



A G E N D A
Carlsbad City Council
Regular Meeting
Municipal Building, 101 North Halagueno
Carlsbad, New Mexico
June 10, 2014 at 6:00 p.m.

Invocation – Pledge of Allegiance

- 1. Approval of Agenda**
- 2. Routine and Regular Business**

All matters under this heading are considered routine by the City Council and will be acted upon in one motion. There will be no separate discussion of these items. If discussion is desired on a particular item, upon request, that item may be removed from the Routine and Regular Business and be considered separately.

- A. Minutes of the Regular City Council Meeting held on May 27, 2014**
- B. Personnel Report**
- C. Purchasing:**
 - 1) Consider approval to Advertise Request for Proposal for Third Party Administration of Workers Compensation Claims
 - 2) Consider approval to Award Bid No. 2014-28, to Pro-vision Systems for Sixteen (16) Video Cameras for Transit Vans in the amount of \$17,613.42
 - 3) Consider approval to Award Bid No. 2014-21, to Accent Landscape Contractors, Inc. for the construction of Two (2) Little League Baseball Fields in the amount of \$1,250,595.06
- D. Contracts and Agreements:**
 - 1) Consider approval of Amendment to the Agreement between the City of Carlsbad and Robert Jacquez dba: Ultra Clean Carpet & Janitorial Services for the Cleaning of City Park Restrooms to include locking and unlocking certain restrooms
 - 2) Consider approval of Agreement with Celtech Corporation for Lease of Property at the Cavern City Air Terminal
 - 3) Consider approval of Agreement between the City of Carlsbad and Charles Jurva for Tennis Professional Services at the Lake Carlsbad Municipal Tennis Courts
- E. Monthly Department Reports:**
 - 1) Consider approval of Personnel Department Monthly Report for May 2014
 - 2) Consider approval of Planning, Engineering & Regulation Department Monthly Report for May 2014
- F. Set Date: (July 22, 2014)**
 - 1) An Ordinance Rezoning Part of “R-1” Residential District to “C-2” Commercial District for an approximately 0.59+/- Acre Site, located at 509 W. Pierce Street, legally described as Martin Line Adjustment, Lot 33, Pursuant to Section 3-21-1 et seq NMSA 1978 and Sections 56-150 (B) and 56-140 (I), Carlsbad Code of Ordinances, Applicant: W.T. Martin

2) An Ordinance Rezoning Part of "R-1" Residential District to "R-2" Residential District for an approximately 0.84+/- acre site, located along N. Guadalupe Street, legally described as Martin Line adjustment, Lot 34, pursuant to Section 3-21-1 et seq NMSA 1978 and Sections 56-150(B) and 56-140(I), Carlsbad Code of Ordinances, Owner: Applicant: W.T. Martin

3) An Ordinance Rezoning Part of "I" Industrial District to "C-2" Commercial District for an approximately 27.08+/- acre area, including lots legally described as the Amended Cascades No. 6 Subdivision, Lots 1B, 5A-16A, 20A-24A, 26-28A, and Amended Cascades No. 7 Subdivision, Lots 18B and 19B, Pursuant to Section 3-21-1 et seq NMSA 1978 and Sections 56-150(B) and 56-140(I), Carlsbad Code of Ordinances, Applicant: Carlsbad Department of Development

4) An Ordinance Annexing a portion of land containing 32.12 acres more or less, contiguous to the City of Carlsbad, New Mexico, located North of Ligon Road legally described as part of the NW ¼ of the NW ¼ of Section 25, Township 21 South, Range 26 East, NMPM, Eddy County, New Mexico pursuant to the petition method provided for in Section 3-7-1 et seq, NMSA 1978, Applicant: CARC, Inc.

5) An Ordinance Establishing "PUD" Planned Unit Development Zoning in conjunction with the Annexation of an approximately 32.12 acre area and amending the Official Zoning Map of the City pursuant to Section 3-21-1 et seq NMSA 1978 and Sections 56-150(B) and 56-140(I), Carlsbad Code of Ordinances, Applicant: CARC, Inc.

G. Board Appointment:

1) Carlsbad Golf Course Advisory Board: Kenny Lawson, remainder of 4-year term

3. Consider approval of Resolution No. 2014-29, a Resolution for the City of Carlsbad to Promote and Engage in the Initiatives of the World Health Organization's Age-Friendly Cities and Communities Network

4. Consider approval of a Business License to conduct door-to-door sales, service and installation of security systems by ARM Security, Inc. (Owner: Vivint, Inc.), pursuant to Carlsbad Code of Ordinances, Chapter 28, as amended by Ordinance No. 2012-16

5. Consider an Appeal of the Planning and Zoning Commission's decision to approve a Variance from Section 56-90(b) to allow a front-yard Variance of 10' from the front property line, located on the East side of Miehl's Drive, Appellant: Dave Tawater

A. Public Hearing

B. Consider Appeal

6. Consider an Appeal of the Planning and Zoning Commission's decision to approve a Variance from Section 47-42(i)(1) to allow the proposed cul-de-sac to be 899' in length rather than the required 800' and to serve 17 lots instead of the maximum 15 lots, in the Fountain Hills Subdivision, Phase 11, Zoned Rural Residential District (R-R), Appellant: Dave Tawater

A. Public Hearing

B. Consider Appeal

7. Consider an Appeal of the Planning and Zoning Commission's decision to approve a Variance from Section 47-42(c)(3) that would allow the platted right-of-way of a future street to be 42' in width, with additional 9' utility and access easements on both sides (equating to a total of 60'), rather than the required platted 60', in the Fountain Hills Subdivision – Phase 11, Zoned Rural Residential District (R-R), Appellant: Dave Tawater

- A. Public Hearing
- B. Consider Appeal

8. Consider an Appeal of the Planning and Zoning Commission's decision to approve a variance from Section 47-62(d) that would allow the pavement width of future streets to be 26' in width rather than the required 28' and to allow the construction of the street without curb and gutter, in the Fountain Hills Subdivision – Phase 11, Zoned Rural Residential District (R-R), Appellant: Dave Tawater

- A. Public Hearing
- B. Consider Appeal

9. Council Committee Reports

10. Adjourn

INFORMATION ONLY

NEXT REGULAR CITY COUNCIL MEETINGS

- Regular City Council Meeting on Tuesday, June 24, 2014 at 6:00 p.m.
- Regular City Council Meeting on Tuesday, July 8, 2014 at 6:00 p.m.

<p>If you require hearing interpreters, language interpreters or auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's office at (575) 887-1191 at least 48 hours prior to the scheduled meeting time.</p>
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**This item was
unavailable at the time
the Agenda packets
were compiled**

CITY OF CARLSBAD
PERSONNEL REPORT

June 10, 2014

APPOINTMENTS:

<u>NAME</u>	<u>DATE</u>	<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>
Gary L. Crawford	06/19/14	Double Eagle	Heavy Equipment Operator 2
Lupita Montana	07/01/14	Library	BPA Intern
Edward Joe VanScotter	06/19/14	Museum	Museum Attendant, P/T
Corina Yrigolen	06/19/14	San Jose Sr. Rec. Ctr.	Assistant Manager

TERMINATIONS:

<u>NAME</u>	<u>DATE</u>	<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>	<u>REASON</u>
Mark Alam	05/30/14	Fire	Lieutenant/EMT-I	Retired
Linda Eastman	05/28/14	Library	Museum Attendant, P/T	Retired
Lexie Fitch	05/20/14	Executive	BPA Intern	Resigned
Michael Jason Lowe	05/30/14	Fire	Lieutenant/EMT-I	Retired
Kayla Roberts	05/20/14	Library	BPA Intern	Resigned
Ricky Dean Smith	05/29/14	Double Eagle	Heavy Equipment Oper.	Resigned

INTERNAL TRANSFERS AND PROMOTIONS:

<u>NAME</u>	<u>DATE</u>	<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>
J. Patrick Cass	06/09/14	Public Works	Deputy Director
George Peterson	05/26/14	Water	Water Operator 4
Logan Ramirez	05/26/14	WW Collections	Waste Water Operator, Apprentice
Lupe Ramirez	05/12/14	Community Service	Caretaker

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

Steven McCutcheon, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Michael Hernandez, Deputy Director of Utilities ~~MA~~

SUBJECT: Recommendation for Employment

DATE: May 29, 2014

The Following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to pre-hire medical examination:

General Information:

Name: Gary L. Crawford Classification/Position: Heavy Equipment II
Department: Double Eagle

<input checked="" type="checkbox"/> Regular	<input type="checkbox"/> Full-time	<input checked="" type="checkbox"/> Hourly \$ <u>21.95</u> per hour
<input type="checkbox"/> Seasonal	<input type="checkbox"/> Part-time	<input type="checkbox"/> Salary \$ _____ per hour
<input type="checkbox"/> Temporary	<input type="checkbox"/> On call	

Education Level:

<input checked="" type="checkbox"/> High School Diploma	<input type="checkbox"/> GED or equivalent
<input type="checkbox"/> Associates Degree	_____
<input type="checkbox"/> Bachelors Degree	_____
<input type="checkbox"/> Masters Degree	_____
<input type="checkbox"/> Other	_____

Employment:

Present or last Employer: El Paso Natural Gas/ Kinder Morgan
From April 1982 to April 2013 Classification: Senior Operations Tech.
Duties: Pipeline Construction, Equipment Operator and Truck Driver

Related Experience: _____

Comment: Computer training, operated Rubber Tire Backhoe, Track-Hoes, Dozer, and Maintainers.
Driven various tractor trailers rigs in Texas, New Mexico, Arizona and Oklahoma.

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

Steve McCutcheon, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Patsy Jackson-Christopher, Culture, Recreation and Community Services

SUBJECT: Recommendation for Employment

DATE: June 2, 2014

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Lupita Montana Classification/Position: BPA Student Intern

Department: Library - Culture, Recreation and Community Services

<input type="checkbox"/> Regular	<input type="checkbox"/> Full-time	<input checked="" type="checkbox"/> Hourly \$ <u>\$7.50</u> per hour
<input type="checkbox"/> Seasonal	<input checked="" type="checkbox"/> Part-time	<input type="checkbox"/> Salary \$ _____ per annum
<input checked="" type="checkbox"/> Temporary	<input type="checkbox"/> On call	

Education Level:

<input type="checkbox"/> Associates Degree	<input type="checkbox"/> High School Diploma GED or equivalent
<input type="checkbox"/> Bachelors Degree	<u>Lupita is a senior at Carlsbad High School and enrolled in the</u>
<input type="checkbox"/> Masters Degree	<u>Business Internship Program.</u>
<input checked="" type="checkbox"/> Other	_____

Employment:

Present or last Employer: S&P Aragon McDonald's

From Nov-14 to Present Classification: Clerk

Duties:

Assisting with payroll, invoices, inventory, and filing.

Related Experience: _____

Library user

Comments: _____

Lupita is enthusiastic, well-spoken, and an excellent student (3.31 GPA).

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

Steve McCutcheon, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Patsy Jackson-Christopher, Culture, Recreation & Community Services

SUBJECT: Recommendation for Employment

DATE: June 4, 2014

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Edward Joe VanScotter Classification/Position: Museum Attendant, P/T
Department: Museum

<input checked="" type="checkbox"/> Regular	<input type="checkbox"/> Full-time	<input checked="" type="checkbox"/> Hourly \$ <u>13.90</u> per hour
<input type="checkbox"/> Seasonal	<input checked="" type="checkbox"/> Part-time	<input type="checkbox"/> Salary \$ _____ per annum
<input type="checkbox"/> Temporary	<input type="checkbox"/> On call	

Education Level:

☐ High School Diploma ☐ GED or equivalent

☐ Associates Degree _____

☒ Bachelors Degree Eastern Washington University

☐ Masters Degree _____

☐ Other _____

Employment:

Present or last Employer: Walmart
From 01/14 to Present Classification: Department Manager
Duties: Managing department, including maintaining merchandise and supervising employees.

Related Experience: _____

Comments: Edward's success in his educational background, along with his minor in history, will make him a valuable asset for the Museum.

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

Steve McCutcheon, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Amparo C. Vasquez, San Jose Center Manager *scv* *AV*

SUBJECT: Recommendation for Employment

DATE: June 3, 2014

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Corina Yrigollen Classification/Position: Assistant Manager

Department: _____

<input checked="" type="checkbox"/> Regular	<input checked="" type="checkbox"/> Full-time	<input checked="" type="checkbox"/> Hourly \$ <u>14.81</u> per hour
<input type="checkbox"/> Seasonal	<input type="checkbox"/> Part-time	<input type="checkbox"/> Salary \$ _____ per annum
<input type="checkbox"/> Temporary	<input type="checkbox"/> On call	

Education Level:

<input checked="" type="checkbox"/> High School Diploma	<input type="checkbox"/> GED or equivalent
<input type="checkbox"/> Associates Degree	_____
<input type="checkbox"/> Bachelors Degree	_____
<input type="checkbox"/> Masters Degree	_____
<input type="checkbox"/> Other	_____

Employment:

Present or last Employer: SENMCAC

From Apr-14 to Present Classification: Senior Service Specialist

Duties: Conduct assessments of seniors at the center or at their homes. Send reports to the main office, keep track and input mileage for housekeepers, visit with the seniors and assist them if they need assistance.

Related Experience: Translating for seniors who do not speak or understand the English language, people skills computer literate.

Comments: Corina is fluent in Spanish and works very well with the senior population.

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM
PURCHASING RECOMMENDATION

Council Meeting Date: 6/10/14

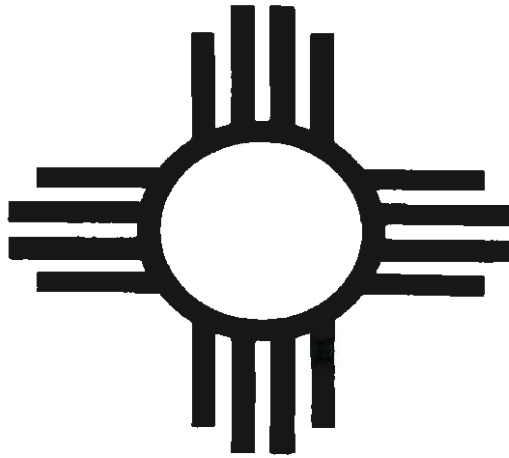
Department: All City Departments	BY: Matt Fletcher, Purchasing Mgr.	Date: 6/4/14
SUBJECT: Services Description: Third Party Administration of Workers Compensation Claims		
SYNOPSIS: Qty _____ Total Est. Cost _____ Total Actual Cost _____ Budgeted Yes Est. City Share _____ Actual City Share _____ Account # _____ Account # _____ Account # _____ Account # _____ <div style="text-align: right;">TOTAL _____ \$ 0.00</div>		
BACKGROUND, JUSTIFICATION AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) The City of Carlsbad is requesting to solicit proposals for Third Party Administration of Workers Compensation Claims Services. The current contract with New Mexico Mutual is terminated and services are being provided on a month to month basis currently by Keenan & Associates. An RFP is necessary to initiate a new contract term for this service.		
Requested action to be taken by Council: Advertise Invitation for Request for Proposal	Council Action Taken: Select one	Date: June 5, 2014
Reviewed by City Administrator: /s/ Steve McCutcheon		

POST BID/RFP RECOMMENDATION	Council Meeting Date: 06/10/2014
Requested action to be taken by Council: Other:	Council Action Taken: Select one
ADDITIONAL INFORMATION: 	
Reviewed by City Administrator:	

 ATTACHMENT(S): ☒ Specifications ☐ Bid/RFP Summary ☐ Other: _____

**REQUEST FOR PROPOSALS
FOR
THIRD PARTY ADMINISTRATION OF WORKER'S COMPENSATION CLAIMS**

RFP No. 2014-



City of Carlsbad

101 N. Halagueno
Carlsbad, NM 88221

Telephone: (575) 234-7905

Date: 6/13/14

Procurement Manager: Matthew Fletcher

NOTICE OF REQUEST FOR PROPOSALS

Competitive sealed proposals for **Third Party Administration of Worker's Compensation Claims** will be received by the **City of Carlsbad** for RFP No. 2014-.

The City shall entertain proposals in accordance with State law and as outlined within the RFP. All proposals shall be evaluated according to set criteria as stipulated in the RFP documents with price/cost being only one of several factors considered.

Proposals will be received at **City of Carlsbad, Purchasing Department, Room 115, 101 N. Halagueno, Carlsbad, NM 88220 or P.O. Box 1569, Carlsbad, NM 88221-1569** until **5:00 p.m. on July 3, 2014.**

Copies of the Request for Proposals can be obtained in person at the office of the Purchasing Department, Room 115, at the City of Carlsbad, 101 N. Halagueno, Carlsbad, NM or will be mailed upon written or telephone request to Matt Fletcher, Purchasing Manager at (575) 234-7905.

A Pre-Proposal Conference will not be held, however specific questions regarding this RFP may be directed to Matt Fletcher, Purchasing Manager, at (575) 234-7905.

PURCHASING AGENT:

Harry Burgess

Date: _____

[FOR CONTRACTING AGENCY'S USE ONLY]

Newspaper: Current - Argus Publish: 6/13/14 P.O. No. _____

Newspaper: _____ Publish: _____ P.O. No. _____

Newspaper: _____ Publish: _____ P.O. No. _____

[Note: This Notice is issued pursuant to the requirements of '13-1-104 NMSA 1978 and must be published not less than 10 calendar days prior to the date set for the receipt of proposals ('13-1-113) and published in a newspaper of general circulation in the area.]

1. RFP DESCRIPTION

The City of Carlsbad is seeking proposals for the provision of **Third Party Administration of Worker's Compensation Claims**. The City shall consider proposals from qualified entities that are able to provide these services in a manner that includes communication with City staff, injured employees, and medical personnel, all of whom typically reside and conduct business in Carlsbad, NM.

The City is seeking proposals due to the fact that its current provider of these services is closing its business, after serving the City for approximately 10 years. The expiring contract for these services has been based on a fee-for-services format, with annual expenditures for these services averaging approximately \$30,000.00 per year.

The City of Carlsbad is self-insured for Worker's Compensation claims, with an excess aggregate insurance policy to cover claims that exceed \$350,000 for regular staff and \$500,000 for public safety employees. Over the past four years, an initiative to reduce the losses from worker's compensation claims has realized significant benefits as the result of an aggressive educational program involving both supervisory staff and employees.

For reference purposes related to the scale and activity of these duties, the following table illustrates the City's most recent employment numbers and loss statistics: **THIS SECTION TO BE UPDATED PRIOR TO RELEASE OF RFP.**

Fiscal Year	2006-7	2007-8	2008-9	2009-10 (to date)
Average Number of Full-Time Employees	318	320	325	351
Reports Filed	56	49	46	39
Loss Hours	4208	5982	5598	2320
Travel Expense	\$4,434.48	\$2934.26	\$5654.00	\$1850.00
Medical Expenses	\$233,206.39	\$171,798.07	\$167,124.19	\$74,824.13
Weekly Benefits Paid	\$68,586.15	\$66,522.71	\$67,077.48	\$39,050.97
Settlements	\$82,045.51	\$75,111.68	\$46,358.00	\$39,050.97
Total Expenditures for WC Claims	\$388,272.53	\$316,366.72	\$286,213.67	\$138,477.35

The City is not seeking insurance coverage under this request for proposals, but rather wishes to procure services for the administration of claims, as generally listed below.

Duties shall include:

- 1) Investigate and document all submitted Employee Reports of Injury, to include interviewing affected employee and witnesses, if any, to determine extent of injury and liability.
- 2) Interact with contracted City Physician regarding extent of injury, required treatment, and return-to-work provisions.
- 3) Submit reports to City regarding each case, itemizing advised payments for treatment and reserve amounts.
- 4) Calculation of weekly benefits and Disability Compensation (as necessary) in accordance with New Mexico Statutes.
- 5) Provide feedback to City regarding specific incidents or any observed trends concerning accidents in order to reduce future exposure.
- 6) The provision of services will require access to personal information regarding individual employees, and the provider of services will be required to adhere to state and federal laws regarding associated privacy issues.

Proposals shall identify current and former clients where similar services have been provided, as well as contact information for such clients in order that references may be checked. Proposals shall also include responses oriented towards the evaluation criteria as listed in (Attachment B).

2. PROPOSAL FORMAT

- A. Offeror's shall provide 5 copies of their proposal to the location specified on the cover page on or before the closing date and time for receipt of proposals.
- B. All proposals must be typewritten on standard 8 1/2" x 11" paper.
- C. A maximum of 25 pages, including title, index, etc., not including front and back covers.
- D. The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated:
 - 1) Cover Letter
 - 2) Bid Form (Attachment A)
 - 3) Text/Body describing proposal in accordance with items listed in Evaluation Criteria (Attachment B)
 - 4) Campaign Contribution Form (Attachment C)
- E. Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

SUBMITTAL OF PROPOSALS

- A. Proposals shall be submitted by the time and at the place indicated in the Notice of Request for Proposals.
- B. The envelope shall be addressed to the Purchasing Manager of the City. The following information shall be provided on the front lower left corner of the Bid envelope: RFP Title, RFP number, date of opening, and time of opening. If the Proposal is sent by mail, the sealed envelope shall have the notation "**SEALED PROPOSAL ENCLOSED**" on the face thereof.
- C. Proposals received after the date and time for receipt of Proposals will be returned unopened.
- D. Oral, telephonic, or telegraphic proposals are invalid and will not receive consideration.

3. EVALUATION OF PROPOSALS

The City will designate a committee of not less than three persons to review and evaluate the submitted proposals. The proposals will be assigned points based upon the criteria outlined in Attachment B.

5. AWARD

The Carlsbad City Council shall consider the proposal(s) that receive the highest number of assigned points. The award of any RFP shall be determined by a vote of the City Council in an open meeting subsequent to the date of opening.

6. RESERVATIONS

This Request for Proposals may be canceled, or any or all proposals may be rejected in whole or in part, when it is in the best interest of the City. This Request for Proposals does not bind the City of Carlsbad to engage any of the services discussed herein.

7. GENERAL TERMS AND CONDITIONS

- a. GOVERNING LAW - The Agreement shall be governed exclusively by the laws of the State of New Mexico as the same from time to time exist.
- b. INDEPENDENT CONTRACTORS - The Offeror and his agents and employees are independent contractors and are not employees of the City. The Offeror and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of the Agreement.

- c. BRIBES, GRATUITIES AND KICK-BACKS - Pursuant to §13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including §30-14-1, §30-24-2, and §30-41-1 through §30-41-3 NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (§13-1-28 through §13-1-199 NMSA 1978) imposes civil and criminal penalties for its violation.
- d. STANDARD FORM OF AGREEMENT BETWEEN CONTRACTING AGENCY AND CITY - The form of agreement typically issued by the City will be used for this project.
- e. CONTACTS WITH CONTRACTING AGENCY OFFICIAL OR STAFF MEMBERS - Prior to, and after submittal of proposal, prospective Offeror's shall **not** make contact with any official or staff member regarding this RFP, other than contact to obtain a copy of related documents.

[Attachment A]

BID FORM

Name of Offeror _____

Address _____

Telephone Number (____) ____-_____

Proposed Fees (annual) _____

General Description of Services** _____

Summary of Experience ** _____

****This description is for general reference only. Please include additional sheets as necessary to completely address items as indicated under Attachment B, Evaluation Criteria.**

[Attachment B]

EVALUATION CRITERIA

Proposals shall be evaluated by the committee in accordance with the following schedule:

1.	Proposer's Experience with similar provision of Workers Compensation Claim Administration, more specifically for governmental agencies or for entities of a similar or larger size.	15%
2.	Proposer's ability to provide services in a manner that meets City's needs with respect to location (Carlsbad, NM), hours of service, and ability to communicate effectively with all parties involved.	15%
3.	Proposer's ability to provide services / duties as listed (Section 1, pg.4 items 1-6).	20%
4.	Additional information/related experience, unique aspects of firm that enhance proposer's ability to provide requested services.	10%
5.	Proposer's Fee Structure	40%
	Total	100%

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM PURCHASING RECOMMENDATION

Council Meeting Date: 6/10/14

Department: Transit	BY: Matt Fletcher, Purchasing Mgr.	Date: 6/4/14
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SUBJECT: Equipment and Services
Description:

Video Cameras for Sixteen (16) Transit Vans

SYNOPSIS:	Qty <u>1</u>	Total Est. Cost	<u>\$ 26,358.00</u>	Total Actual Cost	<u>\$ 17,613.42</u>
	Budgeted Yes	Est. City Share	<u>\$ 26,358.00</u>	Actual City Share	<u>\$ 17,613.42</u>
	Account # <u>15-0150-84002</u>		<u>\$ 26,358.00</u>		
	Account # _____		_____		
	Account # _____		_____		
	Account # _____		_____		
	TOTAL		<u>\$ 26,358.00</u>		

BACKGROUND, JUSTIFICATION AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)

The City of Carlsbad solicited bids to purchase and installation of Sixteen (16) video camera system to be installed in Carlsbad City Transit Vans. There are to be 2 cameras installed in each vehicle.

The City received six (6) bids and the low bidder is Pro-Vision Video Systems in the amount of \$17,613.42. The bid has been reviewed by City staff and meets the conforming standards of the bid specifications.

The purchase was approved in the current year budget.

Requested action to be taken by Council:

Advertise Invitation for Bid

Council Action Taken:

Select one

Date:

Reviewed by City Administrator: /s/ Steve McCutcheon

June 5, 2014

POST BID/RFP RECOMMENDATION	Council Meeting Date:	06/10/2014
Requested action to be taken by Council:	Council Action Taken:	Date:
Award Bid Number 2014-28	Select one	
Award to Pro-Vision Video Systems		
ADDITIONAL INFORMATION:		
If it pleases the council, it is recommended to award Bid# 2014-28 to Pro-Vision Systems in the amount of \$17,613.42		
Reviewed by City Administrator:		

ATTACHMENT(S): ☐ Specifications ☒ Bid/RFP Summary ☐ Other: _____

Video Cameras for Tranist Vans

Bid Results

Bid No. 2014-28

Date: 6/2/14 Time: 2:30 p.m.

BIDDERS:	Bid Amount	Acknowledgment Addendum #1	Acknowledgment Addendum #2	State Resident?
Roberts Truck Center, Albuquerque, NM	\$20,346.66	YES	NO	YES
Resident Bidders Preference Adjustment (5%)	-\$1,017.33			
Adjusted Bid Amount for Comparison	\$19,329.33			
247 Security Inc., Dallas, GA	\$26,136.00	NO	NO	NO
Security USA, Albuquerque, NM	\$20,314.20	NO	NO	YES
Resident Bidders Preference Adjustment (5%)	-\$1,015.71			
Adjusted Bid Amount for Comparison	\$19,298.49			
Pro-Vision Video Systems, Byron Center, MI	\$17,613.42	YES	YES	NO
Safety Vision, Houston, TX	\$28,490.00	NO	NO	NO
Tadi Brothers, Los Angeles, CA	\$19,000.00	YES	NO	NO

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM PURCHASING RECOMMENDATION

Council Meeting Date: June 10, 2014

Department: Sports Complex	BY: John Lowe, Sports Superintendent	Date: June 4, 2014
SUBJECT: Infrastructure Description: Bob Forrest Youth Sports Complex- Construction of Two (2) Little League Baseball Fields		
SYNOPSIS: Qty <u>2</u> Total Est. Cost <u>\$ 1,250,595.06</u> Total Actual Cost _____ Budgeted Yes Est. City Share <u>\$ 1,250,595.06</u> Actual City Share _____ Account # <u>29-0290-86540</u> <u>\$ 1,060,595.06</u> Account # <u>81-0810-86540</u> <u>\$ 190,000.00</u> Account # _____ Account # _____ <div style="text-align: right;">TOTAL <u>\$ 1,250,595.06</u></div>		
BACKGROUND, JUSTIFICATION AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) In 2009 the city started phase 3 of the Bob Forrest Youth Sports Complex. This included the construction of four little league fields. The city is ready to complete phase 3 of the project with the construction of the remaining two (2) fields. Formal construction bids were solicited for a base bid that consisted of two (2) little league fields, a new field house for electrical needs present and future, other site improvements, and an additive alternate consisting of one (1) Pee Wee field and related site improvements. The formal construction bids were opened on May 20, 2014. Lowest bid received for construction of the base bid was \$1,250,595.06 including gross receipts tax. The low bid for the additive alternate was \$369,555.99 including gross receipts tax. In addition to the base and additive alternate bids there is a portion of this construction project to be completed on CES pricing agreement. this includes the installation of synthetic turf for one field, installation of grandstand seating, score boards, press boxes, backstop netting, and fence slats. The CES price for this is \$601,893.10. AK Sales and Consulting, Inc would be responsible for the installation of the above referenced amenities on the CES pricing agreement. It is the recommendation of the Bob Forrest Youth Sports Complex Advisory Board to award the base bid in the amount of \$1,250,595.06 and have AK Sales & Consulting, Inc provide and install the referenced amenities to construct two (2) little league fields.		
Requested action to be taken by Council: Other: Award bid # 2014-21	Council Action Taken: Select one	Date: June 5, 2014
Reviewed by City Administrator: <u>/s/ Steve McCutcheon</u>		

POST BID/RFP RECOMMENDATION	Council Meeting Date:
Requested action to be taken by Council: Award Bid Number Bid # 2014-21	Council Action Taken: Select one <div style="text-align: right;">Date: June 5, 2014</div>
ADDITIONAL INFORMATION: If it is the Council's pleasure, it is our recommendation to award the base bid for bid # 2014-21 to the lowest qualifying bidder, Accent Landscape Contractors, Inc. in the amount of 1,250,595.06 (includes NMGR). The contract is to be complete within 120 days of the notice to proceed.	
Reviewed by City Administrator: <u>/s/ Steve McCutcheon</u>	

ATTACHMENT(S): ☐ Specifications ☒ Bid/RFP Summary ☒ Other: Engineer's Recommendation



May 20, 2014

Ms. Anna Beason
Special Projects Coordinator, City of Carlsbad
P.O. Box 1569
Carlsbad, NM 88221-1569

Re: **Bid No. 2014-21**
Bob Forrest Carlsbad Youth Sports Complex Expansion - 2014
Carlsbad, NM

Dear Ms. Beason:

As you know, bids were opened for the above-referenced project on Tuesday, May 20, 2014. The City received three (3) competitive bids. The bid amounts are summarized on the attached bid tabulation sheet. All bids were reviewed by me for completeness and mathematical accuracy. The lowest base bid amount was submitted by Accent Landscape Contractors, Inc. of Albuquerque, NM. They submitted a base bid in the amount of \$1,250,546.72, including gross receipts tax. However, there was a slight mathematical error in the total of the base bid items. Their corrected low base bid amount is \$1,250,595.06, including gross receipts tax.

Accent Landscape Contractors, Inc. is a registered Contractor in the State of New Mexico with active classifications MS06, GF03, GF09, GF05, and GB98 under license number 23063. This was verified through the New Mexico Construction Industries Division website. They are a registered with the New Mexico Department of Workforce Solutions. The Surety for the Bid Bond is Travelers Casualty and Surety Company of America. Accent Landscape Contractors, Inc. submitted all required Bid Forms. They listed their subcontractors that will work on this project. All subcontractors listed are licensed in the State of New Mexico with the appropriate classification attachments to perform their nature of work.

The basis of award for this project is the lowest, complete and responsive base bid submitted by a licensed contractor in the State of New Mexico as stated in the New Mexico DFA guidelines included in the bid documents. The bid submitted by Accent Landscape Contractors, Inc. meets these guidelines. Therefore, after reviewing the submitted bids, Smith Engineering Company recommends the contract be awarded to

Ms. Anna Beason
Page 2 of 2
May 20, 2014

Accent Landscape Contractors, Inc. of Albuquerque, NM in the amount of 1,250,595.06,
including gross receipts tax.

Please feel free to call me with any questions or comments.

Sincerely,
Smith Engineering Co.

A handwritten signature in cursive script, appearing to read "Scott Hicks".

Scott E. Hicks, PE
Project Engineer

Attachment

cc: John Lowe, Sports Coordinator

BID TABULATION

BASE BID

BID ITEM	Unit	Quantity	Engineer's Estimate	AJAC Enterprises, Inc.	Accent Landscape Contractors, Inc.	Lone Mountain Contracting, Inc.
			BID AMOUNT	BID AMOUNT	BID AMOUNT	BID AMOUNT
1. Provide all labor, material and equipment for the construction of one (1) 215' Championship Natural Little League Field, including all earthwork, construction surveying/staking/layout, dugouts/bullpens, field concrete (bleacher pads, press box pad, and dugout flatwork), fencing, backstop poles and CMU wall, field irrigation, field surfacing (infield mix/sod), pitcher's mound, field electrical and lighting, installation of owner-provided scoreboard, mobilization, SWPPP and all other work necessary for a fully functional baseball field, Complete-in-Place. (Excluding: bleachers, press box, backstop netting and dugout netting).	LS	1	\$380,000.00	\$498,796.00	\$469,783.00	\$568,955.00
2. Provide all labor, material and equipment for the construction of one (1) 215' Championship Synthetic Little League Field, including all earthwork, construction surveying/staking/layout, dugouts/bullpens, field concrete (bleacher pads, press box pad, and dugout flatwork), fencing, backstop poles and CMU wall, field electrical and lighting, installation of owner-provided scoreboard, SWPPP and all other work necessary for a fully functional baseball field, Complete-in-Place. (Excluding: synthetic field surfacing, bleachers, press box, backstop netting and dugout netting).	LS	1	\$300,000.00	\$379,113.00	\$386,869.00	\$373,342.00
3. Provide all labor, material and equipment for the construction of one (1) 25'x25' split-face block Field House building with electrical room, including all earthwork, construction surveying/staking/layout, concrete foundation exterior/interior walls, roof system, wall-mounted AC unit, doors, building electrical/lighting and all other work necessary for a fully functional Field House building, Complete-in-Place.	LS	1	\$100,000.00	\$124,806.00	\$116,869.00	\$159,230.00
4. Provide all labor, material and equipment for site electrical expansion, including coordination with Xcel Energy for primary power extension and new transformer, service from new transformer to new Field House electrical room, new panels/circuits, new pedestrian lighting, new conduits/wiring to serve existing Senior League Fields and batting cages, and conduits for future use terminating outside of Field House.	LS	1	\$75,000.00	\$78,859.00	\$75,785.00	\$92,325.00
5. Provide all labor, material and equipment for the construction of off-field concrete sidewalks and off-field irrigation adjacent to new Little League Fields and new Field House.	LS	1	\$80,000.00	\$82,601.00	\$114,715.00	\$106,413.00

SUB-TOTAL BASE BID
 GRT @ 7.4375
TOTAL BASE BID

\$935,000.00	\$1,184,175.00	\$1,184,021.00	\$1,298,265.00
\$89,540.63	\$86,585.52	\$88,574.08	\$96,558.46
\$1,004,540.63	\$1,260,760.52	\$1,260,595.08	\$1,394,823.46

(corrected for slight mathematical error)

ADDITIVE ALTERNATE NO. 1

BID ITEM	Unit	Quantity	BID AMOUNT	BID AMOUNT	BID AMOUNT
1. Provide all labor, material and equipment for the construction of one (1) 140' Natural Pee Vee Field, including all earthwork, construction surveying/staking/layout, dugouts/bullpens, field concrete (bleacher pads, and dugout flatwork), fencing, backstop poles and CMU wall, field and perimeter irrigation, field surfacing (infield mix/sod), pitcher's mound, field electrical and lighting, installation of owner-provided scoreboard, mobilization, SWPPP and all other work necessary for a fully functional baseball field, Complete-in-Place. (Excluding: bleachers, backstop netting and dugout netting).	LS	1	\$315,000.00	\$358,680.00	\$343,973.00

SUB-TOTAL ADD ALT. NO 1
 GRT @ 7.4375
TOTAL ADD ALT. NO. 1

\$315,000.00	\$358,680.00	\$343,973.00	\$379,807.00
\$23,428.13	\$26,875.34	\$25,582.99	\$28,248.15
\$338,428.13	\$385,555.34	\$369,555.99	\$408,055.15

SUB-TOTAL BASE BID and ADD. ALT NO. 1
 GRT @ 7.4375
TOTAL BASE BID and ADD. ALT NO. 1

\$1,250,000.00	\$1,522,835.00	\$1,507,994.00	\$1,678,072.00
\$92,988.75	\$113,260.85	\$112,157.05	\$124,808.61
\$1,342,988.75	\$1,636,095.85	\$1,620,151.05	\$1,802,876.61

(corrected for slight mathematical error)

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM PURCHASING RECOMMENDATION

Council Meeting Date: June 10 2014

Department: Parks	BY: Luis Renteria, Parks Superintendent	Date: June 4 2014
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SUBJECT: Services**Description:**

Amendment to the City of Carlsbad, and Ultra Clean janitorial services contract.

SYNOPSIS:	Qty <u>1</u>	Total Est. Cost	<u>\$ 10,293.86</u>	Total Actual Cost	<u>\$ 10,293.86</u>
	Budgeted Yes	Est. City Share	<u>\$ 10,293.86</u>	Actual City Share	<u>\$ 10,293.86</u>
	Account # <u>01-0070-60040</u>		<u>\$ 200,300.00</u>		
	Account # _____		_____		
	Account # _____		_____		
	Account # _____		_____		
		TOTAL	<u>\$ 200,300.00</u>		

BACKGROUND, JUSTIFICATION AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)

To deter, and prevent vandalism in the City of Carlsbad park restrooms facilities, the City of Carlsbad has requested that Ultra Clean janitorial services, who are currently under contract with the City of Carlsbad for janitorial services for all park restrooms, lock, and unlock doors into the restrooms specified by the city to prevent access to the restrooms. The amount requested by Ultra Clean janitorial service is \$1,368.75 plus all applicable taxes per month, for the seven (7) months remaining in the contract. Total compensation is \$9,581.25 plus all applicable taxes.

Requested action to be taken by Council:

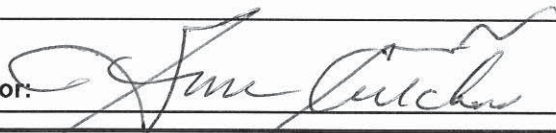
Other:

Council Action Taken:

Select one

Date:

Reviewed by City Administrator:



6-5-14

POST BID/RFP RECOMMENDATION

Council Meeting Date:

Requested action to be taken by Council:

Select one

Council Action Taken:

Select one

Date:

ADDITIONAL INFORMATION:

It is recommended to approve the amendment to the City of Carlsbad, and Ultra Clean janitorial services contract for locking, and unlocking of the park restrooms.

Reviewed by City Administrator:

ATTACHMENT(S): ☐ Specifications ☐ Bid/RFP Summary ☒ Other: Amendment, Janitorial contract

**AMENDMENT TO THE
AGREEMENT BETWEEN THE CITY OF CARLSBAD AND
ROBERT JACQUEZ d.b.a.
ULTRA CLEAN CARPET & JANITORIAL SERVICES
FOR THE CLEANING OF CITY RESTROOMS
TO INCLUDE LOCKING AND UNLOCKING CERTAIN RESTROOMS**

1 THIS AMENDMENT is entered into at Carlsbad, New Mexico, this ____ day of May, 2014,
2 by and between the **CITY OF CARLSBAD**, New Mexico, a municipal corporation, hereinafter
3 referred to as "**CITY**," and **ROBERT JACQUEZ d.b.a. Ultra Clean Carpet & Janitorial Services**,
4 hereinafter referred to as "**JACQUEZ**".

5
6 WHEREAS, in December 2013, the City of Carlsbad and Robert Jacquez, d.b.a. Ultra Clean
7 Carpet & Janitorial Services, entered into an agreement, attached as Exhibit "A" and hereinafter
8 referred to as the "Agreement"; and

9
10 WHEREAS, pursuant to the Agreement, Jacquez is to provide professional janitorial services
11 for restrooms in CITY Parks and Recreation areas; and

12
13 WHEREAS, the CITY has asked that, in addition to his current duties, JACQUEZ lock and
14 unlock certain restrooms on a daily basis; and

15
16 WHEREAS, JACQUEZ has agreed to provide those services for the additional compensation
17 of \$1,470.55 per month; and

18
19 WHEREAS, the parties wish to amend the Agreement to include the additional duties and
20 compensation.

21
22 NOW THEREFORE, the parties, in consideration of the mutual covenants and agreements
23 herein contained, agree to amend the Agreement as follows:

24
25 1. **The Agreement.** The Agreement Between the City of Carlsbad and Robert Jacquez d.b.a.
26 Ultra Clean Carpet & Janitorial Services for the Cleaning of City Restrooms dated 11 December
27 2013, is attached and is incorporated herein and made a part of this Amendment.

28
29 2. **Agreement to be Amended.** The Agreement shall remain in full force and effect and the
30 parties shall have the same rights and responsibilities as they do pursuant to the Agreement attached
31 as Exhibit "A" except for the amendments as described herein.

32
33 3. **Amendment of JACQUEZ Provided Services.** Paragraph 2 of the Agreement shall be
34 amended to include this new provision:

35 2.G. JACQUEZ shall lock and unlock the doors into the Restrooms specified by the CITY
36 to prevent access to the Restrooms.
37
38

4. **Amendment of Service Schedule.** Paragraph 3 of the Agreement shall be amended to include this new provision:

3.D. Restroom Locking and Unlocking

i. JACQUEZ shall provide locking and unlocking services for the Park Restrooms. JACQUEZ shall unlock the Restrooms no earlier than 5:00 a.m. and no later than 6:00 a.m. each day. From Memorial Day to Labor Day, JACQUEZ shall lock the Restrooms no earlier than 8:00 p.m. and no later than 10:00 p.m. each day. For all other days, JACQUEZ shall lock the Restrooms at one (1) hour after sunset.

5. **Amendment of Compensation.** Paragraph 5 of the Agreement shall be amended to include this new provision:

5.C. Locking and Unlocking Services

One thousand three hundred sixty-eight dollars and 75/100 (\$1,368.75) per month plus all applicable taxes.

6. **Locking and Unlocking Service Date.** JACQUEZ shall begin providing Restroom Locking and Unlocking services on June 11, 2014.

7. **Captions.** The captions of any articles, paragraphs, or sections hereof are made for convenience only and shall not control or affect the meaning or construction of any of the provisions thereof.

8. **Exhibits.** Any instrument or document made and attached to this Agreement shall constitute a part hereof as though set forth in full in the body of this Agreement, whether made a part hereof by reference or whether made a part hereof by attachment.

CITY OF CARLSBAD:

DALE JANWAY, MAYOR

ATTEST:

CITY CLERK

Contract Number: C-

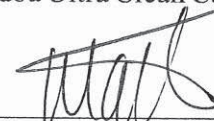
ROBERT JACQUEZ



ROBERT JACQUEZ, dba
Ultra Clean Carpet & Janitorial Service

STATE OF NEW MEXICO)
) ss.
COUNTY OF EDDY)

The foregoing instrument was signed and acknowledged before me this 4th day of June, 2014 by ROBERT JACQUEZ, dba Ultra Clean Carpet & Janitorial Service.

My commission expires: 8/17/2015


NOTARY PUBLIC

 OFFICIAL SEAL
MELINDA A. ROUNTREE
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 8/17/2015

**AGREEMENT BETWEEN THE CITY OF CARLSBAD AND
ROBERT JACQUEZ d.b.a.
ULTRA CLEAN CARPET & JANITORIAL SERVICES
FOR THE CLEANING OF CITY RESTROOMS**

THIS AGREEMENT is entered into at Carlsbad, New Mexico, this 11th day of December, 2013, by and between the **CITY OF CARLSBAD**, New Mexico, a municipal corporation, hereinafter referred to as "**CITY**," and **ROBERT JACQUEZ d.b.a. Ultra Clean Carpet & Janitorial Services**, hereinafter referred to as "**JACQUEZ**".

WHEREAS, the City of Carlsbad owns and operates public parks, recreation areas, and sport facilities in City of Carlsbad, hereinafter referred to as the "Parks and Recreation Areas"; and

WHEREAS, the CITY requested proposals for professional janitorial services for restrooms in the Parks and Recreation areas in its RFP No. 2013-58; and

WHEREAS, JACQUEZ submitted a proposal in response to RFP No. 2013-58; and

WHEREAS, the Carlsbad City Council awarded RFP No. 2013-58 to JACQUEZ subject to the successful negotiation of a contract for Council consideration; and

WHEREAS, the parties wish to enter into this agreement for the provision of the specified services.

NOW THEREFORE, the parties, in consideration of the mutual covenants and agreements herein contained, agree as follows:

1. **Restrooms.** The facilities to be serviced by JACQUEZ shall consist of all restrooms in the following locations, hereinafter, the "Restrooms":

A. "Park Restrooms" shall mean the following facilities:

- i. Lake Carlsbad Recreation Area
 - a. Restrooms in the Rotary playground area, west of the Pecos River on the north end of the park;
 - b. Restrooms in the Bandshell area, at Riverside and Blodgett; and
 - c. Restrooms east of Park Drive across the street from the Tennis Courts;
- ii. Riverview Park
 - a. Restrooms near Pavilion No. 1, south of Pavilion Lane
- iii. Tennis Complex
 - a. Restrooms west of the tennis and racquetball courts
- iv. Bataan Recreation Area
 - a. Restrooms on the east side of the Pecos River off the alley between the 100 block of North James Street and the river; and
 - b. Restrooms in the Lower Tansil Dam area on the west side of the Pecos River near the railroad tracks.

- v. Playground on the Pecos
 - a. Restrooms near Riverwalk Drive, northeast of the playground
- vi. Carlsbad Veterans' Memorial Park
 - a. Restrooms in the park east of South James Street and north of Lower Tansil Dam
- vii. Beach Bathhouse
 - a. Restrooms in the Bathhouse east of the intersection of Park Drive and Church Street
- viii. The Ray Anaya San José Plaza
 - a. Restrooms in the park between Plaza, San José, Diaz, and De Baca Streets
- ix. Dr. Martin Luther King, Jr. Memorial Park
 - a. Restrooms in the park near the intersection of Canyon and Plaza Streets
- B. "Recreation and Cemetery Restrooms" shall mean the following facilities:
 - i. Carlsbad Shooting Range Recreation Area
 - a. Restrooms at the City shooting range on Happy Valley Road (NM Road 524)
 - ii. Carlsbad Cemetery
 - a. Restrooms at the municipal cemetery at 607 Juarez; and
 - b. Restrooms at that portion of the municipal cemetery east of Boyd Street and north of Juarez.
- C. "Sports Facility Restrooms" shall mean the following facilities:
 - i. Bob Forrest Sports Complex
 - a. Restrooms in the baseball concession building;
 - b. Restrooms in the softball concession building; and
 - c. Restrooms in the soccer concession building.
- D. The CITY may, in its sole discretion, replace one or more Restrooms, temporarily or permanently close one or more Restrooms, or temporarily or permanently open one or more additional Restrooms. In the event there is a change in the number of Restrooms to be serviced by JACQUEZ, the compensation due JACQUEZ shall be adjusted upon the mutual agreement of the parties with such change in compensation to be based upon the pro rata change in the number of Restrooms to be serviced.

2. **JACQUEZ Provided Services.** JACQUEZ shall provide the CITY with complete janitorial services at all Restrooms including, but not limited to, the following:

A. All fixtures, including but not limited to toilets, urinals, and sinks, shall be cleaned and sanitized. The walls, floors, and ceilings shall be washed and disinfected. All trash and debris shall be removed and properly disposed, including, but not limited to, any trash and debris around the entrance to each Restroom.

B. Each Restroom shall be fully stocked with hand towels, soap, and toilet paper. JACQUEZ shall supply all hand towels, soap, and toilet paper needed for use in the Restrooms at no additional expense.

1 C. JACQUEZ shall provide all materials, supplies, equipment, and tools required to
2 perform the duties required by this Agreement. JACQUEZ shall be solely responsible for
3 all purchase, repair, maintenance, and operational costs of such materials, supplies,
4 equipment, or tools.

5 D. JACQUEZ shall provide all labor necessary to perform the duties required by this
6 Agreement.

7 E. At mutually convenient times, JACQUEZ shall meet with CITY personnel as
8 necessary to discuss the services performed pursuant to this Agreement.

9 F. JACQUEZ shall perform such additional duties as may from time to time be mutually
10 agreed to by the parties.

11
12 3. **Service Schedule.** JACQUEZ shall provide the services enumerated in Paragraph 2 on the
13 following schedule:

14 A. Park Restrooms

15 i. Routine Services

16 a. Twice a day, seven (7) days a week beginning on the Friday before
17 Memorial Day and continuing through Labor Day. These services shall be
18 provided once in the morning before 10:00 a.m. and once in the afternoon, no
19 later than 5:00 p.m.

20 b. Once a day, seven (7) days a week from the day after Labor Day
21 through the Thursday before Memorial Day. These services shall be provided
22 once in the morning before Noon.

23 ii. Special Services

24 a. Continuous services, the equivalent of two (2) eight-hour shifts per
25 day, during the 4th of July holiday, from 6:00 a.m. through 10:00 p.m.

26 b. Continuous services, the equivalent of one (1) eight-hour shift per
27 day, during Easter Sunday and Mother's Day, beginning at 8:00 a.m.

28 c. Continuous services, the equivalent of two (2) eight-hour shifts per
29 day, of the Ray Anaya San José Plaza restrooms during each day of the 16th
30 of September weekend celebration, from 6:00 a.m. through 10:00 p.m.

31 B. Recreation and Cemetery Restrooms

32 i. Routine Services

33 Once a day, four (4) days a week, Monday, Wednesday, Friday, and Sunday,
34 throughout the year. The services shall be provided no later than 8:00 a.m.
35 each day.

36 C. Sports Facility Restrooms

37 i. Bob Forrest Sports Complex

38 The Bob Forrest Sports Complex Restrooms shall be serviced as requested
39 in writing by the City.
40
41
42
43

1 4. **CITY Provided Services.** The CITY shall be responsible for the following at the
2 Restrooms:

3 A. The payment of all reasonable utility expenses including water service, sewer service,
4 electric service at the Restrooms; and

5 B. Except for damage or vandalism by JACQUEZ officers, employees, or agents, the
6 City shall provide structural, plumbing, electrical, and mechanical repair or maintenance of
7 Restroom structures and systems.
8

9 5. **Compensation.** Prior to receiving any monies from the CITY, JACQUEZ shall submit a
10 current IRS Form W9 to City's Finance Department. In consideration for this Agreement, the CITY
11 shall pay JACQUEZ the following compensation:

12 A. Routine and Special Services of Restrooms

13 Thirty-six thousand four hundred dollars and 00/100 per year (\$36,400.00) plus all
14 applicable taxes. This compensation shall be paid in twelve equal monthly
15 installments of three thousand thirty-three dollars and 33/100 per month
16 (\$3,033.33/month) plus all applicable taxes.

17 B. Additional Days or Numbers of Services

18 i. Additional Requested Service

19 For each additional service of a Restroom requested in writing by the CITY,
20 the CITY shall pay JACQUEZ thirty-one dollars and 67/100 per service of
21 a Restroom (\$31.67/service/Restroom) plus all applicable taxes.

22 ii. Itemized Statement

23 JACQUEZ shall submit a monthly itemized statement to the CITY of all
24 additional days or numbers of services provided by it, with such statement
25 including the date, place, type of service, and rate charged. Each monthly
26 statement shall also include a completed cleaning sign-in sheet for each
27 Restroom listing the date and time of service for each Restroom. An example
28 cleaning sign-in sheet is attached as Exhibit "A".
29

30 6. **Prevention of Waste and Damage.** JACQUEZ shall use all reasonable cautions to prevent
31 waste, damage, or injury to the Restrooms in the performance of its obligations under this
32 Agreement. JACQUEZ shall be solely responsible for any damage to or destruction of the
33 Restrooms, City property, or any improvements caused by the acts or omissions, willful or otherwise,
34 of JACQUEZ's officers, employees, or agents. JACQUEZ shall be responsible for all costs incurred
35 by the CITY to replace lost or damaged keys, including but not limited to replacing or rekeying
36 locks.
37

38 7. **Reporting Damage.** JACQUEZ shall immediately verbally report any vandalism, damage,
39 or destruction as well as any repair or maintenance needed to be performed by the CITY. It shall
40 also report such matters to the CITY in writing within five (5) business days.
41

42 8. **Compliance with Laws.** JACQUEZ shall comply with all applicable local, state, and federal
43 laws, rules, regulations, and policies and shall obtain and maintain any and all permits, licenses, or
44 certifications that may be necessary to carry out the operations contemplated by this Agreement. In
45 the event JACQUEZ should cease to be properly permitted, licensed, or certified, it shall

1 immediately inform the City Administrator and shall immediately cease its operations pursuant to
2 this Agreement. Within five (5) days of ceasing to be properly permitted, licensed, or certified,
3 JACQUEZ shall also notify the CITY in writing of that event. JACQUEZ shall require all its
4 officers, employees, and agents, to comply with all applicable local, state, and federal laws, rules,
5 regulations, and policies.
6

7 9. **Structural Changes.** JACQUEZ shall not make any structural changes to the Restrooms,
8 CITY property, or to any CITY structure or building used by JACQUEZ, without the prior written
9 consent of the CITY. All such changes shall be performed in a workmanlike manner and shall be
10 done in accordance with all applicable laws, rules, and regulations.
11

12 10. **Assignment of Agreement.** JACQUEZ shall not sublease, assign, or transfer any interest
13 in or right to this Agreement without the prior written approval of the CITY.
14

15 11. **Right to Enter and Inspect.** The CITY shall have the right to enter the Restrooms and to
16 inspect the Restrooms and all improvements, structures, or buildings at any time.
17

18 12. **AS IS Condition.** Prior to the commencement of this Agreement, JACQUEZ has fully
19 examined and inspected the Restrooms and all improvements, buildings, fixtures, appliances, and
20 personal property therein. JACQUEZ accepts the Restrooms and such improvements, buildings,
21 fixtures, appliances, and personal property in their existing condition and state of repair. JACQUEZ
22 accepts them in an AS IS CONDITION. JACQUEZ agrees that no representations, statements, or
23 warranties, express or implied, have been made by or on behalf of the CITY in respect thereto,
24 including, but not limited to their suitability for any purpose, and the CITY shall in no event be liable
25 for any latent defects.
26

27 13. **Term.** The term of this Agreement shall be for one (1) year beginning on the 16th day of
28 December 2013, and terminating on the 15th day of December, 2014. This Agreement may be
29 renewed for three (3) additional one (1) year terms upon the mutual agreement of both parties and
30 upon such terms and conditions as the parties may agree. Not later than thirty (30) days before the
31 expiration of this contract, if both parties desire to renew for an additional year, the parties shall meet
32 to negotiate renewal terms and conditions.
33

34 14. **Records.** For the term of this Agreement and for five (5) years after the expiration or
35 termination of this Agreement, JACQUEZ shall maintain copies of all records regarding any and all
36 activities it conducts pursuant to this Agreement. The CITY shall have the right to inspect and copy
37 such records upon reasonable notice to JACQUEZ.
38

39 15. **Indemnification.** JACQUEZ agrees to indemnify, save, and hold harmless the City, its
40 officers, agents, and employees against all liability, claims, damages, losses, or expenses of every
41 kind, including reasonable attorneys' fees together with costs and expenses of litigation, arising out
42 of, from, or associated in any manner with the acts or omissions of JACQUEZ, his officers, agents,
43 or employees.

1 16. **Insurance.** At all times material to this Agreement, JACQUEZ shall obtain and maintain,
2 at its own expense, public liability insurance in the sum of two million dollars (\$2,000,000.00).
3 Such insurance shall name the City as an additional insured. JACQUEZ shall provide the City with
4 a current Certificate of Insurance. The insurance shall be with a company or companies licensed and
5 authorized to do business in the State of New Mexico. JACQUEZ shall annually furnish to the
6 CITY a Certificate of Insurance for the above required insurances. JACQUEZ shall provide the
7 CITY with notice of any change thereof, and furnish to the CITY evidence of acquirement of a
8 substitute therefore, and payment of the premium thereof.

9
10 17. **Release.** JACQUEZ, upon final payment of the amount due under this Agreement, releases
11 the CITY, it's officers, agents, and employees from all liabilities, claims, and obligations whatsoever
12 arising from or under this Agreement. JACQUEZ agrees not to purport to bind the City of Carlsbad,
13 unless JACQUEZ has express written authority to do so, and then only within the strict limits of that
14 authority.

15
16 18. **Default or Breach.** Each of the following event shall constitute a default or breach of this
17 Agreement:

18 A. **Bankruptcy Filing.** If JACQUEZ during the term of this Agreement, shall file a
19 petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall
20 voluntarily take advantage of any such act by answer or otherwise, or shall make an
21 assignment for the benefit of creditors.

22 B. **Involuntary Proceedings.** If involuntary proceedings under any bankruptcy law or
23 insolvency act shall be instituted against JACQUEZ, or if a receiver or trustee shall be
24 appointed for all or substantially all of the property of JACQUEZ and such proceedings shall
25 not be dismissed or the receivership or trusteeship vacated within sixty (60) days after the
26 institution or appointment.

27 C. **Failure to Comply.** If JACQUEZ fails to perform or comply with any of the
28 conditions of this Agreement, and if the nonperformance shall continue for a period of fifteen
29 (15) days after notice thereof by the CITY to JACQUEZ, or, if the performance cannot be
30 reasonably had within the fifteen (15) day period, and JACQUEZ shall not in good faith have
31 commenced performance within the fifteen (15) day period and then diligently proceeded to
32 completion of performance.

33 D. **Transfer.** If this Agreement shall be transferred to or shall pass to or devolve to any
34 other person or party, except in the manner specified herein.

35
36 19. **Effect of Default.** In the event of default hereunder as set forth in this Agreement, the rights
37 of the non-defaulting party shall be as follows:

38 A. **Cancellation.** The non-defaulting party shall have the right to cancel and terminate
39 this Agreement. On expiration of the time fixed in the notice, this Agreement and all rights,
40 title, and interest of the defaulting party hereunder shall terminate in the same manner and
41 with the same force and effect, except as to the defaulting party's liability, as if the date fixed
42 in the notice of cancellation and termination were the end of the term herein originally
43 determined.

1 B. **Compliance.** The non-defaulting party may elect, but shall not be obligated, to make
2 any payment required of the defaulting party herein or comply with any agreement, term, or
3 condition required hereby to be performed by the defaulting party, and the non-defaulting
4 party shall have the right to enter the Restrooms for the purpose of directing or remedying
5 any such default and to remain until the default has been corrected or remedied; but any
6 expenditure for correction by the non-defaulting party shall not be deemed to waive or
7 release the default of the defaulting party or the right of the non-defaulting party to take any
8 action as may be otherwise permissible or to seek other remedy under the law.
9

10 20. **Non-Waiver.** Waiver by the CITY of any default in performance by JACQUEZ of any of
11 the terms or conditions contained in this Agreement shall not be deemed a continuing waiver of that
12 default or any subsequent default.
13

14 21. **Funding Availability.** The funding of this Agreement is subject to the availability and
15 appropriation of funds by the City Council of Carlsbad, New Mexico. If sufficient funding is not
16 available or not appropriated by the City Council, then this Agreement is terminated and the CITY
17 shall not incur any penalty or further liability.
18

19 22. **Termination.** Either party may terminate this Agreement without cause by providing the
20 other party with written notice of its intention to terminate this Agreement at least ninety (90) days
21 prior to the termination date. By such termination, neither party may nullify obligations already
22 incurred prior to the date of termination of the Agreement. However, neither party shall have any
23 obligation to perform services or make payment for such services rendered after such date of
24 termination.
25

26 23. **Entirety of Agreement.** This Agreement incorporates all the agreements, covenants, and
27 understandings between the parties hereto concerning the subject matter hereof, and all such
28 covenants, agreements, and understandings have been merged into this written Agreement. No prior
29 agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or
30 enforceable unless embodied in this Agreement. The parties expressly waive any other or further
31 representations, warranties, or agreements not set forth in this document.
32

33 24. **Independent Contractor.** JACQUEZ, his officers, employees, and agents are independent
34 contractors performing professional services for the CITY and are not employees of the CITY.
35 JACQUEZ and his officers, employees, and agents shall not accrue leave, retirement, insurance,
36 bonding, use of city vehicles, or any other benefits afforded to the employees of the City of Carlsbad
37 as a result of this Agreement.
38

39 25. **Workers' Compensation.** JACQUEZ agrees to comply with state laws and rules applicable
40 to workers compensation benefits for its employees. If JACQUEZ fails to comply with the Workers'
41 Compensation Act and applicable rules when required to do so, this agreement may be terminated
42 by the CITY.
43

1 26. **Procurement Code Penalties.** The Procurement Code, NMSA 1978, Sections 13-1-28
2 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New
3 Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

4
5 27. **Notices.** All notices permitted or required by the terms of this Agreement shall be in writing
6 and be deemed to have been duly given and delivered, if mailed, certified postage prepaid:

7 If to CITY:

8 The City of Carlsbad
9 c/o City Administrator
10 P.O. Box 1569
11 Carlsbad, NM 88221-1569

If to JACQUEZ:

Robert Jacquez, dba
Ultra Clean Carpet & Janitorial Service
104 S. Ash Street
Carlsbad, NM 88220

12 The parties shall notify each other in writing of any change in the above information.

13
14 28. **New Mexico Law.** This Agreement shall be construed in accordance with New Mexico law,
15 and the Agreement may not be changed except by writing executed with the same formality as with
16 this Agreement.

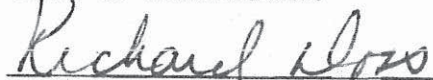
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18 29. **Venue.** The parties agree this Agreement shall be construed and controlled by the laws of
19 the State of New Mexico. The parties further agree that any legal actions arising out of this
20 Agreement shall be brought in the District Court of Eddy County, New Mexico for the Fifth Judicial
21 District. The parties expressly consent to both in personam and subject matter jurisdiction of the
22 Eddy County District Court and agree that venue shall properly lie in the Eddy County, New Mexico
23 District Court.

24
25 30. **Arbitration.** Should any dispute arise between the parties in connection with the Agreement
26 and if such dispute cannot be resolved by discussion between the parties, the parties agree to submit
27 the unresolved dispute to binding arbitration in lieu of litigation.

28
29 31. **Captions.** The captions of any articles, paragraphs, or sections hereof are made for
30 convenience only and shall not control or affect the meaning or construction of any of the provisions
31 thereof.

32
33 32. **Exhibits.** Any instrument or document made and attached to this Agreement shall constitute
34 a part hereof as though set forth in full in the body of this Agreement, whether made a part hereof
35 by reference or whether made a part hereof by attachment.

36
37
38 CITY OF CARLSBAD:

39 
40
41 RICHARD DOSS, MAYOR PRO TEM
42
43

ATTEST:

Annette Barrios
CITY CLERK

ROBERT JACQUEZ

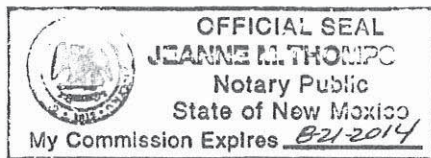
Robert Jacquez
ROBERT JACQUEZ, dba
Ultra Clean Carpet & Janitorial Service

STATE OF NEW MEXICO)
) ss.
COUNTY OF EDDY)

The foregoing instrument was signed and acknowledged before me this 4th day of
December, 2013 by ROBERT JACQUEZ, dba Ultra Clean Carpet & Janitorial Service.

My commission expires: 8-21-2014

Jeanne M. Thompson
NOTARY PUBLIC



City of Carlsbad
(Location, for example, Bataan Recreation Area, 100 Block N. James St.)
Restroom Cleaning

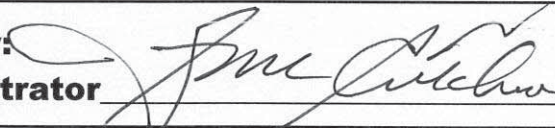
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CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 10 June 2014

DEPARTMENT: Legal	BY: E. Riordan	DATE: 6 June 2014				
SUBJECT: Agreement with Celtech Corporation for Lease of Property at the Cavern City Air Terminal						
<p>BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)</p> <p>Celtech designs and fabricates jet and turboprop engine testing equipment and related items. Celtech recently became a subsidiary of Atech, Inc. Celtech Corporation has had a ground lease for property at the Cavern City Air Terminal for a number of years. It uses the property at the Airport in conjunction with its facility in the Airport Industrial Park. The Airport property consists of about 1.9 acres with no City-provided structures on it.</p> <p>Atec and Celtech wish to renew the lease of the Airport property for an additional 10 year period. The rent would be \$150/month with a 3% increase each year.</p>						
<p>DEPARTMENT RECOMMENDATION:</p> <p style="text-align: center;">Approve the agreement.</p>						
<p>BOARD/COMMISSION/COMMITTEE ACTION:</p> <table style="width: 100%; border: none;"><tr><td style="width: 33%; vertical-align: top;"><input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board</td><td style="width: 33%; vertical-align: top;"><input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> North Mesa Board</td><td style="width: 33%; vertical-align: top;"><input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> _____ Committee</td><td style="width: 10%; vertical-align: top; text-align: right;">} <input type="checkbox"/> APPROVED } } <input type="checkbox"/> DISAPPROVED</td></tr></table>			<input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board	<input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> North Mesa Board	<input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> _____ Committee	} <input type="checkbox"/> APPROVED } } <input type="checkbox"/> DISAPPROVED
<input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board	<input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> North Mesa Board	<input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> _____ Committee	} <input type="checkbox"/> APPROVED } } <input type="checkbox"/> DISAPPROVED			
<div style="display: flex; justify-content: space-between; align-items: center;"><div>Reviewed by: City Administrator</div><div style="text-align: center;"></div><div>Date: <u>6-6-14</u></div></div>						

ATTACHMENT(S): Agreement Between the City of Carlsbad and Celtech Corporation for A Ground Space Lease at the Cavern City Air Terminal

**AGREEMENT BETWEEN THE CITY OF CARLSBAD
AND CELTECH CORPORATION FOR A GROUND SPACE LEASE
AT THE CAVERN CITY AIR TERMINAL**

THIS AGREEMENT is entered into this 4th day of June, 2014 by and between the CITY OF CARLSBAD, New Mexico, a municipal corporation (hereinafter referred to as "City") and CELTECH CORPORATION, a Wyoming corporation (hereinafter referred to as "Celtech").

WHEREAS, the City of Carlsbad owns the real estate commonly known as the Cavern City Air Terminal pursuant to a patent from the United States Government; and

WHEREAS, Celtech Corporation has leased a portion of the Cavern City Air Terminal for aircraft engine testing and other aviation uses related to Celtech's business; and

WHEREAS, Celtech wishes to continue to lease the property.

NOW THEREFORE, the parties, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, agree as follows:

1. **Lease Property Description.** The City hereby agrees to lease to Celtech and Celtech hereby agrees to lease from the City a portion of the Cavern City Air Terminal, 1505 Terminal Drive described as follows:

As shown on the Exhibit "A" attached hereto and incorporated herein.
Said parcel of real estate is hereinafter referred to as the "Lease Property."

2. **Ingress and Egress.** Upon paying the rent and performing the covenants of this Agreement, Celtech and its officers, employees, agents, vendors, suppliers, patrons, and invitees shall have the right of ingress to and egress from the Lease Property over the roadway provided by the City serving the Air Terminal, such roadway commonly known as Terminal Drive. Celtech shall also have the right to use the landing field, runways, taxi-ways, public ramps, commercial and non-commercial roadways, and navigational aids and facilities at the Air Terminal and the air space immediately above it for testing, takeoffs, flights, landings, taxiing, towing, fueling by mobile truck tanks, loading and unloading passengers and cargo. Celtech shall not interfere with the rights and privileges of other persons, firms, or entities using said facilities and shall be subject to such weight and type use restrictions as the City deems necessary.

3. **AS IS Condition of Lease Property.** Prior to the commencement of this Agreement, Celtech has fully examined and inspected the Lease Property, and all fixtures, appliances, improvements, buildings, and appurtenances. Celtech accepts the Lease Property, and such fixtures, appliances, improvements, buildings, and appurtenances in their existing condition and state of repair. Celtech accepts them in an **AS IS CONDITION**. Celtech agrees that no representations, statements, or warranties, express or implied, have been made by or on behalf of the City in any

respect thereto, including, but not limited to their suitability for any purpose, and the City shall in no event be liable for any latent defects.

4. **Use of Lease Property.**

A. **Title Restrictions.** Celtech knows and understands that the City owns the real estate commonly known as the Cavern City Air Terminal (the "Air Terminal") pursuant to patents from the United States government which patents place certain restrictions on the use of the Air Terminal. Under no circumstances shall Celtech utilize the Air Terminal or the Lease Property in any manner which would violate any restrictive covenants to which they are subject including, but not limited to those contained in the patents from the United States of America, acting through the Secretary of the Interior, signed on the 20th day of July 1951, recorded in Book 6, Page 245 of the Records of Patents; and signed on the 28th day of September 1962, recorded in Book 6, Page 485 of the Records of Patents for Eddy County, New Mexico.

B. **Permitted Uses.** Celtech shall have the use of the Lease Property solely for aviation-related activities.

C. **Non-Aviation Uses.** Celtech shall not engage in any activity which is not directly related to aviation without obtaining the prior written approval of the City Administrator. Such non-aviation uses authorized shall be subject to such terms and conditions as may be set forth in the written agreement.

D. **Applicable Laws.** Every use of the Air Terminal, the Lease Property, and all fixtures, appliances, improvements, buildings, and appurtenances thereon shall be consistent with all applicable laws, ordinances, rules, regulations, and policies and as they are now and as they may be made or amended from time to time including, but not limited to, those of the Federal Aviation Administration or its successor agency or body.

E. **Hazards and Interference.** No use of the Air Terminal, Lease Property, or the fixtures, appliances, improvements, buildings, or appurtenances thereon shall in any manner interfere with the landing and taking off of aircraft at the Air Terminal or otherwise constitute a hazard. This includes, but is not limited to, keeping the Lease Property free of foreign object debris. In the event this covenant is breached, the City reserves the right to enter upon the Lease Property and cause the abatement of such interference or hazard at the expense of Celtech.

5. **Non-Exclusive.** Nothing contained in this Agreement shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as it may be amended from time to time. The City reserves the right to grant to others the privilege and right to conduct any one or all activities of an aeronautical nature. Additionally, parking aprons and other improvements constructed in whole or in part with federal funds are intended for public use, and, therefore, permission for exclusive lease or use of such facilities may not be granted.

6. **Non-Discrimination.** Celtech for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that:

A. **Use of Air Terminal.** No person on the grounds of race, creed, color, national

origin, sex, age, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Lease Property and all its facilities;

B. **Construction.** In the construction of any improvements on, over, or under the Lease Property and in the furnishing of services thereon, no person on the grounds or race, creed, color, national origin, sex, age or handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

C. **CFR Title 49.** Celtech shall use the Lease Property in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally Assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964 as said regulations may be amended.

7. **Term.** The term of this Agreement shall be for ten (10) years beginning at 12:01 a.m. of the 2nd day of June, 2014 and terminating at 12:01 a.m. of the 2nd day of June, 2024. This Agreement may be renewed by the parties for an additional five (5) year term upon their mutual agreement.

8. **Compensation.**

A. **Monthly Rent.** As compensation for this Agreement and beginning on 4th day of June, 2014, Celtech shall pay the City, without demand, a fixed monthly rental payment (hereinafter referred to as "Rent"). The Rent shall be due on or before the fourth (4th) day of each month. The amount of Rent shall be One Hundred Fifty Dollars and 00/One Hundredths (\$150.00). The Rent for the Lease Property shall be increased by three percent (3%) each year on the anniversary date of the Agreement. The Rent amounts are listed on Exhibit "B".

B. **Due in Advance and Without Notice.** All rental payments shall be due and payable in advance and without notice. Rent shall be paid to P.O. Box 1569, Carlsbad, NM 88221-1569, Attention City Finance Director, or such other place as the City may direct in writing.

C. **Late Fee.** On any rental payment made ten (10) or more days after the payment due date, Celtech shall, in addition to the Rent, pay a late charge of ten percent (10%) of the Rent for each month or part of a month that the rental payment is late.

D. **No Refunds.** Celtech may terminate this Agreement pursuant to the requirements of Paragraph 30, below, however, in that event, Celtech shall not be entitled to a refund of any rent or fees of any kind paid.

E. **Holding Over.** In the event Celtech shall continue to occupy the Lease Property, or any portion thereof beyond the term of this Agreement or any renewal of this Agreement, such holding over shall not constitute a renewal of this Agreement but shall be a month-to-month tenancy only. The amount of Rent to be paid during this hold over period shall equal one and one-half (1.5) times the normal monthly rent chargeable at the termination of the lease. Such increase in Rent shall be in addition to the annual increase described in Paragraph 8(A), above.

9. **Utilities and Maintenance Services.** All applications and connections for utility services for the Lease Property, including, but not limited to, water, sewer, electricity or natural gas shall be in the name of Celtech. Celtech shall be solely responsible for all charges, fees, expenses, assessments, and payments as they become due. Celtech shall be solely responsible for any costs incurred for the installation, operation, maintenance, or repair of telephone, modem, and/or communication lines or services. Celtech shall provide all routine maintenance and janitorial services for the Lease Property.

10. **Taxes, Licenses, and Permits.** Celtech shall be solely responsible for:

A. **Taxes.** The timely payment of any and all personal property taxes which may be assessed against any improvements, equipment, merchandise, or other personal property belonging to Celtech located on the Lease Property, or other portions of the Air Terminal. In the event any real estate taxes are assessed against the land, improvements, or personal property on the Lease Property during the term of this Agreement, such taxes shall be paid by Celtech.

B. **Licenses and Permits.** Obtaining and paying for all licenses, permits, certifications, fees, or other authorizations or charges as required under federal, state, or local laws, ordinances, codes, rules, regulations, or policies insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

11. **Maintenance.**

A. **Celtech to Maintain.** Celtech shall keep the Lease Property in good order and repair at all times and shall use all reasonable cautions to prevent waste, damage, or injury to the Air Terminal, the Lease Property, and all fixtures, appliances, improvements, buildings, and appurtenances thereon. At its sole expense, Celtech shall keep, repair, maintain, improve, and operate the Lease Property and any and all fixtures, appliances, improvements, buildings, and appurtenances in a safe, sanitary, orderly, sightly, and workmanlike manner in accordance with all applicable laws, ordinances, codes, rules, regulations, and policies. Such maintenance shall include, but not be limited to the removal of any trash, litter, weeds, and debris as well as the maintenance of the cleanliness of the Lease Property. Celtech shall also be responsible for pest control on the Lease Property. There shall be no outside storage of any material, property, equipment, rubbish, trash, garbage, or debris without the prior written permission of the City. Celtech shall not dispose of any waste at the Air Terminal or on the Premises unless the waste is appropriate for removal by the City's Solid Waste Department and is properly stored while awaiting pickup.

B. **Compliance with Codes.** Celtech shall be solely responsible for complying with all applicable codes including, but not limited to, building, safety, and fire codes and for complying with the requirements of the Americans with Disabilities Act.

C. **Right to Correct Deficiencies.** The City shall have the right to require reasonable maintenance of and repairs to the Lease Property and all fixtures, appliances, improvements, buildings, and appurtenances as required by this Agreement. Should Celtech fail to make the required corrections, the City shall have the right to enter the Lease Property, or improvements, buildings, or appurtenances thereto, correct the deficiency, and recover the

cost of those activities from Celtech as additional Rent due at the time of the next rental payment.

12. **Storage of Materials.** Storage or disposal at or on the Lease Property of any materials or waste defined as hazardous or toxic by local, state, or federal laws, ordinances, codes, rules, regulations, or policies shall be prohibited except with the prior written permission of the City. Any approved storage or disposal shall fully comply with all applicable laws, ordinances, codes, rules, regulations, and policies as such may be amended.

13. **Title to Improvements.** During the term of this Agreement, title to all improvements constructed by Celtech upon the Lease Property are and shall be vested in Celtech, except as described in Paragraph 17.

14. **Additions, Alterations, and Improvements.** No addition, alteration, improvement, construction, repair, installation, or demolition on the Lease Property shall be done without the prior written consent of the City Administrator. All such activity shall be performed in a workmanlike manner. Other conditions with respect to additions, alterations, improvements, construction, repairs, installations, or demolitions are as follows:

A. **City Approval.** The plans and specifications for any such activity shall be submitted to the City Administrator for written approval prior to commencing such activity;

B. **Filing.** Before commencement of any such activity, all plans and specifications shall be filed with, approved by, and permitted by all governmental departments and authorities having jurisdiction;

C. **Licensed Contractor(s).** All such activity shall be done by appropriately licensed contractor(s) and shall be done in accordance with all applicable laws, rules, regulations, and policies;

D. **Commencement and Completion.** All work, construction, altering, repairing, installing, or demolishing must be commenced no later than six (6) months following the approval of the plans and specifications by the City Administrator and must be completed within eighteen (18) months of that approval by the City Administrator.

E. **FAA Approval.** No change, improvement, alteration, or modification shall be made without first obtaining the prior written approval of the Federal Aviation Administration, if such approval is needed.

15. **Signs.** No sign shall be erected or maintained by Celtech except in compliance with all applicable laws, ordinances, codes, rules, regulations, and policies. Prior to erection, Celtech must obtain written approval from the City.

16. **Damage or Destruction.**

A. **Repair of Damage.** If the Lease Property or improvements thereto are partially destroyed or damaged by fire or other casualty, then Celtech, at its sole expense, shall repair and restore the Lease Property, or improvements thereto as soon as it is reasonably practicable. Such repair or restoration shall commence not later than six (6) months after

such damage, and shall be completed within six (6) months of the commencement date. Such restoration shall be to substantially the same condition in which the Lease Property or improvements thereto was before such damage. In the event that Celtech has not commenced repairs or restoration within six (6) months or completed the repairs or restoration within six months of the commencement, this Agreement may be immediately terminated by the City. Such termination shall be made effective by serving notice upon Celtech, and shall be effective on the date of receipt of such notice by Celtech.

B. **Destruction.** In the event the Lease Property or improvements thereto is completely destroyed or so badly damaged that repairs cannot be commenced within six (6) months and completed within six (6) months thereafter, then this Agreement may be terminated. Such termination shall be effective as of the date of the occurrence of the damage or destruction, and made effective by either party hereto by serving written notice upon the other.

17. **Removal of Improvements.**

A. **At Celtech's Request.** If at any time during the term of this Agreement, when all Rent then due and owing has been fully paid and Celtech is not in default under this Agreement, Celtech may remove any or all of the improvements or buildings owned by Celtech. Celtech shall give sixty (60) days advance written notice to the City of its intent to remove the improvements or buildings. When removing the improvements or buildings, Celtech shall restore the Lease Property to its previously existing condition, including filling excavations, returning the surface to grade, and leaving the Lease Property safe and free from all debris and hazards.

B. **At Termination or Expiration.** At the termination or expiration of this Agreement, Celtech shall remove all buildings and/or improvements owned by Celtech within sixty (60) days of that termination or expiration. Such removal shall not cause unreasonable damage to the Lease Property. When removing buildings or improvements, Celtech shall restore the Lease Property to its previously existing condition, including filling excavations, returning the surface to grade, and leaving the Lease Property safe and free from all debris and hazards. All buildings and/or improvements not removed within sixty (60) days of the termination or expiration of this Agreement shall, at the City's sole discretion and without compensation by or to the City, become the City's property free and clear of all liability and expenses. Should Celtech fail to promptly remove the buildings and/or improvements if and as required, the City may assess and bill Celtech based on receipt of an itemized statement of all costs of removal and restoration of the Lease Property.

18. **Environmental Assessment.** At any time during the term of this Agreement or upon the expiration or termination of this Agreement, the City may require Celtech to furnish to the City an Environmental Assessment Report of the Lease Property, conducted in accordance with the laws, ordinances, codes, rules, regulations, and policies in effect at that time. The costs of remediation, if any should be required by law, shall be the responsibility of Celtech.

19. **Right to Enter and Inspect.** The City shall have the right to enter the Lease Property and to inspect it and all fixtures, appliances, improvements, buildings, and appurtenances at any reasonable time.

20. **Insurance.** During the term of this Agreement and for any further time that Celtech shall hold the Lease Property:

A. **Public Liability Insurance.** Celtech shall obtain and maintain at its own expense general public liability insurance insuring against such claims and which insurance names the City as an additional insured. This insurance shall have an aggregate limit in the amount of two million dollars (\$2,000,000.00), or as required to meet the mandatory requirements of the New Mexico Tort Claims Act or its successor in law, whichever is greater.

B. **Fire and Casualty.** Celtech shall obtain and maintain at its own expense property and casualty insurance covering the improvements to the Lease Property and the contents thereof. Such insurance shall be a fire insurance policy with extended coverage endorsement, including vandalism, and malicious mischief. The insurance shall be on a replacement cost basis and shall name the City as an additional insured, as its interests may appear. City, its officers, employees, and agents are hereby expressly released and discharged from any responsibility whatsoever for any such property.

C. **Certificate of Insurance.** All insurance shall be with a company or companies licensed and authorized to do business in the State of New Mexico. At least five (5) days prior to the effective date of this Agreement, Celtech shall provide the City Administrator with a Certificate or Certificates of Insurance reflecting the coverages specified herein and naming the City as an additional insured. Celtech shall annually furnish to the City Administrator on the Rent payment due date of this Agreement, a Certificate of Insurance for the above required insurances. Celtech shall provide the City Administrator with notice of any change thereof, and furnish to the City Administrator evidence of acquirement of a substitute therefore, and payment of the premium thereof. If Celtech should fail to maintain such insurance coverage or coverages, then the City may, at its sole discretion, obtain same and add the cost of such insurance to the next due Rent payment. If the City does so, it may charge interest thereon at the rate of fifteen percent (15%) per annum from the time of payment, which shall be added to the Rent payment becoming due, and shall be collected as an additional charge.

D. **Self-Insurance.** Celtech may self-insure by filing with the City a letter of credit in the amounts listed above and in the form approved by the City, or by filing another approved promissory or escrowed monetary instrument.

E. **Tort Claims Act.** The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any sovereign immunity, defense, or limitation of liability pursuant to law. No provision of this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

21. **Indemnification of City.** Celtech shall indemnify, save, and hold harmless the City, its officers, directors, employees, representatives, and agents, and shall provide such assistance as the City may require with respect to any and all claims, liabilities, obligations, governmental penalties,

finer, causes of action, damages, losses, and expenses of every kind, together with any attorney's fees and litigation costs, made arising out of, or from, or associated in any manner with this Agreement.

22. **Release of Liability.** The City shall not be responsible for any personal injury, death, or property damage to Celtech, its agents, employees, officers, agents, representatives, assigns, customers, patrons, or invitees nor shall the City be liable to Celtech for any loss or damage to Celtech's personal property, equipment, furniture, or fixtures arising from any cause or causes whatsoever during the term of this Agreement, or during any further time that Celtech shall hold the Lease Property or any portion of the Air Terminal unless such personal injury, death or property damage arises out of the actions of the City's officers, directors, employees, representatives or agents thereof.

23. **Force Majeure.** The City shall not be responsible for or liable to Celtech for any loss, claim, or damage due to force majeure, acts of God, strikes, lockouts or industrial disturbances, civil disturbances, arrests and restraints, interruptions by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, inability to secure labor or materials, including inability to secure materials as a result of allocations promulgated by authorized governmental agencies, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to machinery or equipment, or any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the City.

24. **War or Emergency.** During a time of war or national emergency, the City shall have the right to lease the landing area or any other part of the Air Terminal to the United States government for military use. If any such lease is executed, any provision or provisions of this Agreement may be suspended, provided that the term of this Agreement shall be extended by the amount of the period of suspension.

25. **Compliance with Laws.** Celtech shall comply with all applicable local, state, and federal laws, ordinances, codes, rules, regulations, and policies and shall obtain and maintain any and all permits, licenses, or certifications that may be necessary to carry out the operations contemplated by this Agreement, including, but not limited to all laws, codes, rules, and regulations of the Federal Aviation Administration. Celtech shall require all its agents, employees, officers, agents, representatives, assigns, customers, patrons, or invitees, and all others who enter onto the Lease Property to comply with all applicable local, state, and federal laws, ordinances, codes, rules, regulations, and policies. Any penalties and costs levied as a result of Celtech's breach of any of applicable local, state, and federal laws, rules, regulations, and policies shall be borne solely by Celtech.

26. **Assignment, Mortgage, or Sublease.** Neither Celtech nor its successors or assigns shall assign, mortgage, pledge, or encumber this Agreement in whole or in part or enter into a sublease, nor shall this lease be assigned or transferred by operation of law without the prior written consent

of the City in each instance. The City shall not withhold its consent unreasonably. The consent by the City to an assignment, mortgage, pledge, encumbrance, sublease, or transfer shall not be construed to relieve Celtech or its successors or assigns from obtaining the express written consent of the City to any future transfer of interest.

27. **Default or Breach.** Each of the following events shall constitute a default or breach of this Agreement:

A. **Bankruptcy Filing.** If Celtech, while in possession of the Lease Property, shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors.

B. **Involuntary Proceedings.** If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against Celtech, or if a receiver or trustee shall be appointed for all or substantially all of the property of Celtech and such proceedings shall not be dismissed or the receivership or trusteeship vacated within sixty (60) days after the institution or appointment.

C. **Failure to Comply.** If Celtech fails to perform or comply with any of the conditions of this Agreement, and if the nonperformance shall continue for a period of fifteen (15) days after notice thereof by the City to Celtech, or if the performance cannot be reasonably had within the fifteen (15) day period, and Celtech shall not in good faith have commenced performance within the fifteen (15) day period and then diligently proceeded to completion of performance.

D. **Vacation of Premises.** If Celtech shall vacate or abandon the Lease Property.

E. **Transfer of Agreement.** If this Agreement shall be transferred to or shall pass to or devolve to any other person or party, except in the manner specified herein.

28. **Effect of Default.** In the event of default hereunder as set forth in this Agreement, the rights of the City be as follows:

A. **Termination.** The City shall have the right to cancel and terminate this Agreement. On expiration of the time fixed in the notice, this Agreement and all rights, title, and interest of the Celtech hereunder shall terminate in the same manner and with the same force and effect, except as to the Celtech's liability, as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.

B. **City Compliance.** The City may elect, but shall not be obligated, to make any payment required of Celtech herein or comply with any agreement, term, or condition required hereby to be performed by Celtech, and the City shall have the right to enter the Lease Property for the purpose of directing or remedying any such default and to remain until the default has been corrected or remedied; but, any expenditure for correction by the City shall not be deemed to waive or release the default of Celtech or the right of the City to take any action as may be otherwise permissible or to seek other remedy under the law.

C. **Non-Exclusive Remedy.** The City may pursue any other remedy available at law or in equity. No right or remedy is exclusive of any other provided herein or permitted by law or equity. All such rights and remedies shall be cumulative and may be enforced

concurrently or individually.

29. **Waiver.** Failure of the City to insist upon strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that the City may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any term or condition.

30. **Termination.** Either party may terminate this Agreement without cause by providing the other party with written notice of its intention to terminate this Agreement at least sixty (60) days prior to the termination date.

31. **Surrender of Possession.** On the last day of the term of this Agreement or upon the earlier termination or forfeiture of this Agreement, Celtech shall promptly, peaceably, and quietly vacate, quit, surrender, and deliver the Lease Property to the City free of subtenancies, and the City shall have the right to re-enter upon and possess the Lease Property as if this Agreement had not been undertaken by the parties. Celtech shall surrender the Lease Property in at least as good order and condition as it was at the commencement of this Agreement, reasonable wear and tear excepted.

32. **Arbitration.** Should any dispute arise between the parties in connection with this Agreement and if such dispute cannot be resolved by discussion between the parties, the parties agree to submit the unresolved dispute to binding arbitration in lieu of litigation.

33. **Notices.** All notices permitted or required by the terms of this Agreement shall be in writing and be deemed to have been duly given and delivered, if mailed, certified postage prepaid:

If to City:

City of Carlsbad
c/o City Administrator
P.O. Box 1569
Carlsbad, NM 88221-1569

If to Celtech:

Celtech Corporation.
c/o Mike Rigdon, Vice President
1300 Terminal Dr.
Carlsbad, NM 88220

The parties shall notify each other in writing of any change in the above names or addresses.

34. **Independent Contractor.** Celtech and its employees, officers, and agents are independent contractors and are not employees of the City. Celtech and its employees, officers, and agents shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to the employees of the City of Carlsbad as a result of this Agreement.

35. **Procurement Code Penalties.** The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, as it may be amended from time to time, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

36. **Entirety of Agreement.** This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such

covenants, agreements, and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. The parties expressly waive any other or further representations, warranties, or agreements not set forth in this document. This Agreement cannot be changed except by a written instrument subsequently executed with the same formalities as with this Agreement.

37. **Workers' Compensation.** Celtech agrees to comply with any and all applicable state laws, rules, and regulations regarding workers' compensation benefits for its employees. Should Celtech fail to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

38. **Successors and Assigns.** All of the terms, covenants, conditions, and agreements contained herein shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

39. **New Mexico Law and Venue.** The parties agree this Agreement shall be construed and controlled by the laws of New Mexico. The parties further agree that any legal action arising out of this Agreement shall be brought in the District Court of Eddy County, New Mexico for the Fifth Judicial District. The parties expressly consent to both in personam and subject matter jurisdiction of the Eddy County District Court and agree that venue shall properly lie in the Eddy County, New Mexico District Court.

40. **WAIVER OF JURY TRIAL.** THE PARTIES HEREBY WAIVE THE RIGHT TO A JURY TRIAL ON ANY ISSUE ARISING OUT OF OR RELATING, DIRECTLY OR INDIRECTLY, TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

41. **Captions.** The captions of any articles, paragraphs or sections hereof are made for convenience only and shall not control or affect the meaning or construction of any of the provisions thereof.

42. **Exhibits.** Any instrument or document made and attached to this Agreement shall constitute a part hereof as though set forth in full in the body of this Agreement, whether made a part hereof by reference or whether made a part hereof by attachment.

CITY OF CARLSBAD, NEW MEXICO:

DALE JANWAY, MAYOR

ATTEST:

CITY CLERK

CELTECH CORPORATION

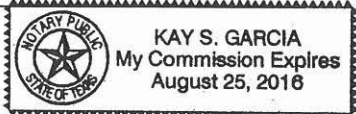
Mike Rigdon
MIKE RIGDON, VICE PRESIDENT

STATE OF TEXAS)
) ss.
COUNTY OF FORT BEND)

The forgoing instrument was signed and acknowledged before me this 4th day of June, 2014, by MIKE RIGDON, Vice President of Celtech Corporation.

My Commission Expires:

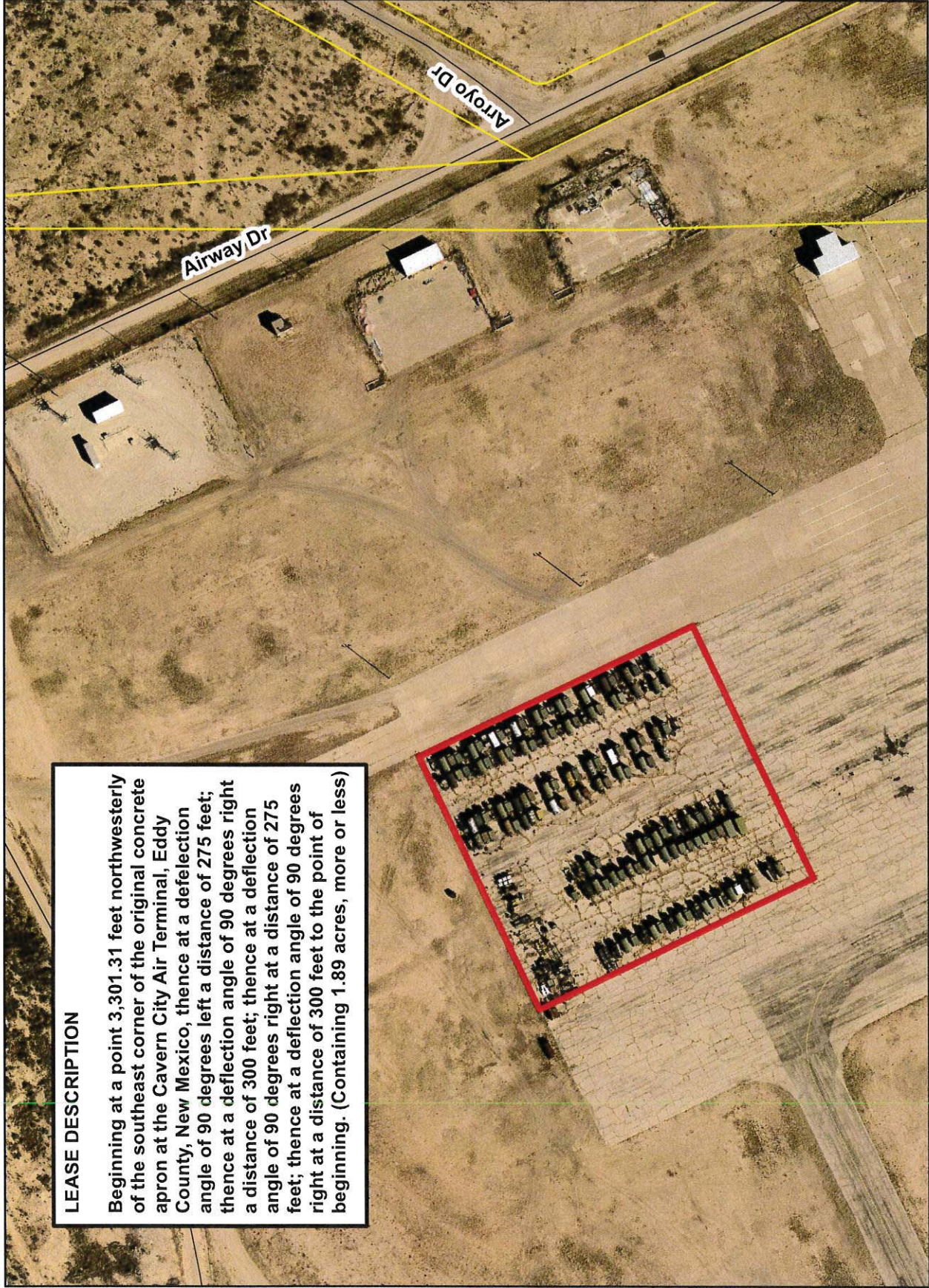
8-25-2016



Kay S. Garcia
NOTARY PUBLIC



Exhibit A CELTECH Corp. Leasehold



LEASE DESCRIPTION

Beginning at a point 3,301.31 feet northwesterly of the southeast corner of the original concrete apron at the Cavern City Air Terminal, Eddy County, New Mexico, thence at a deflection angle of 90 degrees left a distance of 275 feet; thence at a deflection angle of 90 degrees right a distance of 300 feet; thence at a deflection angle of 90 degrees right at a distance of 275 feet; thence at a deflection angle of 90 degrees right at a distance of 300 feet to the point of beginning. (Containing 1.89 acres, more or less)

EXHIBIT B

Monthly Rent Amount for the Leased Property

Year 1, Beginning on June 1, 2014
\$150.00 / month

Year 2, Beginning on June 1, 2015
\$154.50 / month

Year 3, Beginning on June 1, 2016
\$159.13 / month

Year 4, Beginning on June 1, 2017
\$163.91 / month

Year 5, Beginning on June 1, 2018
\$168.83 / month

Year 6, Beginning on June 1, 2019
\$173.89 / month

Year 7, Beginning on June 1, 2020
\$179.11 / month

Year 8, Beginning on June 1, 2021
\$184.48 / month

Year 9, Beginning on June 1, 2022
\$190.02 / month

Year 10, Beginning on June 1, 2023
\$195.72 / month

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM PURCHASING RECOMMENDATION

Council Meeting Date: June 10 2014

Department: Parks	BY: Luis Renteria, Parks Superintendent	Date: June 3 2014																					
SUBJECT: Services Description: Tennis Professional																							
SYNOPSIS: <table style="width:100%; border: none;"> <tr> <td style="width:15%;">Qty <u>1</u></td> <td style="width:35%;">Total Est. Cost <u>\$ 12,000.00</u></td> <td style="width:50%;">Total Actual Cost <u>\$ 12,000.00</u></td> </tr> <tr> <td>Budgeted Yes</td> <td>Est. City Share <u>\$ 12,000.00</u></td> <td>Actual City Share <u>\$ 12,000.00</u></td> </tr> <tr> <td>Account # <u>01-0070-60040</u></td> <td><u>\$ 200,300.00</u></td> <td></td> </tr> <tr> <td>Account # _____</td> <td>_____</td> <td></td> </tr> <tr> <td>Account # _____</td> <td>_____</td> <td></td> </tr> <tr> <td>Account # _____</td> <td>_____</td> <td></td> </tr> <tr> <td align="right" colspan="2">TOTAL <u>\$ 200,300.00</u></td> <td></td> </tr> </table>			Qty <u>1</u>	Total Est. Cost <u>\$ 12,000.00</u>	Total Actual Cost <u>\$ 12,000.00</u>	Budgeted Yes	Est. City Share <u>\$ 12,000.00</u>	Actual City Share <u>\$ 12,000.00</u>	Account # <u>01-0070-60040</u>	<u>\$ 200,300.00</u>		Account # _____	_____		Account # _____	_____		Account # _____	_____		TOTAL <u>\$ 200,300.00</u>		
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Account # _____	_____																						
Account # _____	_____																						
Account # _____	_____																						
TOTAL <u>\$ 200,300.00</u>																							
BACKGROUND, JUSTIFICATION AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) The City of Carlsbad, and Mr. Charles Jurva have successfully negotiated a four (4) year contract to provide tennis professional services at the Lake Carlsbad municipal tennis courts, and the Rio Pecos tennis shop. The City of Carlsbad compensation to Mr. Jurva would be \$12,000.00 annually for the duration of the contract, including participation in the city health insurance plan.																							
<table style="width:100%; border: none;"> <tr> <td style="width:40%;">Requested action to be taken by Council:</td> <td style="width:30%;">Council Action Taken:</td> <td style="width:30%;">Date:</td> </tr> <tr> <td>Other:</td> <td>Select one</td> <td></td> </tr> <tr> <td colspan="3">Award a Four (4) year contract to Mr. Charles Jurva</td> </tr> </table>			Requested action to be taken by Council:	Council Action Taken:	Date:	Other:	Select one		Award a Four (4) year contract to Mr. Charles Jurva														
Requested action to be taken by Council:	Council Action Taken:	Date:																					
Other:	Select one																						
Award a Four (4) year contract to Mr. Charles Jurva																							
Reviewed by City Administrator:																							

POST BID/RFP RECOMMENDATION	Council Meeting Date:						
<table style="width:100%; border: none;"> <tr> <td style="width:40%;">Requested action to be taken by Council:</td> <td style="width:30%;">Council Action Taken:</td> <td style="width:30%;">Date:</td> </tr> <tr> <td>Other:</td> <td>Select one</td> <td></td> </tr> </table>		Requested action to be taken by Council:	Council Action Taken:	Date:	Other:	Select one	
Requested action to be taken by Council:	Council Action Taken:	Date:					
Other:	Select one						
ADDITIONAL INFORMATION: It is recommended to approve a four (4) year tennis professional services contract in the amount of \$12,00.00 annually to Mr. Charles Jurva.							
Reviewed by City Administrator:							

ATTACHMENT(S): ☐ Specifications ☐ Bid/RFP Summary ☒ Other: Tennis Professional Services Contract.

**AGREEMENT BETWEEN THE CITY OF CARLSBAD
AND CHARLES H. JURVA
FOR TENNIS PROFESSIONAL SERVICES**

THIS AGREEMENT is entered into this ____ day of _____, 2014, by the **CITY OF CARLSBAD, NEW MEXICO**, a municipal corporation, hereinafter referred to as "CITY," and **CHARLES H. JURVA**, hereinafter referred to as "JURVA."

WHEREAS, the City of Carlsbad has nine (9) tennis courts and three (3) racquetball courts at the Lake Carlsbad Municipal Beach; and

WHEREAS, the CITY desires to have a tennis professional provide for the operation, care, and maintenance of that facility; and

WHEREAS, in RFP No. 2014-13, the CITY sought proposals for the provision of those services; and

WHEREAS, Charles H. Jurva submitted a proposal in response to that RFP; and

WHEREAS, JURVA was selected to provide the services; and

NOW THEREFORE the parties mutually agree to the following terms and conditions:

1. DEFINITIONS

In the construction and interpretation of this Agreement, the following definitions shall be used:

- A. Concessions may include food service, equipment repair facilities, for pay sports instruction, vending machines, and the sale of all other merchandise and services at the courts, excluding use of the courts for which no fees are charged.
- B. Courts shall mean the nine (9) tennis courts and the three (3) racquetball courts which are part of the Lake Carlsbad Recreation Area and all buildings, ground, ways, and parking lots within the area shown on the attached Exhibit "A".
- C. Pro Shop shall mean that building, constructed by the City at the courts, which is commonly known as Rio Pecos Tennis Shop, 700 Park Drive, as shown on the attached Exhibit "A".

2. TERM OF AGREEMENT

The term of this Agreement shall be from 1 May 2014 through 30 April 2018.

3. THE COURTS - A PUBLIC FACILITY

- A. JURVA shall faithfully serve the CITY to the best of his ability in promoting public recreation for which said facilities have been provided. One essential function of the Courts is to combat juvenile delinquency. Therefore, the Courts and related facilities shall be available at all times to all persons, regardless of age, sex, race, color, or creed.

B. JURVA shall provide service to meet seasonal public demand. During June, July, and August, he shall keep the Pro Shop open each day at reasonable hours as approved by the Carlsbad City Council. During the remaining months, JURVA shall keep the Pro Shop open on days and at hours approved by the Carlsbad City Council. The currently approved days and hours of operation are attached as Exhibit "B".

C. The Courts shall remain open for play at all times unless an emergency occurs. In the event the CITY must close the Courts or a portion thereof for maintenance, such closing shall be coordinated with JURVA prior to the actual closing. Notification of closings shall be posted in a conspicuous place by JURVA in order to maintain good public relations.

D. The Carlsbad City Council shall establish rules and regulations regarding and relating to the use of the Courts, and the conduct of players and other persons while on the Courts.

E. JURVA shall supervise a public relations program and handle all complaints.

4. MANAGEMENT DUTIES OF JURVA

A. During June, July, and August, JURVA shall devote a minimum of forty (40) hours per week to his duties at the Courts. During the remainder of the year, JURVA shall devote a minimum of twenty-five (25) hours per week to his duties at the Courts. JURVA may be absent at such times as are approved by the City Administrator provided, however, that a substitute, acceptable to the City Administrator, shall discharge JURVA's duties during such absences.

B. JURVA shall provide, at his own expense, such employees as are necessary to perform the duties and render the services required in the operation and supervision of the Courts and the Pro Shop. Such persons so hired by JURVA are not employees of the CITY but employees of JURVA, acting as an independent contractor. They shall not accrue leave, retirement, insurance, bonding, use of city vehicles, or any other benefit afforded to the employees of the CITY as a result of this Agreement. JURVA agrees to comply with state laws and rules applicable to workers' compensation benefits for his employees. If JURVA fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the CITY.

C. All employees maintaining the Courts shall be City employees, but shall be under the supervision of JURVA.

D. There shall be at least one person in charge of the Pro Shop for a minimum of forty (40) hours per week during June, July, and August, and for a minimum of twenty-five (25) hours per week during the remainder of the year.

E. JURVA shall patrol the Courts and shall be responsible for assigning courts and starting the players.

5. COMPENSATION

In consideration for the services provided by JURVA pursuant to this Agreement, the CITY shall pay JURVA one thousand dollars (\$1,000.00) per month. In addition to the other benefits herein indicated, JURVA may participate in the CITY's health insurance program at the same premium participation levels as afforded regular CITY employees.

6. PROFESSIONAL INSTRUCTION

A. JURVA shall provide instruction in the arts of playing tennis and racquetball. He shall offer two (2) courses of instruction in tennis and one (1) course of instruction in racquetball. These courses shall be open to the public at the cost of thirty dollars (\$30.00) per course per person, and then twenty dollars (\$20.00) for every other family member, or at such charges as are approved by the Carlsbad City Council. Each course of tennis instruction shall be five (5) weeks in length and shall consist of not less than twenty-five (25) hours of instruction.

B. JURVA shall promote and conduct such tournaments and exhibitions as may benefit the general operation of the courts. JURVA shall have the right, in all advertising and promotion of tournaments, to his personal identification as a member of the Southwest Tennis Association.

C. JURVA shall have the right to use one (1) court for private lessons. He shall endeavor to schedule private lessons at times when all the courts are not expected to be in use. No more than three (3) hours per day can be devoted to private lessons during the months of June, July, and August.

7. PRO SHOP

A. JURVA shall maintain an attractive and amply-supplied Pro Shop for his concessions. He may install appropriate sales fixtures and such vending machines as are approved by the City Administrator.

B. JURVA is granted exclusive control of the Pro Shop and tennis court area for sales as determined in Section 7C of this Agreement.

C. JURVA may determine, with the City Administrator's written approval, the concessions he will operate.

D. JURVA shall not erect or permit advertising signs on or in the Pro Shop, except with written consent of the City Administrator.

8. CARE OF FACILITIES AND EQUIPMENT

A. JURVA shall keep the Courts in a clean and orderly condition at all times. JURVA shall keep all CITY property and equipment he uses in good condition. JURVA waives all rights to make any repairs at the expense of the CITY, except with the written authorization of the City Administrator. Restrooms are available elsewhere at the Lake Carlsbad Municipal Beach. The CITY furnishes supplies and maintenance for these facilities.

B. JURVA shall not make or cause to be made any alterations to the courts or remove any equipment belonging to the CITY without first obtaining the written consent of the City Administrator. The City Administrator shall determine at whose expense any such changes are to be made.

9. INVENTORY OF PROPERTY

JURVA shall provide the City Administrator with an annual inventory of all furniture, fixtures and equipment at the Courts belonging to him. The City Administrator shall provide JURVA with an annual inventory of the CITY's furniture, fixtures and equipment located at the Courts.

10. UTILITIES

The CITY shall provide and pay for electricity, water and refuse collection at the Courts.

11. LAWS AND ORDINANCES

JURVA shall comply with all applicable laws and ordinances.

12. TAXES AND LICENSES

JURVA shall pay promptly all taxes and license fees of whatever nature applicable to this operation.

13. PAYMENT OF OBLIGATIONS

JURVA shall pay when due all bills, debts and obligations incurred by him or his employees in the operation of the Courts.

14. INSURANCE

A. JURVA shall provide workers' compensation insurance in accordance with the laws of New Mexico.

B. The CITY will provide and maintain fire and extended coverage insurance on the buildings and on City-owned contents of the buildings.

C. JURVA shall provide general liability insurance covering the courts with limits of not less than one hundred thousand dollars (\$100,000) and three hundred thousand dollars (\$300,00) for personal injury or death, and twenty-five thousand dollars (\$25,000) for property damages and said insurance shall include products liability coverage. The CITY shall be a named insured party and JURVA shall provide the CITY with a certificate of insurance.

15. DAMAGE OR DESTRUCTION OF COURTS

If the courts are destroyed or damaged beyond use, then at the election of either party, this Agreement shall be null and void.

16. NO ASSIGNMENT

JURVA shall not assign any rights under this Agreement, in whole or in part, without written consent of the City Council.

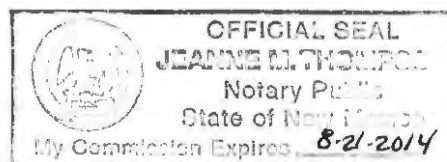
17. TERMINATION

A. The death of JURVA or his inability to perform the provisions of this Agreement shall terminate this Agreement.

B. In the event any of the conditions or provisions of this Agreement are breached, either party may terminate this Agreement.

C. Upon termination of this Agreement, JURVA shall deliver the courts and the Pro Shop to the CITY in as good condition and state of repair as when received, except for ordinary wear and tear or less or damage beyond his control.

D. In the event the agreement for Tennis Professional Services is not awarded to JURVA, the CITY shall notify JURVA of that in writing. JURVA shall have ninety (90)





0 50 100 200 Feet

City of Carlsbad
New Mexico



CITY OF CARLSBAD
PLANNING, ENGINEERING AND
REGULATION DEPARTMENT
5/2/2014

Lake Carlsbad
Municipal Tennis Complex
Exhibit A



RIO PECOS TENNIS SHOP HOURS OF OPERATION

During the summer months of June, July and August, the Tennis Shop will be open as follows:

Monday	8 -11 am
Tues -Fri	8 -11 am, 3:30-6:30 pm
Saturday	9 am – 6 pm
Sunday	1 – 5 pm

For the remainder of the year, shop hours will be:

Tues – Fri	3:30 – 6:30 PM
Saturdays	9 am – 6 pm
Sundays	1 – 5 pm

**City of Carlsbad
Personnel Department**

**Action Report
Month of May 2014**

**Submitted by
Scot D. Bendixsen, HR Director**

City of Carlsbad
Personnel Department Action Report
Month of May 2014

EMPLOYEE REPORT	Beginning of Month	New Hires	Termina- tions	Transfers In	Transfers Out	End of Month
Full-Time Employees	400	3	7	2	2	396
Part-Time/Temp Employees	66	15	3			78
Total Employees	466	18	10	2	2	474
Administrative	18		1		1	16
Judicial	8					8
Finance	18		1			17
Police	105					105
Fire	54	14	2			66
Culture & Recreation	110	1	3		1	107
Planning & Regulation	14	1	1			14
Utilities	73		2	1		72
Transportation & Facilities	66	2		1		69
TOTAL	466	18	10	2	2	474

WEEKLY INDEMNITY	Beginning of Month	New Claims	Released To Work	Terminated	End of Month
Employees on WI	2	1	0	0	3

UNEMPLOYMENT — CLAIMS	Claims Received	Claims Returned	Claims Denied	Claims Approved	Claims Pending	Claims Appealed
Current Month	1	1	1	1	0	0

DRUG TESTS	Number Given
Pre-employment	30
Probationary	2
Post Accident	16
Random	0
Periodic	0
Probable Cause	0

VACANCIES BID	Department
ARC Driver	Solid Waste
Code Enforcement	Permits, Eng. & Reg.
Facility Maintenance	Culture & Rec.
Caretaker	Golf Course
Caretaker	Community Service
Purchasing Clerk	Finance

PHYSICAL EXAMINATIONS	Number Given
Pre-employment	27
Return to Work Evaluation	0
Functional Capacity Evaluation	0

VACANCIES ADVERTISED	Applications Received
Heavy Equipment Operator	5
San Jose Sr. Rec. Ctr. Asst. Mgr.	11
Patrolman	19
Seasonal Laborer	9
Lifeguard	17

TESTING	Number Given
Patrolman	9

MONTHLY ACTIVITY REPORT
Planning, Engineering, & Regulation Department
May 2014

ACTIVITY SUMMARY

1. Business Activity:

New Businesses: 36

Temporary Businesses: 31

Business Renewals: 23

2. Miscellaneous Permits:

Dances: 2

Parades: 0

Other: 0

3. Building Permits & Inspections:

Permits Issued: 247

Permit Revenue: \$32,089.50

Inspections Completed: 423

92—Building Permits

168—Building

79—Plumbing/Mechanical

119—Plumbing/Mechanical

76—Electrical Permits

160—Electrical

4. Planning & Engineering activities for the month of May 2014:

NEW

- Seven Planning & Zoning Applications received for June meeting
- Infrastructure Standards Document —90% Complete
- City Hall Parking Lot Improvements—Project 95% Complete
- FEMA LOMR—Submitted to FEMA—Waiting for Response from Consultant re: FEMA comments
- Long-Range Roadway Plan—30% Complete
- CAIP Platting Complete for Bypass Route
- CAIP Platting Complete for Arroyo/Petroleum Drive
- Veterans Cemetery Project Moving Forward
- Civic Center Parking Lot Design Started

ONGOING

- Infrastructure Mapping (GIS)
- Development Review
- Subdivision Review and Approvals
- Leased Properties Inspections

PLANNING AND ZONING COMMISSION

Meets the first Monday of each month at 5 p.m. in the City Hall Planning Room.

Signed: _____

Planning Director

ORDINANCE NO. 2014-____

AN ORDINANCE REZONING PART OF "R-1"
RESIDENTIAL DISTRICT TO "C-2"
COMMERCIAL DISTRICT FOR AN
APPROXIMATELY 0.59+/- ACRE SITE,
LOCATED AT 509 W. PIERCE ST., LEGALLY
DESCRIBED AS MARTIN LINE ADJUSTMENT,
LOT 33, PURSUANT TO SECTION 3-21-1 ET.
SEQ. NMSA 1978 AND SECTIONS 56-150(B) AND
56-140(I), CARLSBAD CODE OF ORDINANCES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD,
EDDY COUNTY, NEW MEXICO, that:

The official zoning map of the City is hereby amended to rezone part of "R-1" Residential District to
"C-2" Commercial District, an approximately 0.59+/- acre site, located at 509 W. Pierce St.,
Carlsbad, NM, legally described as:

MARTIN LINE ADJUSTMENT, LOT 33

INTRODUCED, PASSED, ADOPTED AND APPROVED this 22nd day of July, 2014.

DALE JANWAY, MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO. 2014-____

AN ORDINANCE REZONING PART OF "R-1" RESIDENTIAL DISTRICT TO "R-2" RESIDENTIAL DISTRICT FOR AN APPROXIMATELY 0.84+/- ACRE SITE, LOCATED ALONG N. GUADALUPE ST., LEGALLY DESCRIBED AS MARTIN LINE ADJUSTMENT, LOT 34, PURSUANT TO SECTION 3-21-1 ET. SEQ. NMSA 1978 AND SECTIONS 56-150(B) AND 56-140(I), CARLSBAD CODE OF ORDINANCES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, EDDY COUNTY, NEW MEXICO, that:

The official zoning map of the City is hereby amended to rezone part of "R-1" Residential District to "R-2" Residential District, an approximately 0.84+/- acre site, located along N. Guadalupe St., Carlsbad, NM, legally described as:

MARTIN LINE ADJUSTMENT, LOT 34

INTRODUCED, PASSED, ADOPTED AND APPROVED this 22nd day of July, 2014.

DALE JANWAY, MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO. 2014-_____

AN ORDINANCE REZONING PART OF "I" INDUSTRIAL DISTRICT TO "C-2" COMMERCIAL DISTRICT FOR AN APPROXIMATELY 27.08+/- ACRE AREA, INCLUDING LOTS LEGALLY DESCRIBED AS THE AMENDED CASCADES NO. 6 SUBDIVISION, LOTS 1B, 5A-16A, 20A-24A, 26A-28A, AND AMENDED CASCADES NO. 7 SUBDIVISION, LOTS 18B AND 19B, PURSUANT TO SECTION 3-21-1 ET. SEQ. NMSA 1978 AND SECTIONS 56-150(B) AND 56-140(I), CARLSBAD CODE OF ORDINANCES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, EDDY COUNTY, NEW MEXICO, that:

The official zoning map of the City is hereby amended to rezone part of "I" Industrial District to "C-2" Commercial District, an approximately 27.08+/- acre site, legally described as:

AMENDED CASCADES NO.6 SUBDIVISION, LOTS 1B, 5A-16A, 20A-24A, 26A-28A, AND
AMENDED CASCADES NO. 7 SUBDIVISION LOTS 18B AND 19B

INTRODUCED, PASSED, ADOPTED AND APPROVED this 22nd day of July, 2014.

DALE JANWAY, MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO. 2014-__

AN ORDINANCE ANNEXING A PORTION OF LAND CONTAINING 32.12 ACRES MORE OR LESS, CONTIGUOUS TO THE CITY OF CARLSBAD, NEW MEXICO, LOCATED NORTH OF LIGON ROAD, LEGALLY DESCRIBED AS PART OF THE NW1/4 OF THE NW1/4 OF SECTION 25, TOWNSHIP 21 SOUTH, RANGE 26 EAST, N.M.P.M., EDDY COUNTY, NEW MEXICO, PURSUANT TO THE PETITION METHOD PROVIDED FOR IN SECTION 3-7-1 ET. SEQ., NMSA 1978.

WHEREAS, a petition for annexation of territory contiguous to the City of Carlsbad has been presented to the Governing Body of the City of Carlsbad; and

WHEREAS, said petition has been signed by the owners of a majority of the number of acres in the contiguous territory; and

WHEREAS, said petition is accompanied by a map showing the external boundary of the territory proposed to be annexed and its relationship to the existing boundary of the City of Carlsbad, New Mexico.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, NEW MEXICO:

Section 1. Subject to the proviso contained in Section 2 hereof, the City of Carlsbad hereby consents to the annexation of 32.12 acres, more or less, of contiguous territory situated in Eddy County, New Mexico, located north of Ligon Road, legally described as part of the NW1/4 of the NW1/4 of Section 25, Township 21 South, Range 26 East, N.M.P.M., Eddy County, New Mexico.

Section 2. A copy of this ordinance and the plat of said property shall be filed in the office of the County Clerk of Eddy County. After such filing, the property shall be included in and be a part of the City of Carlsbad. Appeal may be made by any person owning land within this said territory to the District Court of Eddy County within thirty (30) days on the grounds and in the manner provided by law.

INTRODUCED, PASSED, ADOPTED, AND APPROVED THIS 22ND DAY OF JULY, 2014.

DALE JANWAY, MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO. 2014-_____

AN ORDINANCE ESTABLISHING “PUD”
PLANNED UNIT DEVELOPMENT ZONING IN
CONJUNCTION WITH THE ANNEXATION OF
AN APPROXIMATELY 32.12 ACRE AREA AND
AMENDING THE OFFICIAL ZONING MAP OF
THE CITY PURSUANT TO SECTION 3-21-1 ET.
SEQ. NMSA 1978 AND SECTIONS 56-150(B) AND
56-140(I), CARLSBAD CODE OF ORDINANCES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD,
EDDY COUNTY, NEW MEXICO, that:

The official zoning map of the City is hereby amended to establish “PUD” Planned Unit
Development zoning for a 32.12+/- acre area, located north of Ligon Road, legally described as:

PART OF THE NW1/4 OF THE NW1/4 OF SECTION 25, TOWNSHIP 21 SOUTH, RANGE
26 EAST, N.M.P.M., EDDY COUNTY, NEW MEXICO

INTRODUCED, PASSED, ADOPTED AND APPROVED this 22nd day of July, 2014.

DALE JANWAY, MAYOR

ATTEST:

CITY CLERK

CITY OF CARLSBAD

INTER-OFFICE MEMORANDUM

Dale Janway, Mayor

Steve McCutcheon City Administrator

June 2, 2014

TO: Council Members

FROM: Mayor Janway

RE: Board, Commission and Committee Appointments

Subject to the approval of the Governing Body, I would like to appoint the following:

Carlsbad Golf Course Advisory Board

Kenny Lawson Remainder of 4 year term

Thank you.

DJ/cm

RESOLUTION NO. 2014- _____

**A RESOLUTION FOR THE CITY OF CARLSBAD
TO PROMOTE AND ENGAGE IN THE
INITIATIVES OF THE WORLD HEALTH
ORGANIZATION'S AGE-FRIENDLY CITIES AND
COMMUNITIES NETWORK.**

WHEREAS, The City of Carlsbad, New Mexico has adopted a Greater Carlsbad Comprehensive Plan: Strategy 2030; and

WHEREAS, community services and facilities contribute to the quality of life for residents by providing safety, protection, recreation, leisure, meeting places, social services, educational and cultural opportunities; and

WHEREAS, the City has established a "Long Term Planning Implementation Committee"; and

WHEREAS, Carlsbad shall appoint an ad hoc citizen advisory committee to guide development of pedestrian and bicycle pathways through the City; and

WHEREAS, the Carlsbad area is home to the following amenities:

- Two continuing care retirement communities;
- A respite care facility
- Senior recreational centers
- Two National Parks
- Two New Mexico State Parks
- 34 public parks, open spaces, and a dog park
- Sports complexes
- Neighborhood playgrounds
- The Riverwalk Recreation Center
- Tennis courts and golf courses

WHEREAS, Carlsbad shall continue implementation of the transportation improvement plan to connect current and future needs of the community; and

WHEREAS, active aging is a life-long process, whereby an age-friendly community is not just "elder-friendly" but intended to be friendly for all ages; and

WHEREAS, the World Health Organization (WHO) has developed a program and policies to encourage age-friendly communities.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO, THAT:

I, Dale Janway, Mayor of the City of Carlsbad, New Mexico, with the approval of the governing body, do hereby support the initiatives to promote and engage Carlsbad in the World Health Organization's Age-friendly cities and communities network.

INTRODUCED, PASSED, ADOPTED, AND APPROVED this __ day of _____ 2014.

DALE JANWAY, MAYOR

ATTESTED:

CITY CLERK

CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 6/10/14

DEPARTMENT: Planning, Engineering & Regulation	BY: Stephanie Shumsky, Planning Director	DATE: 5/29/14				
SUBJECT: Business License to conduct door to door sales, service and installation of security systems by ARM Security, Inc. (Owner: Vivint, Inc.) 491 South 1325 West, Suite 3-4, Orem, UT 84058 (Contact: Chelsea Anderson), pursuant to Carlsbad Code of Ordinances, Chapter 28, as amended by Ord. 2012-16.						
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) The applicant is requesting a special license to conduct door-to-door solicitations. In June 2013, the City Council approved a request for a Special License to allow door to door sales for Vivint, Inc. based on the condition that door to door sales were only permitted during the hours of 9am to 7pm. The applicant provided the required application materials including the bond. A report was requested from the Police Department on May 16 th and again on May 30 th , but as of the printing of this ABM it has not been received. Section 28-43(b), as recently amended by Ord. 2012-16, of the Carlsbad Code of Ordinances states that: "In making its decision, the city council shall consider, but is not limited to, how such business will affect the health, safety and general welfare of the public; the level of supervision such business may require; the degree to which such business may attract crowds or children or affect vehicle or pedestrian traffic; the accessibility of the proprietors of such business if complaints made to the city are to be investigated; and the possibility of illegal activity transpiring at the proposed place of business." In addition, Section 28-161 et. Seq. specifically applies to solicitations and Section 28-166 states: "A city solicitation license may be granted only upon approval by the city council at a regular meeting of the council. The city council shall not consider approval of a solicitation license application unless the chief of police has filed a report on his investigation of the employer or person seeking the license. " (emphasis added) (see attached sections of Chapter 28)						
RECOMMENDATION: Denial of the Business License in compliance with Sec. 28-166. If the investigation report is received from the police department prior to the Council hearing and the report is positive, staff recommends approval of the business license.						
BOARD/COMMISSION/COMMITTEE ACTION: N/A <table style="width: 100%; border: none;"><tr><td style="width: 25%; vertical-align: top;"><input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board</td><td style="width: 25%; vertical-align: top;"><input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> N. Mesa Board</td><td style="width: 25%; vertical-align: top;"><input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> _____ Committee</td><td style="width: 25%; vertical-align: top; text-align: right;">} <input type="checkbox"/> APPROVED } } <input type="checkbox"/> DISAPPROVED</td></tr></table>			<input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board	<input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> _____ Committee	} <input type="checkbox"/> APPROVED } } <input type="checkbox"/> DISAPPROVED
<input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board	<input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> _____ Committee	} <input type="checkbox"/> APPROVED } } <input type="checkbox"/> DISAPPROVED			
Reviewed By: City Administrator: <u>/s/ Steve McCutcheon</u> Date: <u>June 5, 2014</u>						

ATTACHMENT(S): Application and applicable Chapter 28 sections

ARTICLE VI. SOLICITATIONS

Sec. 28-161. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Employer means any person, firm, partnership, association, corporation or other natural or legal entity employing any person in the capacity of agent, servant, employee or representative on an exclusive or nonexclusive basis.

Insurance agent means any person appointed by an insurance company licensed to transact business in the state to act as representative in any given locality for the purpose of soliciting and writing insurance bonds, and such other duties in connection with the handling of the business of such agent as may be authorized, and paid for his services either on a commission basis or salary basis, or part by commission and part by salary.

Insurance solicitor means any person employed by the licensed agent of an insurance company licensed to transact business in the state to act as representative in any given locality for the purpose of soliciting and writing insurance or bonds, and such other duties in connection with the handling of the business of such agent as may be authorized, and paid for his services either on a commission basis or salary basis, or part by commission and part by salary.

Solicitation means the going in or upon or telephoning to one or more private residences in the city by any person not having been requested or invited to do so by the owners or occupants of such private residence or residences for the purpose of soliciting orders for the sale of goods, wares, merchandise, any article or thing of whatsoever description intended for the use or benefit of the recipient thereof, property either real or personal or tangible or intangible, or services; for the purpose of peddling or hawking any of the same; for the purpose of making or requesting appointments or procuring interviews or arranging for demonstrations or explanations preliminary to any actual solicitation of orders; or for the purpose of selling, peddling or hawking of any of the same.

(Code 1974, § 31-1)

Sec. 28-162. General prohibition.

(a) *Violation deemed misdemeanor.* Whoever commits solicitation in violation of this article commits a misdemeanor.

(b) *Elements of prima facie case of solicitation.* Any person or employer who goes in or upon or who telephones any one residence for the purpose of solicitation shall be deemed prima facie to have committed solicitation and a continued practice need not be shown.

(Code 1974, §§ 31-2, 31-3)

Sec. 28-163. Exceptions to prohibition.

The provisions of section 28-162(a) shall not apply to any person if such person for himself, or through his employer, shall have:

(1) Posted a surety bond, with a surety licensed to do business in the state, in the amount of \$1,000.00, to the city and the residents of the city conditioned that the person posting the surety bond shall comply fully with all the provisions of the ordinances of the city and the statutes of the state regulating and concerning the business licensed, and guaranteeing to any resident of the city that all money paid will be accounted for and applied according to the representations of the licensee, and further guaranteeing to any resident of the city doing business with such licensee that the property or services purchased will be delivered or furnished according to representations made by the licensee, and will conform to such representation, whether such representations be oral or in writing, and that the licensee's contract in all respects will be fully performed. Action on such bond may be brought in the name of the city to the use and benefit of the aggrieved person or in the name of the aggrieved person. The term of such bond shall be at least one year.

a. Any employer may purchase such a bond for any person employed by him or representing him in any capacity. If such bond is purchased by an employer of more than one employee, he shall purchase one such bond in the amount of \$2,000.00, which bond shall cover all persons employed by him or representing him in any capacity.

b. Any person who solicits for one or more employers shall file with the city administrator evidence of a surety bond having been posted by each employer in the manner heretofore described.

(2) Obtained a state school tax license and a city solicitation license as provided in section 28-166.

(3) Obtained a peddler's identification card. Such card shall be issued upon written proof of compliance with this section. The city administrator is authorized to require any such person to be properly identified

by fingerprinting and photography; provided, however, that such fingerprinting shall be required only at the time of the filing of the original application for such card; except, that if the city administrator finds that the fingerprints lack sufficient clarity or are otherwise inadequate or unavailable for proper identification of such person, the city administrator may require such person to be fingerprinted again. The card shall be renewed every two years. The application of such card and every renewal thereof shall be made on such form as shall be provided by the city administrator. The service charge for investigation and printing the original card and for each renewal thereof shall be as set from time to time by the council and a schedule of such charges is on file in the office of the city clerk. The city council shall, after notice and hearing, suspend or revoke any such card upon finding such person has been convicted of a felony or misdemeanor involving moral turpitude in this state or any of the United States, or upon finding that such person gave false information on the application; provided, however, that nothing herein contained shall prohibit the city administrator from withholding the issuance of the aforementioned identification card until an adequate police record check is obtained.

(Code 1974, § 31-4)

Sec. 28-164. Peddler's identification card.

(a) *Contents.* The peddler's identification card shall contain the following:

- (1) The name and address of the bearer.
- (2) The name and address of each employer or, if self-employed, the words "self-employed" or, where applicable, both the name and address of each employer and the words "self-employed."
- (3) A wallet-size photograph of the bearer, to be furnished by the bearer.
- (4) The name and address of each bonding company and the employer bonded, if any.
- (5) The legend: "THE CITY OF CARLSBAD DOES NOT ENDORSE OR GUARANTEE THE PRODUCT OR SERVICE OF THE BEARER OR HIS COMPANY."

(b) *Carrying; exhibition.* Any person who solicits in the city shall carry his own peddler's identification card at all times while engaged in solicitation. Such card shall be exhibited to any owner or occupant of any residence or, upon demand, to any police officer of the city.

(Code 1974, §§ 31-5, 31-6)

Sec. 28-165. Insurance agents and insurance solicitors; real estate brokers and real estate salespersons.

(a) The provisions of sections 28-162(a), 28-163 and 28-164 shall not apply to any insurance agent or insurance solicitor who has obtained a license from the state superintendent of insurance, nor to any real estate broker or real estate salesperson who has obtained a license from the state real estate commission, and who carries such license on his person and who exhibits such license to any owner or occupant of any residence or, upon demand, exhibits such license to any police officer of the city.

(b) No person shall solicit for the purchase of insurance without a license from the state superintendent of insurance.

(Code 1974, § 31-9; Ord. No. 1035, 1-14-92)

Sec. 28-166. Grant of license; investigation report prerequisite to consideration.

A city solicitation license may be granted only upon approval by the city council at a regular meeting of the council. The city council shall not consider approval of a solicitation license application unless the chief of police has filed a report on his investigation of the employer or person seeking the license.

(Code 1974, § 31-10)

Sec. 28-167. Posted property.

Except where he has been requested or invited to do so by the owner or occupant of property, it is unlawful for any person, whether or not authorized by compliance with section 28-163 to solicit, to commit an act of solicitation in or upon any premises if required by anyone not to do so, or if there is placed on such premises in a conspicuous place near the entrance thereof a sign bearing the words: "No Trespassing," "No Peddlers," "No Agents," "No Solicitors," "No Advertisements" or any similar notice indicating in any manner that the occupants of such premises do not desire to be molested or have their privacy disturbed.

(Code 1974, § 31-7)

Sec. 28-168. Representation of city approval prohibited.

It is unlawful for any person to make any claim or representation, whether orally or in writing, during the solicitation that the city has approved, endorsed or guaranteed his product or service.

(Code 1974, § 31-8)

Sec. 28-169. Time limitation.

No person shall engage in solicitation after 9:00 p.m.

(Code 1974, § 31-11)

**CITY OF CARLSBAD**

Planning, Engineering, and Development Dept.

Phone (575) 887-1191, Ext. 7920 or 7921

Fax (575) 885-9871

Date: 5-15-14**NON-REFUNDABLE APPLICATION FEE:**

- ☒ \$25 Door to Door--City Solicitation License
(as regulated by Sec. 28.161)
- ☐ \$25 Dance, per day
- ☐ \$200 Dance, per year
- ☐ \$50 Boxing, wrestling, fighting, or martial arts exhibitions or contests, per performance
- ☐ \$100 Carnival, circus, or menagerie, per day
- ☐ \$250 Pawnbroker, per year

**BUSINESS LICENSE
(SPECIAL EVENTS/PAWNBROKERS)
APPLICATION****BUSINESS NAME:**ARM Security, Inc.**TYPE OF BUSINESS/PURPOSE OF LICENSE:**Door to door sales of Vivint, Inc's home automation systems.**LOCATION OF BUSINESS (Physical Address):**491 S 1325 W #3-4
Orem, UT 84058**NM ID #:**03-143296-00-4**MAILING ADDRESS:**491 S 1325 W #3-4
Orem, UT 84058**BUSINESS OWNER:**Vivint, Inc.**DATES OF LICENSE USE:**2014 year**E-MAIL**ADDRESS: compliance@armsecurity.comPHONE NUMBER: 877-479-1670 x3**APPLICANT'S SIGNATURE:**Alex J. Dunn**FOR OFFICIAL USE ONLY**Solicitor's License? ☐ Yes ☐ NoCouncil Action: ☐ Approved ☐ Denied

Date: _____

Conditions Required: _____

CITY OF CARLSBAD PROCEDURES FOR APPLYING FOR BUSINESS LICENSE

MEETING TIME AND DATE: Business License Requests are presented to the City Council. This application will be set for Council on 5-27-14.

DEADLINE: The deadline for submitting applications for City Council is _____.

APPLICATION FEE: The Fee is due upon submission of application. Fees are listed on first page of application.

LETTER OF INTENT: A letter explaining the reason for the request must be submitted. The letter should be typed and addressed to the Carlsbad City Council.

BOND: (from Section 28-163 of the City of Carlsbad, Code of Ordinances, bold type added)

"The provisions of section 28-162(a) shall not apply to any person if such person for himself, or through his employer, shall have:

(1) Posted a surety bond, with a surety licensed to do business in the state, in the amount of \$1,000.00, to the city and the residents of the city conditioned that the person posting the surety bond shall comply fully with all the provisions of the ordinances of the city and the statutes of the state regulating and concerning the business licensed, and guaranteeing to any resident of the city that all money paid will be accounted for and applied according to the representations of the licensee, and further guaranteeing to any resident of the city doing business with such licensee that the property or services purchased will be delivered or furnished according to representations made by the licensee, and will conform to such representation, whether such representations be oral or in writing, and that the licensee's contract in all respects will be fully performed. Action on such bond may be brought in the name of the city to the use and benefit of the aggrieved person or in the name of the aggrieved person. **The term of such bond shall be at least one year.**

a. Any employer may purchase such a bond for any person employed by him or representing him in any capacity. If such bond is purchased by an employer of **more than one employee**, he shall purchase one such bond in the amount of **\$2,000.00**, which bond shall cover all persons employed by him or representing him in any capacity."

ATTACHMENTS: Any additional information about business such as brochures, plans, or deeds should be submitted with the application.

SUBMIT TO: City of Carlsbad
Planning, Engineering, and Regulation Department
101 N. Halagueno (or mail to PO Box 1569)
Carlsbad, NM 88220
Phone: (575) 887-1191

PRESENCE AT MEETING: The Carlsbad City Council will vote on the request during a regularly scheduled City Council meeting. The applicant or his/her representative must be present to address any questions that the Mayor or Council members may have.



May 12, 2014

City of Carlsbad
101 N Halagueno
Carlsbad, NM 88220

RE: Request for Business License for ARM Security, Inc.

Carlsbad City Council:

ARM Security, Inc. is a certified dealer of, and owned fully by, Vivint, Inc. While Vivint, Inc. is in the business of installing, servicing and monitoring home automation systems (i.e. video surveillance, intrusion alarm, fire alarm, thermostat control, etc.), ARM Security will solely offer for sale Vivint's products and services through door-to-door solicitation. Thus, ARM Security will not receive any taxable income, but will simply create contracts between customers of Carlsbad and Vivint, Inc. Please let us know if there is anything else we would need to do to acquire the appropriate licensing for our business endeavors. Accompanied with this request, is a check for \$25.00 to cover the business license application fees.

Feel free to email or call with any questions or concerns.

Sincerely,

Chelsea Anderson • Company Licensing
compliance@armsecurity.com
P: 877.479.1670 • F: 801.765.5743
491 S 1325 W, #3-4, Orem, UT 84058

491 South 1325 West
Suite 3-4
Orem, UT 84058

P: 877.479.1670
F: 801.765.5741

armarketing.com
info@armarketing.com



Western Surety Company

CONTINUATION CERTIFICATE

Western Surety Company hereby continues in force Bond No. 61249585 briefly described as TRANSIENT MERCHANT CITY OF CARLSBAD

for ARM SECURITY, INC.

_____, as Principal,

in the sum of \$ TWO THOUSAND AND NO/100 Dollars, for the term beginning

January 19, 2014, and ending January 19, 2015, subject to all the covenants and conditions of the original bond referred to above.

This continuation is issued upon the express condition that the liability of Western Surety Company under said Bond and this and all continuations thereof shall not be cumulative and shall in no event exceed the total sum above written.

Dated this 11 day of November, 2013.



WESTERN SURETY COMPANY

By

Paul T. Bruhat

Paul T. Bruhat, Vice President

THIS "Continuation Certificate" MUST BE FILED WITH THE ABOVE BOND.

Western Surety Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That WESTERN SURETY COMPANY, a corporation organized and existing under the laws of the State of South Dakota, and authorized and licensed to do business in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the United States of America, does hereby make, constitute and appoint

Paul T. Bruflat of Sioux Falls,
State of South Dakota, its regularly elected Vice President,
as Attorney-in-Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, the following bond:

One TRANSIENT MERCHANT CITY OF CARLSBAD

bond with bond number 61249585

for ARM SECURITY, INC.

as Principal in the penalty amount not to exceed: \$2,000.00

Western Surety Company further certifies that the following is a true and exact copy of Section 7 of the by-laws of Western Surety Company duly adopted and now in force, to-wit:

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys-in-Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

In Witness Whereof, the said WESTERN SURETY COMPANY has caused these presents to be executed by its Vice President Paul T. Bruflat with the corporate seal affixed this 11 day of November, 2013.

ATTEST

L. Nelson

L. Nelson, Assistant Secretary

WESTERN SURETY COMPANY

By

Paul T. Bruflat

Paul T. Bruflat, Vice President

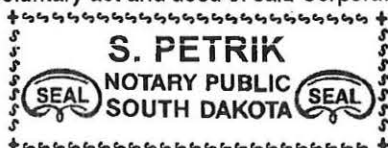
STATE OF SOUTH DAKOTA

COUNTY OF MINNEHAHA

} ss

On this 11 day of November, 2013, before me, a Notary Public, personally appeared
Paul T. Bruflat and L. Nelson

who, being by me duly sworn, acknowledged that they signed the above Power of Attorney as Vice President and Assistant Secretary, respectively, of the said WESTERN SURETY COMPANY, and acknowledged said instrument to be the voluntary act and deed of said Corporation.



My Commission Expires August 11, 2016

S. Petrik

Notary Public



Memo

To: Jennifer Campos
From: Captain Jarod A. Florez
Date: May 23, 2014
Subject: ARM Security, Inc. (Owner: Vivint, Inc.) Special License Application

The following information are the findings determined in research of ARM Security, Inc. (Owner: Vivint, Inc.) who has filed a Special License Application with the City of Carlsbad requesting door-to-door solicitations. I have performed a research on this company's integrity and have compiled these facts.

Summaries of the previous investigations:

*Note: In three past investigations of this company, it has been discovered that the company has changed names 3 times on the Special License Application paperwork (APX, Vivint, Inc., and now ARM Security, Inc.).

July 2011: (Summary of previous investigation)

Captain Kelly Lowe conducted an investigation in reference to an APX request for a similar application in July of 2011. During his investigation, he discovered that APX was a Vivint, Inc. owned company. He stated several facts as to why the Carlsbad Police Department did not support the company's request for this license. The reasons Captain Lowe cited were directly from the Better Business Bureau (BBB) web site, which indicated that the business had numerous complaints filed through the BBB for both Advertising and Sales as well as with Production and Services and Billing, Collection, Delivery/Guarantee. The company's overall grade of a C- on an A+ to F scale was also an issue cited by Captain Lowe. At the time that Captain Lowe did his inquiry on the business, it was listed as being under a "Red Alert" due to a Government Action pending, as well as several documented actions that were upheld within court resulting in several fines and settlements being reached in courts in Washington, Arkansas, and Oregon. The case in Oregon was specifically referencing **fraudulent claims that the business had partnerships "WITH FIRE AND POLICE IN ORDER TO CLOSE SALES"**.

February 2012: (Summary of previous investigation)

I conducted an investigation in reference to a Vivint, Inc. application for door to door solicitation of product and services. I, too, was able to locate and identify additional circumstances that would support Captain Lowe's statements for the city **NOT** to approve the Special License Application and recommended such license be denied. The following circumstances were: A Better Business Bureau Rating of a D on an A+ to F scale, numerous complaints (product, service, billing, collections, delivery, guarantee, warranty), "Red Alert" Status, numerous government actions filed against Vivint, Inc. Each strike against the company had statistics to support the increase of complaints to the BBB and specific examples and facts to the government sanctions on company.

June 2013:

I investigated ARM Security, Inc. (Owner: Vivint, Inc.) for a Special License Application for door to door solicitation. I found that **neither Vivint, Inc. nor ARM Security, Inc. is associated with the Better Business Bureau**. This raises concerns because of the unacceptable status the company held with the BBB when they left. In the last 12 months, the BBB has closed 1,238 complaints on this company.

In addition to the BBB complaints I located, I also found three more Government Actions in addition to the four on my previous report on February 2012. These are:

1. On September 27, 2012 the Wisconsin Attorney General's Office announced a Consent Judgment with Vivint, Inc. The consent judgment requires the company to pay refunds to consumers who were misled about their ability to cancel their alarm service contracts, as well as consumers who were misled about false alarm charges. Vivint also will remove affected consumers from collections and the company will pay forfeitures and attorneys' fees to the State as well as greatly improve their disclosures to consumers about their services and charges, making it easier for consumers to cancel their contracts if they so desire.
2. On March 15, 2013 the Kansas Attorney General entered into a Settlement Agreement with Vivint, Inc. According to the terms of the Settlement Agreement, the company was accused of using a variety of deceptive practices while going **DOOR-TO-DOOR** offering to install new home security systems or replace existing systems. The Attorney General's Office said the salesman failed to advise the consumers of their rights and did not disclose all costs associated with switching alarm system providers.
3. On April 26, 2013 the State of Ohio Attorney General's Office entered into an Assurance of Voluntary Compliance Settlement Agreement with Vivint, Inc. According to the terms of the Settlement Agreement, consumers filed complaints that the company made representations to consumers that its home security equipment was free, but failed to disclose the existence or amount of installation, activation and monitoring fees associated with the system. Vivint, Inc. **DOOR-TO-DOOR** sales representatives misrepresented the price of continued monthly monitoring fees, made representations that it was providing an upgrade to the consumer's current home security system; that the consumer's current security system company was no longer in business; or that Vivint was otherwise part of or authorized to continue monitoring the consumer's current home security system. Vivint routinely installed the home security systems on the same day the contracts were executed and within the three-day cancellation period and failed to orally inform consumers of their right to cancel the contract within three days or misrepresented the consumers' right to cancel by informing them they were signing the contract on a "trial basis" or that they had thirty days to cancel.

May 2014:

I, again, investigated ARM Security, Inc. (Owner: Vivint, Inc.) for a Special License Application for door to door solicitation. I found that **neither Vivint, Inc. nor ARM Security, Inc. is associated with the Better Business Bureau.** This raises concerns because of the unacceptable status the company held with the BBB when they left. In the last 12 months, the BBB has closed 1,096 complaints on this company.

In addition to the BBB complaints I located, I also found one more Government Action in addition to the seven on my last two reports. It read:

1. On June 3, 2013 the State of Nebraska Attorney General's Office entered into an Assurance of Voluntary Compliance with Vivint, Inc. According to the terms of the Agreement, Vivint, Inc. agreed to not make misrepresentations and/or false or misleading statements, directed or by implied, which had the **tendency or effect to deceive or mislead consumers**, including but not limited to the following: Saying that consumers will receive free or discounted products or services if he/she agrees to place a sign in consumer's yard, or otherwise advertise for Vivint, when no free or discounted product or services are available; Consumer will receive a special of limited-time offer, when no special or limited-time offer will be given; Vivint, Inc. is affiliated with another company, when it is not; Vivint, Inc. would be/is upgrading a consumer's current security system, when in reality, it is not upgrading the consumer's security system; Consumer's current security company has gone out of business, is no longer providing security services or had merged with another entity, when it has not; **Vivint's security systems are directed connected to local police or emergency personnel or home health care personnel, and/or police, emergency or home health care personnel will be directly notified without some form of prior verification, if any of these statements is not true; That there is criminal activity in the area, when such a statement is not true;** and That a consumer will receive a discount on their home insurance premium rather than stating the consumer may receive such a discount.

Every year there are more and more complaints filed against Vivint, Inc. and ARM Security, Inc. with the Better Business Bureau. A large percentage of these complaints deal with sales practices and false promises made to the consumer by the sales representative. These reported false promises made to consumers by sales representatives include free pizza every month to the consumer, current security system contract buy-outs, free or discounted products, additional add-on services free of charge, and the list goes on!

I will once again state that the Carlsbad Police Department **DOES NOT** agree or endorse the approval of this company's request for a Special License Application for door to door solicitation in this city. Based on the outcome of all **FOUR** Vivint, Inc. investigations, I still cannot in good conscience, on behalf of the citizens of Carlsbad, recommend or support the interests of Vivint, Inc./ARM Security, Inc. to conduct business under this special license, due to the high potential that the citizens of Carlsbad be misled by uncommon and deceptive practices that have been called to the attention of several State Governments by current and past customers of this company.

It is my recommendation that the City of Carlsbad City Council deny this application.

Kent Waller, Chief of Police

Kevin Florez, Assistant Chief

Jarod Florez, Captain

Jon Moyers, Captain

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

COUNCIL MEETING DATE: 6/10/14

DEPARTMENT: Planning, Engineering and Regulation	BY: Stephanie Shumsky, Planning Director	DATE: 5/29/14
<p>SUBJECT: Appeal of the Planning and Zoning Commission's decision to approve a variance from Section 56-90(b) to allow a front-yard setback variance of 10' from the front property line, which would result in 20' front-yard setbacks for Fountain Hills Subdivision – Phase 11, located on the east side of Miehl's Drive, zoned Rural Residential District (R-R).</p> <p>Appellant (Primary Contact): Dave Tawater 908 Fountain Drive Carlsbad, NM 88220</p>		
<p>SYNOPSIS, HISTORY and IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.): At their regularly scheduled meeting on May 5, 2014, the Planning and Zoning Commission considered the request as stated above. The Commission voted to approve the requested variance, as described in the attached P&Z meeting packet and minutes, with a vote of 4-0.</p> <p>Appeals are regulated by Code of Ordinances Sections 56-140(k) and 56-150(c). Section 56-140(k) states (emphasis added):</p> <p>“Pursuant to this Zoning Ordinance, administrative decisions made by the Planning Director may be reviewed on appeal by the Planning and Zoning Commission. All final decisions made by the Planning and Zoning Commission may be reviewed on appeal to the City Council. Final decisions of the City Council may be appealed to District Court pursuant to Section 3-21-9 NMSA 1978. A decision made pursuant to this Zoning Ordinance is final unless an appeal is filed, within 15-days, and as required by law. Substantial deviations from this Zoning Ordinance are considered variances and are a form of appeal and may not be approved by city staff but rather shall be considered by the Planning and Zoning Commission.”</p> <p>Section 56-150(c) states:</p> <p>“1. Aggrieved Persons May Appeal.</p> <p>A person aggrieved by a decision of the Planning Director, City Engineer, other City staff, or the Planning and Zoning Commission, may file an appeal with the City Administrator. An aggrieved person is one who has a personal or pecuniary interest or property right adversely affected by the decision. The interest must be immediate and substantial, not merely nominal or remote.</p> <p>2. Submittal Requirements.</p> <p>An appeal is made by filing a written notice of appeal with the City Administrator which clearly articulates the reasons for the appeal, specifically citing and explaining one or more alleged error:</p> <p>(a) In applying adopted City plans, policies and ordinances in arriving at the decision;</p> <p>(b) In the appealed action or decision, including its stated facts; and/or</p> <p>(c) In acting fraudulently, arbitrarily or capriciously.</p> <p>3. Review Procedures.</p> <p>(a) An appeal must be filed with the City Administrator within fifteen (15) days after the</p>		

date of the decision. Untimely appeals shall not be considered.

- (b) Upon receipt of a notice of appeal, the City Administrator shall transmit to the City Council or the Planning and Zoning Commission, whichever is the appellant body, all the papers and other documents which constitute the record relating to the action appealed. The appeal shall be heard no later than forty-five (45) days from receipt of the appeal by the City Administrator, unless a waiver is mutually agreed upon by all concerned parties.
- (c) An appeal stays all actions by the Planning Director seeking enforcement of or compliance with the decision appealed, unless the Planning Director certifies to the City Council that a stay would cause imminent peril to life or property, because of facts stated in the decision. In which case actions shall not be stayed except by order of the City Council or a court.
- (d) **The City Council, by a concurring vote of two-thirds of all members,** or the Planning and Zoning Commission, by a simple majority, whichever the case might be, may reverse, affirm (wholly or partly), remand back or modify the requirement, decision or determination and shall make any requirement, decision or determination that, in its opinion, ought to be made in order to remedy those situations noted in the appeal.

4. Criteria.

The purpose of the appeal procedure is to determine if the decision being appealed meets the requirements of this Zoning Ordinance. The City Council or the Planning and Zoning Commission, when hearing an appeal, is limited to the following determinations:

- (a) The decision-maker made an error in reviewing whether a standard was met, by a misreading of the facts, plans, regulations or an error in judgment.
- (b) Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility.
- (c) The decision-maker made the decision on standards not contained in this or other City ordinances, regulations or state law; or a standard was applied more strictly or broadly than is appropriate to implement the City's Comprehensive Plan and this Zoning Ordinance.

5. Judicial Review.

The final decision on any application may be appealed to District Court, pursuant to N.M.S.A. 1978, Section 3-21-9, provided all administrative remedies have been exhausted.”

In accordance with the appeal process stated above, the appellant filed the appeal on May 19, 2014, which was within 15-days of the date of the decision. The reason for the appeal is stated in the appellant's letter. The City Council, by a concurring vote of two-thirds of all members, may reverse, affirm (wholly or partly), remand back or modify the requirement, decision or determination and shall make any requirement, decision or determination that, in its opinion, ought to be made in order to remedy those situations noted in the appeal.

BOARD/COMMISSION/COMMITTEE ACTION:

- | | | | |
|---|--|--|--|
| <input checked="" type="checkbox"/> P&Z | <input type="checkbox"/> Lodgers Tax Board | <input type="checkbox"/> Cemetery Board | <input checked="" type="checkbox"/> APPROVED |
| <input type="checkbox"/> Museum Board | <input type="checkbox"/> San Jose Board | <input type="checkbox"/> Water Board | <input type="checkbox"/> DISSAPPROVED |
| <input type="checkbox"/> Library Board | <input type="checkbox"/> N. Mesa Board | <input type="checkbox"/> _____ Committee | |

Reviewed by

City Administrator: DEÙc^ç^ÁT &Ô^ &@[] { /~~~~~Date: R } ^Á ËG€FI

ATTACHMENTS: May 5, 2014 P&Z meeting packet and minutes

May 19, 2014



Ms. Stephanie Shumsky

City of Carlsbad Planning Department

Carlsbad, NM 88220

Dear Ms. Shumsky,

Enclosed you will find a presentation of 4 signed protests of the Planning and Zoning actions of May 5, 2014, regarding Fountain Hills.

We request notification of the time and date of the City Council meeting when these protests will be heard. We request a date of June 10 or later for this City Council hearing.

Primary contact is Dave Tawater, 908 Fountain, 885-5722

Secondary contact is Marie Wilburn, 1210 Miehl's Drive, 887-2440

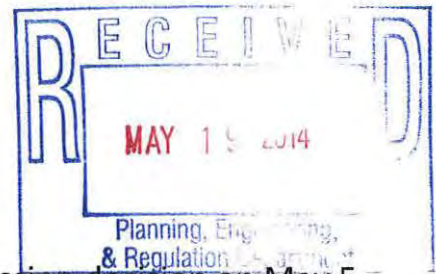
Sincerely,

A handwritten signature in black ink, appearing to read "Dave Tawater".

Dave Tawater

To: Carlsbad City Administrator

May 19, 2014



Subject: Protest of the City Planning and Zoning Commission decision on May 5, 2014

Reference: Zoning variance 56-90B for building setback

The above referenced variance request 56-90B allows a front yard setback of 20 feet instead of the required 30 feet.

The Carlsbad Planning and Zoning Commission's decision to approve the subject variance was arbitrary and did not support a due diligence evaluation of the overall impact to the existing neighborhood. The decision contributes to a greater density of new home construction and will adversely affect the interest of the below signed property owners.

The Fountain Hills development was established over an extended period of approximately 40 years under the existing zoning regulations which established a neighborhood home density and an architecturally diverse character.

The aggrieved parties request a reversal of the decision by the Planning and Zoning Commission for the variance and require the Phase II subdivision to comply with all existing zoning regulations which would promote a continuation of the neighborhood character as it exists today.

Respectfully submitted,

David Al. [Signature] 908 Fountain Dr
Dawn M. [Signature]

Mr. A. F. [Signature]
1104 MICHELLE DR

Phil Blum - 902 Fountain Dr

Paul Copeland 803 Dennis Way

Brad [Signature]

Joe [Signature] 914 Fountain Dr
Mary [Signature] 914 Fountain Dr

[Signature]
Deen Coombs
Barbara Dalton

MINUTES OF THE REGULAR MEETING OF THE

**City of Carlsbad
Planning & Zoning Commission**

May 5, 2014, at 5:00 p.m.

Meeting Held in the Planning Room

CITY OF CARLSBAD
CARLSBAD, NEW MEXICO

AGENDA

PLANNING AND ZONING COMMISSION
REGULAR MEETING

Monday, May 5, 2014 at 5:00 PM

Municipal Building 101 N. Halagueno Street
Planning Room (Second Floor)

1. Roll call of voting members and determination of quorum.
2. Approval of Agenda.
3. Approval of Minutes from the Regular Meeting held April 7, 2014.
4. Consider an appeal (variance) from Section 47-42(c)(3) to allow the right-of-way of a future street to be 42' in width rather than the required 60', within Fountain Hills Subdivision – Phase 11.
5. Consider an appeal (variance) from Section 47-62(d) to allow the pavement width of a future street to be 26' in width rather than the required 28' and to allow the construction of the street without curb and gutter, within Fountain Hills Subdivision – Phase 11,
6. Consider an appeal (variance) from Section 47-42(c)(4) to allow a street ending in a cul-de-sac to be 889' in length instead of the maximum 800' and to serve 17 lots instead of the maximum 15 lots, within Fountain Hills Subdivision – Phase 11.
7. Consider an appeal (variance) from Section 56-90(b) to allow front-yard setbacks of 20' instead of the required 30', within Fountain Hills Subdivision – Phase 11.
8. Consider a Preliminary Plat for Fountain Hills Subdivision - Phase 11, creating 17 new lots, with lots zoned "R-R" and "R-1", pursuant to Code of Ordinances Chapter 47.
9. Consider an appeal (variance) from Sections 47-44(b)(1) and 56-90(b) to allow the subdivision of Block 5, Lot 9, La Huerta Subdivision, Zoned "R-R", with 65.96' of street frontage rather than the required 110'.
10. Consider a request for a Conditional Use Permit to allow a massage therapy business as a home occupation, in accordance with Sections 56-41(g) and 56-70(d)(9)(a)(xii), at 901 N. Thomas St., Zoned R-1.
11. Consider a request for a Conditional Use Permit to allow a trucking company and storage of oil field fluids, to be located at 221 W. Rose St., in accordance with Section 56-41(g)(Table 4(1)(b)), Zoned C-2.
12. Consider a request to vacate a portion of an existing alley located within Everts Subdivision, Block 177, located north of Church St. between Canal St. and Halagueno St., pursuant to 3-20-12 NMSA 1978.
13. Consider a recommendation regarding a Zoning Change from "R-1" Residential District to "C-2" Commercial District for an approximately 7.7 acre site, located at

1702 W. Fox St., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.

14. Consider a recommendation regarding a Zoning Change from "R-1" Residential District to "C-2" Commercial District for an approximately 5.5 acre area, which is a portion of the property located at 3500 National Parks Hwy., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
15. Consider a recommendation regarding a Zoning Change from "R-R" Rural Residential District to "C-2" Commercial District for an approximately 10.8 acre parcel, which is a portion of the property located at 3711 San Jose Boulevard, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
16. Consider a recommendation regarding the Annexation (and subsequent establishment of PUD zoning) of an approximately 20.28 acre parcel located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk, pursuant to the petition method as provided for in Section 3-7-1 et. Seq. NMSA 1978.
17. Consider a recommendation regarding the Establishment of Planned Unit Development (PUD) zoning (in conjunction with the previous annexation) of an approximately 20.28 acre area, located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk.
18. Report regarding plats approved through Summary Review process.
19. Adjourn.

***Note: The zoning change requests for 509 W. Pierce St. will be scheduled for the June 2, 2014 Commission meeting (adjacent property owners had been sent notification letters with a May 5, 2014 meeting date on it).**

If you require hearing interpreters, language interpreters, auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's offices at (575) 887-1191 at least 48 hours prior to the scheduled meeting.

**MINUTES OF A REGULAR MEETING OF THE CITY OF CARLSBAD PLANNING &
ZONING COMMISSION HELD IN THE MUNICIPAL BUILDING PLANNING ROOM,
101 N. HALAGUENO STREET, MAY 5, 2014, AT 5:00 P.M.**

VOTING MEMBERS PRESENT:

**JAMES KNOTT
RICK BROWN
WANDA DURHAM
EDDIE RODRIGUEZ**

**CHAIRPERSON
COMMISSIONER
COMMISSIONER
COMMISSIONER**

VOTING MEMBERS ABSENT:

JAMES MCCORMICK

COMMISSION SECRETARY

EX-OFFICIO MEMBERS PRESENT:

STEPHANIE SHUMSKY

PLANNING DIRECTOR

BOARD SECRETARY PRESENT:

PATTIE PISTOLE

**PLANNING, ENGINEERING
AND REGULATION DEPARTMENT
SECRETARY**

OTHERS PRESENT:

DAVID CHURCH	3280 VIEW DR., LAS CRUCES
KEN THURSTON	1880 E. LOHMAN, LAS CRUCES
BARBRA DALTON	811 DENNIS WAY
MICHAEL CLEARY	206 TAYLOR CIRCLE
LUZ E PUEDA	101 E. HAMILTON
TESS GADBURY	1314 DOEPP DRIVE
GRACE KNOX	2084 N. CANAL
ROBERT KNOX	2084 N. CANAL
KERRI DUNAGAN HARVEY	1206 APACHE
ANITA J. SELF	6511 KEVIL ROAD
DENNIS S. MIEHLS	1202 MIEHLS DRIVE
RIC CORDER	1106 MIEHLS DRIVE
CRAIG STEPHENS	101 S. CANYON
AMIT BHAKTA	2420 E. RIVERSIDE
PETE LONGORIA	221 W. ROSE
MILAN PATEL	1834 HAYS DRIVE
DEAN COONRADT	910 FOUNTAIN
DIANA RINCK	2121 W. CHANDLER, PHOENIX
GOSIE ALLISON-KOSIOR	901 N. THOMAS
STAN ALLISON	901 N. THOMAS
KEN SKINNER	4430 N. 22ND, PHOENIX
BRAD HERNDON	1326 W. SHAW
SAM PLUMLEE	100 N. HALAGUENO
MATT BYERS	112 N. CANYON
HELEN TAWATER	908 FOUNTAIN DRIVE
DAVID TAWATER	908 FOUNTAIN DRIVE
& SEVERAL OTHERS WHO DIDN'T SIGN IN	

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:00 Start Recording [5:02:04 PM]

0:00:03 **1. Roll call of voting members and determination of quorum.**

Mr. Knott called roll. There was a quorum. Present: **Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown.** Absent: **Mr. McCormick.**

0:00:18 **2. Approval of Agenda.**

Motion was made by **Ms. Durham** for approval of an amended Agenda. Item #14 was moved to follow Item #8. **Mr. Brown** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

0:01:14 **3. Approval of Minutes from the Regular Meeting held April 7, 2014.**

Motion made by **Mr. Brown** and seconded by **Ms. Durham** for approval of the Minutes. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

0:01:52 **4. Consider an appeal (variance) from Section 47-42(c)(3) to allow the right-of-way of a future street to be 42' in width rather than the required 60', within Fountain Hills Subdivision – Phase 11.**

Mr. Thurston came forward to represent Mr. Miehl, who was also present in the audience. **Ms. Shumsky** stated that Staff recommended approval, because the special topography of the area met the criteria for a variance. **Mr. Thurston** added that the site is difficult because of the steep slant of the terrain. **Mr. Tawater** came forward during public comment. He wanted to know why the other part of the subdivision was built within the ordinance as it existed, with retaining walls to deal with the terrain. **Ms. Shumsky** explained that the existing subdivision did not adhere to the previous subdivision regulations, because it has no curbs, gutters, or sidewalks, and the new road will be the same width as the existing one. **Mr. Thurston** said the concept is to put the houses a little closer to the front, so that the first story will be at street level, with walk-out basements below. Some homes will be three stories high. **Mr. Coonradt**, another resident in the area, expressed concern that all the houses there are special, custom-built homes. **Mr. Thurston** said his intention was to increase the value of the area, not decrease. He said a few may be the same, but most will have to be different because the topography is different for each lot. **Ms. Dalton** wanted to know if the new utilities would be underground like the existing ones, or if there would be poles. **Mr. Thurston** explained that they will be underground. **Mr. Herndon** asked about the narrowing pavement, but **Mr. Thurston** explained that the pavement will be the same width as the existing pavement.

Motion made by **Mr. Brown** for approval of the Variance. **Mr. Rodriguez** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

0:23:25 **5. Consider an appeal (variance) from Section 47-62(d) to allow the pavement width of a future street to be 26' in width rather than the required 28' and to allow the construction of the street without curb and gutter, within Fountain Hills Subdivision – Phase 11.**

Ms. Shumsky stated that Staff had recommended approval after reviewing the Drainage Master Plan. Curbs and gutters are good for run-off in flat areas, but in hilly areas you want to keep the water draining as naturally as possible and build around it. That also keeps the area as natural-looking as possible. **Mr. Thurston** added that there will be a sidewalk, however, which will be 6" thick and 4' wide. **Mr. Church**, the hydrologist for the project, stated that there would be a change in the elevation of the road only.

Motion was made by **Mr. Rodriguez** for approval of the Variance. **Ms. Durham** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

0:29:43 **6. Consider an appeal (variance) from Section 47-42(c)(4) to allow a street ending in a cul-de-sac to be 889' in length instead of the maximum 800' and to serve 17 lots instead of the maximum 15 lots, within Fountain Hills Subdivision – Phase 11.**

Ms. Shumsky explained that there would still be the required space needed for emergency trucks to turn around and for fire hoses to reach. The Fire Department did not object. Staff recommended approval, with conditions. **Ms. Dalton** wanted to know about the effect on water pressure for the neighborhood, because she did not have adequate pressure now. **Mr. Church** said he talked with Luis Camaro about a possible pressure booster. The City is conscious of the problem and is trying to address it. **Mr. Herndon** wanted to know about the cul-de-sac width. **Ms. Shumsky** stated that it meets City standards.

Mr. Brown made a motion for approval of the Variance, with conditions. The motion was seconded by **Ms. Durham**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

0:39:16 **7. Consider an appeal (variance) from Section 56-90(b) to allow front-yard setbacks of 20' instead of the required 30', within Fountain Hills Subdivision – Phase 11.**

Ms. Shumsky stated that Staff recommended approval, even though it did not meet the strict criteria for a variance, because topography limits development in the area. The applicant listed justification on the application. **Mr. Thurston** added that the variance was from the property line, not the pavement, and that this will keep more room between the houses. **Mr. Tawater** was concerned about changing the look of the subdivision that currently exists. He thought the lots would have to be stepped. **Mr. Church** explained that because of all the rock there would not be any mass grading for this project. **Mr. Thurston** also explained that the cables and wires for the utilities would all be underground in the 9' utility easement, while the sewer line will be in the street under the pavement.

Ms. Durham made a motion for approval of the Variance. **Mr. Rodriguez** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

0:50:19 **8. Consider a Preliminary Plat for Fountain Hills Subdivision - Phase 11, creating 17 new lots, with lots zoned “R-R” and “R-1”, pursuant to Code of Ordinances Chapter 47.**

Ms. Shumsky said the City Engineer had recommended approval after reviewing the Drainage Study. He had also reviewed plans for infrastructure and recommended conditions of approval. **Mr. Thurston** concurred with the conditions. **Mr. Coonradt** expressed concern about density in the area. **Ms. Shumsky** explained that R-R zoning is the least dense allowed, with the greatest lot size. The lots meet all the zoning regulations regarding frontage, setbacks, and lot size. The houses will be a variety of housing types and will not take up the entire buildable area. Builders will have to acquire building permits; the setbacks will be verified and inspected during construction. **Mr. Thurston** explained that the existing homes in the area are in a different zoning than spring hollow. That zone allows for much smaller lots. These new homes will have a minimum of 10,890’ for each lot. They want the larger-sized lots. They didn’t want smaller lots like the ones already there. **Mr. Tawater** complained about the water pressure. **Ms. Shumsky** explained how the water is pumped from the City into the tank on the hill and then to the houses. She is going to ask the utilities department to test the water pressure to make sure it is working properly. **Mr. Tawater** also wanted to know if the houses would be built as the land is bought, or if homes would be built ahead without buyers. **Mr. Thurston** said he tries to have around four spec homes on the market at a time. Others would be built as the land was sold. As one home is sold, another will be built. Another area resident said the water pressure varies. **Ms. Shumsky** explained that pressure changes as needed. When the tank is low and they are pumping it up from the City, there is not as much pressure. Also, when everyone is using the water at the same time, such as now when everyone has to water during the same time of the day for water conservation, then the pressure is less.

Mr. Brown made a motion to approve the Preliminary Plat. The motion was seconded by **Mr. Rodriguez**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:09:44 **14. Consider a recommendation regarding a Zoning Change from “R-1” Residential District to “C-2” Commercial District for an approximately 5.5 acre area, which is a portion of the property located at 3500 National Parks Hwy., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Ms. Shumsky stated that the zone change is justified, because a zone line shouldn’t go right down the middle of a property. This change will make it consistent for the whole lot. Property to the south, north and west are commercial already, so it is not a spot zone. Staff recommended approval. **Dave McFadden** related that it was going to be a quality development of hotels, concrete streets, and an upscale restaurant. **Ms. Shumsky** added that Lewis Road provides a buffer to the residential area. **Mr. Cleary** said he supports the zone change 100% and is pleased to hear the plans proposed. He was afraid it was going to be a man-camp.

Mr. Rodriguez made a motion to recommend approval of the Zone change. **Mr. Brown** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr.**

Rodriguez, Mr. Brown; No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:17:01 **9. Consider an appeal (variance) from Sections 47-44(b)(1) and 56-90(b) to allow the subdivision of Block 5, Lot 9, La Huerta Subdivision, Zoned “R-R”, with 65.96’ of street frontage rather than the required 110’.**

Ms. Gadbury was the representative for this issue. **Ms. Shumsky** said Staff had recommended denial, because it didn’t meet the strict criteria for a variance. However, it does make sense for what they want to do and will make the situation better. The leech line crosses the other property, as it is. The change would have the leech line on its own property and all the buildings would be on one property. **Ms. Gadbury** pointed out that LaHuerta has other houses with narrow drives leading to homes behind them. The change in this instance will make the access wider. There was no public comment.

Mr. Brown made a motion to approve the Variance. The motion was seconded by **Ms. Durham.** The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:24:56 **10. Consider a request for a Conditional Use Permit to allow a massage therapy business as a home occupation, in accordance with Sections 56-41(g) and 56-70(d)(9)(a)(xii), at 901 N. Thomas St., Zoned R-1.**

Ms. Allison-Kosior was present to make her request. **Ms. Shumsky** stated that Staff recommended approval and it would be compatible with surrounding uses. **Ms. Allison-Kosier** said she would like to provide a place of quiet repose for body and spirit, with appointments Wednesday through Saturday. She wants to have no more than four clients per day. She would also like to travel to the elderly or those in the hospital who need her services.

Ms. Durham made a motion to approve the Conditional Use. The motion was seconded by **Mr. Brown.** The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:29:42 **11. Consider a request for a Conditional Use Permit to allow a trucking company and storage of oil field fluids, to be located at 221 W. Rose St., in accordance with Section 56-41(g)(Table 4(1)(b)), Zoned C-2.**

Ms. Shumsky explained that trucking is allowed in this zone with a conditional use permit. Staff recommended approval with conditions. There needs to be a 6’ fence erected around the fluid storage area and the applicant must provide a copy of all appropriate state and federal permits. **Mr. Longoria** said he is using one of the RV’s on the site as his office when he is in town from Roswell. Two other RV’s on the property do not belong to him and should be moved soon. They are not occupied and are not hooked up to utilities. **Ms. Shumsky** confirmed that RV’s are permissible as offices or for a night watchman.

Mr. Brown made a motion to approve the Conditional Use, with conditions. Motion was seconded by **Ms. Durham.** The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:35:32 **12. Consider a request to vacate a portion of an existing alley located within Everts Subdivision, Block 177, located north of Church St. between Canal St. and Halagueno St., pursuant to 3-20-12 NMSA 1978.**

Mr. Byers and Ms. Rinck came forward on behalf of the applicant. They want to combine lots, demolish buildings, realign the sewer line, and have the alley vacated for a CVS Pharmacy to be built. When an alley is vacated, owners on either side take possession of it down the middle. Since CVS is the owner of both sides, they will have all of it. (The north part of the alley will still be open to traffic for Red Chimney.) Staff recommended approval. CVS understands all the conditions and has agreed to follow them. There was no public comment.

Ms. Durham made a motion to approve the Vacation, which was seconded by **Mr. Brown**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:47:02 **13. Consider a recommendation regarding a Zoning Change from “R-1” Residential District to “C-2” Commercial District for an approximately 7.7 acre site, located at 1702 W. Fox St., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Mr. Plumlee, IT Director for the City of Carlsbad, was present as representative for the request. **Ms. Shumsky** explained that City facilities can be located in any zone within the City, but changing the zone makes it more consistent with the use. The City wants to install a tower in the future to improve data communication between the different facilities. They do not have any towers for that purpose at this time. During discussion regarding the tower, it was decided that a zoning change would be a good idea. There was no public comment.

Mr. Brown made a motion to recommend approval of the Zone Change. **Mr. Rodriguez** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:52:00 **15. Consider a recommendation regarding a Zoning Change from “R-R” Rural Residential District to “C-2” Commercial District for an approximately 10.8 acre parcel, which is a portion of the property located at 3711 San Jose Boulevard, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Mr. Stephens, Mr. Bhakta, and Mr. Patel came forward with their request for a zone change. There is commercial development in the area, and the property is surrounded on two sides by commercial zoning. The applicants want to put a hotel and restaurants on the property. There was no public comment.

Mr. Knott made a motion to recommend approval of the Zone Change, which was seconded by **Ms. Durham**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:56:10 **16. Consider a recommendation regarding the Annexation (and subsequent establishment of PUD zoning) of an approximately 20.28 acre parcel located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk, pursuant to the petition method as provided for in Section 3-7-1 et. Seq. NMSA 1978.** (CONSIDERED TOGETHER WITH THE NEXT ITEM--#17)

AND **17. Consider a recommendation regarding the Establishment of Planned Unit Development (PUD) zoning (in conjunction with the previous annexation) of an approximately 20.28 acre area, located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk.**

Mr. Skinner was on hand to answer any questions regarding the requested Annexation and PUD Zoning. **Ms. Shumsky** said that Staff recommended approval contingent on the 1,300 acre annexation from last month's meeting being approved by City Council on May 27th. If that one is not approved, this one won't be either. The concept plan includes some industrial warehouse space and apartments for workforce housing. There will be a 6' opaque wall that separates ingress and egress for residential and industrial uses. Prior to development, the Planning and Zoning commission will have a follow-up for the final PUD and a development agreement. All individual structures and building will also need to get building permits. The modular structures will be approved through the State, but the City building inspectors will approve foundations for the structures. **Mr. Skinner** explained that the efficiency apartments will be exceptionally strong and semi-permanent. The walls have Styrofoam on both sides, with concrete poured into the mesh-reinforced space between after they are placed on the foundation footing. This reduces heating and cooling expenses by 40%. **Ms. Self** expressed her dismay that the sign posted for the annexation had listed her address. She said it was a very unpopular annexation and she had been getting threats to herself and her dogs. **Ms. Shumsky** said that a new sign would be issued and that the address would be corrected.

Mr. Rodriguez made a motion to recommend approval of both the Annexation and Establishment of the PUD (Items 16 and 17). He also noted that the address on the posted sign needs to be changed. **Mr. Brown** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown; No – None; Abstained – None; Absent – Mr. McCormick.** The motion carried.

Mr. Skinner said he had worked on over a hundred zoning cases in New Mexico and Arizona and that we were lucky to have Ms. Shumsky here. He said she is smart and makes it so much easier to work through projects, because she is so capable.

2:17:10 **18. Report regarding plats approved through Summary Review process.**

Ms. Shumsky reported regarding the plats she had signed in March. There was brief discussion of the plat for the property where Church Street Grill is located, where they are combining lots and remodeling their building.

2:20:11 **19. Adjourn.**

There being no further business, the meeting was adjourned.

2:20:38

Stop Recording [7:22:42 PM]

Chairman

Date

DRAFT

CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM
PLANNING AND ZONING COMMISSION

Meeting Date: 5/5/14

DEPARTMENT: Planning, Engineering and Regulation	BY: Eric Navarrete, City Engineer	DATE: 4/28/14
<p>SUBJECT: Appeal (variance) from Section 56-90(b) to allow a front-yard setback variance of 10' from the front property line, which would result in 20' front-yard setbacks for Fountain Hills Subdivision – Phase 11, located on the east side of Miehl's Drive, zoned a majority Rural Residential District "R-R" with an area along the frontage of Miehl's Drive zoned R-1.</p> <p>Applicant: Ken Thurston Development Corp. 1880 E. Lohman Las Cruces, NM 88001</p> <p>Property Owner: Don Miehl's 916 Fountain Drive Carlsbad, NM 88220</p> <p><i>*The applicant provided the required notification to property owners within 100' and agreed to post the required sign 5-days prior to the public hearing as required by Sec. 56-140(i).</i></p>		
<p>SYNOPSIS: This variance request accompanies a preliminary plat approval request along with three other variances for Fountain Hills Subdivision – Phase 11, which consists of 17 new lots for residential development. The applicant is requesting a variance from Section 56-90(b) to allow 20' front-yard setbacks instead of the required 30' setbacks for the subdivision.</p> <p>Variances may be permitted by the Planning and Zoning Commission if certain criteria are met according to Section 56-150(c)(4) which states:</p> <p style="padding-left: 40px;">"Criteria. The purpose of the appeal procedure is to determine if the decision being appealed meets the requirements of this Zoning Ordinance. The City Council or the Planning and Zoning Commission, when hearing an appeal, is limited to the following determinations:</p> <ul style="list-style-type: none">(a) The decision-maker made an error in reviewing whether a standard was met, by a misreading of the facts, plans, regulations or an error in judgment.(b) Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility.(c) The decision-maker made the decision on standards not contained in this or other City ordinances, regulations or state law; or a standard was applied more strictly or broadly than is appropriate to implement the City's Comprehensive Plan and this Zoning Ordinance." <p><i>The applicant did not provide justification of this request that meets the criteria above. However, the justification provided does indicate that, due to the topography of the site, the required 30' front setback is not viable. The site is steeply sloped to the west and very rocky.</i></p>		
<p>IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.): The required 30' front-yard setback is meant to provide a uniform look to streets and neighborhoods throughout the city. The front-yard setback also acts as a buffer between the street and the residential structures. Reduced front setbacks are a design goal in this phase of the subdivision. The request is the minimum necessary and is reasonable due to the steep slope and rocky terrain of the site. The requested 20' front-yard setback will still provide uniformity to</p>		

the development and will provide an adequate buffer from the street.

The following *Greater Carlsbad Comprehensive Plan: Strategy 2030* goals apply to this request:

Section 4 Land Use

Goal 5: "The City of Carlsbad will strive to promote and enhance the general social welfare through land use planning."

Goal 6: "The City of Carlsbad will strive to create an aesthetically pleasing built environment."

Chapter 4: Housing

Goal 2: Carlsbad will ensure that local housing protects the health, safety, and welfare of residents and their neighbors.

PLANNING STAFF RECOMMENDATION: Based on the application materials and staff comments, engineering and planning staff recommend approval.

DEPARTMENT RECOMMENDATION (please check):

	Approval	Denial	n/a		Approval	Denial	n/a
Public Works				Plng., Eng. & Reg. Dept:			
Fire Department	x			Code Enforcement Division			
Legal Department				Engineering Division	x		
Police Department				Planning Division	x		
Utilities Department				Building & Regulation Division			
Culture & Rec. Dept.							

DEPARTMENT COMMENTS:

Public Works:

Utilities Department:

Building Department:

Fire Department: reviewed, no comments.

Code Enforcement:

Legal Department:

Planning Department: reviewed, no comments.

Police Department:

Culture and Recreation Department:

City Engineer: reviewed, no comments.

ATTACHMENTS: Application materials

**CITY OF CARLSBAD**

*Planning, Engineering,
and Regulation Department*
PO Box 1569, Carlsbad, NM 88221
Phone (575) 887-1191
Fax (575) 885-9871

BOARD OF APPEALS APPLICATION
(VARIANCE FROM SUBDIVISION OR ZONING ORDINANCE)
Sec. 47-7 or Sec. 56-150(c)

Application Date: 4/4/14Fee Paid (\$50.00): ✓ PAID**APPLICANT INFORMATION:**

DON MIEHLS DBA FOUNTIAN HILLS DEVELOPMENT COMPANY 916 FOUNTAIN DRIVE

NAME

ADDRESS

CARLSBAD NM 88220

(575) 887-6132

DONRMEIHLS@GMAIL.COM

CITY

STATE

ZIP

PHONE

EMAIL

PROPERTY OWNER INFORMATION (IF DIFFERENT FROM APPLICANT):

NAME

ADDRESS

CITY

STATE

ZIP

PHONE

EMAIL

LEGAL DESCRIPTION AND/OR STREET ADDRESS OF PROPERTY (FOR WHICH VARIANCE IS REQUESTED): CHRISTEL'S PLACE

TYPE OF REQUEST (CHECK ONE):

 VARIANCE FROM THE **SUBDIVISION REGULATIONS** (CHAPTER 47 - CODE OF ORDINANCES) AS PROVIDED FOR IN SECTION 47-7, VARIANCES.

SPECIFY REGULATION AND/OR SUBSECTION: _____

 X VARIANCE FROM THE **ZONING ORDINANCE** (CHAPTER 56 - CODE OF ORDINANCES) AS PROVIDED FOR IN SECTION 56-150(c).

SPECIFY REGULATION AND/OR SUBSECTION: SEC 56-90 (B)



CITY OF CARLSBAD

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BOARD OF APPEALS APPLICATION

(VARIANCE FROM SUBDIVISION OR ZONING ORDINANCE)

Sec. 47-7 or Sec. 56-150(c)

PROCESS FOR ACCEPTANCE AND REVIEW OF PLANNING AND ZONING COMMISSION MATTERS

1. The Planning and Zoning Commission's regularly scheduled meetings are on the **FIRST MONDAY OF THE MONTH**. Applicant should obtain an Application Packet for the particular type of request (Zone Change, Subdivision, Variance, Annexation, Conditional Use, etc.) from the City of Carlsbad, Licensing and Permits Office.
2. **Applicant must submit a completed Application to the Licensing and Permits Office on, or before, the FIRST FRIDAY OF THE MONTH prior to the desired Commission meeting.** The minimum application packet submittal is one (1) copy of the Application with original signatures and all required supporting documents. A letter of explanation or clarification may also be provided. The required non-refundable application fee is due with submittal of the application.

The desired maximum size for all documents is 11"x17". **However, if the applicant wishes to support his or her application with larger size documents, an original and fifteen (15) copies need to be provided.** Separate arrangements for copying these large documents may be possible, but will incur additional costs.

3. The Licensing and Permits Office will give the Application an initial cursory review. If deficiencies or questions are noted, the Applicant will be advised and provided an opportunity to supplement the application. If the Applicant fails to complete and resubmit the application prior to the above deadline, the matter will not be heard until the next subsequent Commission meeting. The original application fee will be retained and will suffice for the specific original application for a period of 90-days from the date of the original application.
4. Applications appearing complete will be set for full evaluation by City Staff prior to the Commission meeting. The purpose of this evaluation is to develop and provide a full briefing report for the Commission. Applicants will be advised of deficiencies noted during this review and will be afforded opportunity to supplement their application during their presentation to the Commission, if they so desire.
5. The Planning and Zoning Commission will vote to approve or deny the request. Applicant or his/her representative must be present to address any questions that Planning and Zoning Commissioners may have. Appeals of Planning and Zoning Commission decisions will be heard by the City Council pursuant to Sec. 56-150(c).
6. The applicant shall mail notice of the Planning and Zoning Commission hearing, via certified mail, to all property owners within one-hundred feet (100') of the subject site. Evidence of such notification shall be provided with the application. In addition, the applicant shall post a sign, provided by the City, at the property at least 5 days prior to the public hearing.

JUSTIFICATION FOR REQUEST AND SITE PLAN: (Describe the topographical uniqueness of the property or extreme practical difficulties or undue hardship that would result from the strict application of the requirement(s) contained in the ordinance section from which the variance is requested. Include a site plan drawn to scale or with accurate dimensions showing property lines, existing and proposed fences and/or walls, setbacks, building and structure locations and parking areas. Attach a separate sheet if necessary.)

FOUNTAIN HILLS #10

VARIANCE REQUEST

BUILDING SETBACK – City of Carlsbad Zoning Code Section 56-90(b)

Standard Front Setback in Zone R-R 30'

A Variance is requested from the 30' Front Setback to a 20' Front Setback

The reason for the Building Setback variance is to enable the developer to work with the existing steep terrain in the Fountain Hills area. The concept for the construction of the roadways and residences is to position the home as close to the roadway as possible. To assist in that design goal, we ask that the building setback to be set at 20' from the right-of-way line.

FOUNTAIN HILLS SUBDIVISION UNIT 11

A SUBDIVISION OF THAT PART OF THE SW 1/4 OF SECTION 34, TOWNSHIP 21 SOUTH, RANGE 36 EAST, N.M.P.M. EDDY COUNTY, NEW MEXICO, LYING WEST OF FOUNTAIN HILLS UNIT 3 SUBDIVISION, NORTH OF FOUNTAIN HILLS UNIT 3 SUBDIVISION, IN WHICH THE PERIMETER OF THE SUBDIVISION IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT LIES ON THE INTERSECTION POINT OF THE EAST LINE OF THE SW 1/4 OF SAID SECTION 34, AND THE SOUTHEAST CORNER OF FOUNTAIN HILLS UNIT 17, THEN S01°15'15"W, ALONG THE EAST LINE OF SW 1/4, FOR 818.77 FEET, TO THE NORTH LINE OF FOUNTAIN HILLS SUBDIVISION UNIT 6, THEN S89°52'49"W, ALONG THE NORTH LINE OF UNIT 6, FOR 297.44 FEET, TO THE EAST LINE OF FOUNTAIN HILLS SUBDIVISION UNIT 2, THEN N01°57'11"W, ALONG THE EAST LINE OF UNIT 2, FOR 118.17 FEET, THEN N24°34'18"W, CONTINUING ALONG THE NORTH LINE OF UNIT 2, FOR 207.09 FEET, THEN S84°31'38"W, ALONG THE NORTHERLY LINE OF UNIT 2, FOR 133.10 FEET, TO THE NORTHERLY LINE OF FOUNTAIN HILLS SUBDIVISION UNIT 7, THEN N47°22'50"E, ALONG THE NORTHERLY LINE OF UNIT 7, FOR 895.72 FEET, TO THE SOUTHEAST CORNER OF FOUNTAIN HILLS UNIT 15, THEN N01°51'51"E, ALONG THE EAST LINE OF UNIT 15, FOR 159.80 FEET, THEN N01°13'16"W, ALONG THE EAST LINE OF UNIT 15, FOR 4.37 FEET, THEN N71°39'38"W, ALONG THE NORTHERLY LINE OF UNIT 15, FOR 163.50 FEET, TO THE EAST R.O.W. OF WHEELS DRIVE, THEN THRU A CURVE TO THE LEFT (RADIUS=449.28 FEET) 32.82 FEET, WHOSE CHORD BEARS N18°00'31"E FOR 32.81 FEET, TO THE SOUTH LINE OF FOUNTAIN HILLS UNIT 16 SECOND AMENDED, THEN S85°40'59"E, ALONG THE SOUTH LINE OF UNIT 16, FOR 254.64 FEET, THEN N08°00'19"E, ALONG THE EAST LINE OF UNIT 16, FOR 120.14 FEET, TO THE SOUTH LINE OF FOUNTAIN HILLS UNIT 17, THEN S89°05'11"E, ALONG THE SOUTH LINE OF UNIT 17, FOR 855.84 FEET, BACK TO THE POINT OF BEGINNING, CONTAINING ±17.09 ACRES MORE OR LESS.



APPROVAL BY THE CITY COUNCIL

THIS IS TO CERTIFY THAT THIS REPLAT HAS BEEN EXAMINED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO, DURING A REGULARLY SCHEDULED MEETING HELD ON:

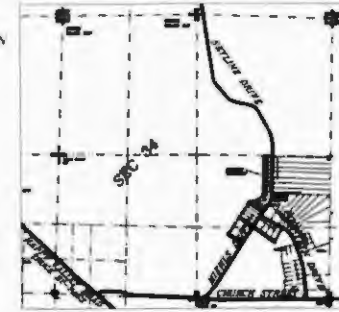
THIS _____ DAY OF _____, 20____.

APPROVAL BY THE CITY PLANNING COMMISSION

THIS IS TO CERTIFY THAT THIS REPLAT HAS BEEN APPROVED BY THE CITY PLANNING COMMISSION OF THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO, DURING A REGULARLY SCHEDULED MEETING HELD ON:

THIS _____ DAY OF _____, 20____.

CHAIRMAN _____ SECRETARY _____



VICINITY MAP

NO SCALE

FOUNTAIN HILLS SUBDIVISION UNIT 11

AREA: ±17.09 ACRES

NUMBER OF LOTS: 17

SIZE OF LOTS:

2 - ±0.25 ACRES 1 - ±0.33 ACRES 1 - ±1.78 ACRES
1 - ±0.28 ACRES 1 - ±0.34 ACRES 1 - ±1.98 ACRES
1 - ±0.28 ACRES 2 - ±0.80 ACRES 1 - ±2.00 ACRES
1 - ±0.28 ACRES 1 - ±0.01 ACRES 1 - ±3.80 ACRES
2 - ±0.30 ACRES 1 - ±1.34 ACRES

SETBACKS: FRONT SETBACK-30'
SIDES SETBACK-7.5'
REAR SETBACK-20'

ZONED: "R-R" RURAL RESIDENTIAL

SET BACK LINES: PER APPLICABLE BUILDING CODES

NO LOTS TO BE DEDICATED TO THE PUBLIC
NO LOTS TO BE DEDICATED FOR PARKS,
SCHOOLS, CHURCHES OR INDUSTRY

FLOODPLAIN: DETERMINED TO BE IN ZONE "X", AREAS DETERMINED TO BE OUTSIDE THE
0.2% ANNUAL CHANCE FLOOD PLAIN, AS DETERMINED BY THE DIGITAL
FLOOD INSURANCE RATE MAP
COMMUNITY - #350017 1045 D, THE CITY OF CARLSBAD, REVISED
-06/04/2010
COUNTY - #350120 1045 D, EDDY COUNTY
MAP PANEL - #35015 C 1045 D

CARLSBAD "C" MOUNTAIN, LLC

KENNETH R. THOMPSON, MANAGING MEMBER
OF CARLSBAD "C" MOUNTAIN, LLC
CERTIFIES STATEMENT AND AFFIDAVIT

STATE OF _____

COUNTY OF _____

THE ABOVE SIGNED BEING FIRST DULY SWORN ON OATH,
STATE:

AS THE OWNERS AND PROPRIETORS WE HAVE OF OUR OWN
FREE WILL AND CONSENT CAUSED THIS PLAT WITH ITS LOTS
AND EXEMPTION TO BE PLATTED, THE PROPERTY DESCRIBED
ON THIS PLAT LIES WITHIN THE PLATING JURISDICTION OF:

CITY OF CARLSBAD

SUBSCRIBES, SWORN TO AND ACKNOWLEDGES BEFORE ME

THIS _____ DAY OF _____, 20____.

BY _____

NOTARY PUBLIC _____

I, MELVIN R. PYLEAT, JR., A NEW MEXICO REGISTERED

PROFESSIONAL LAND SURVEYOR, CERTIFY THAT I CONDUCTED

AND AM RESPONSIBLE FOR THIS SURVEY, AND THAT THIS

SURVEY IS TRUE AND CORRECT TO THE BEST OF MY

KNOWLEDGE AND BELIEF. THIS SURVEY AND PLAT MEET THE

HIGHEST STANDARDS FOR SURVEYING IN NEW MEXICO.

MELVIN R. PYLEAT, JR., 423 W. GREENE ST., CARLSBAD, N.M.

REGISTRATION NO. 20251 TELE. 883-8867 FAX 883-8867



R&R SURVEYING LLC
A LAND SURVEYING CORPORATION

DEEDING INFO. FOR CO. CLAIM

REC. 84 FILE 8086 N.M.P.M.

SUBDIVISION: FOUNTAIN HILLS

FOUNTAIN HILLS UNIT 11

COUNTY: CARLSBAD "C" MOUNTAIN, LLC

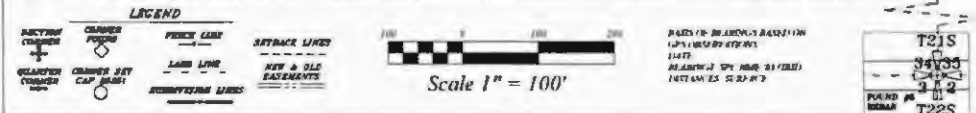
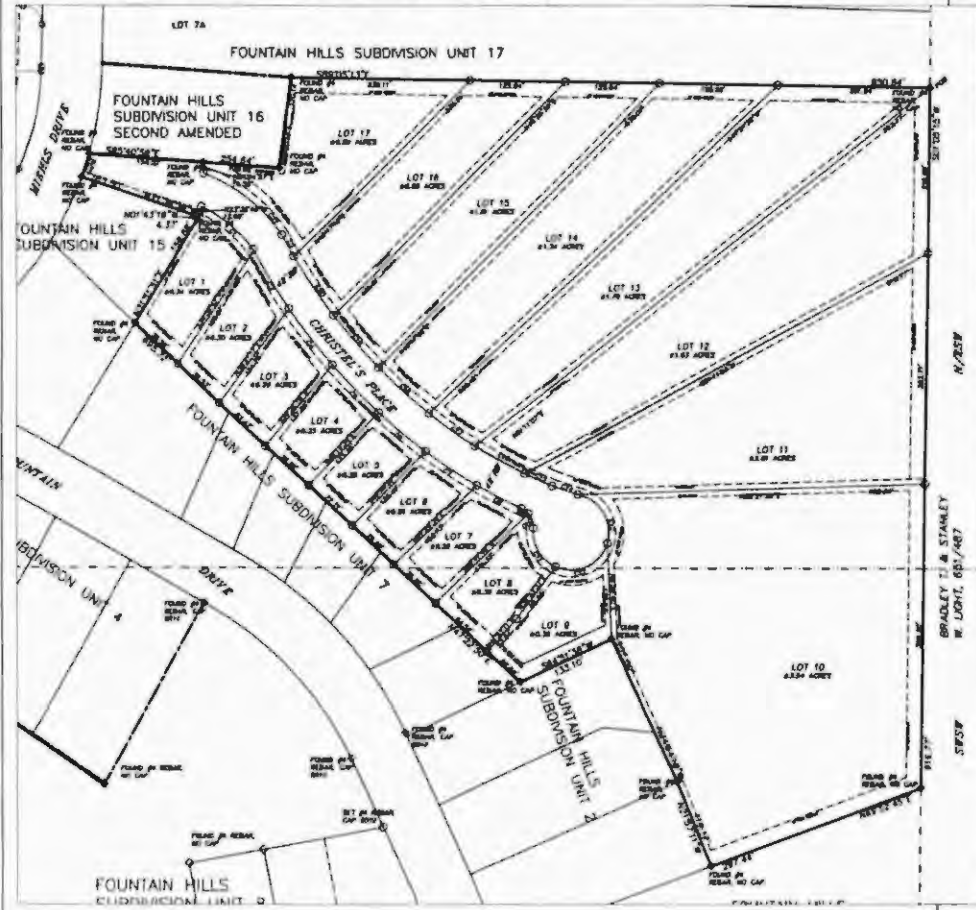
CITY: CARLSBAD

STATE: NEW MEXICO

DATE: APRIL 6, 2014

ACRES: 17.09

AREA: ±17.09 ACRES



CURVE #	CHORD BEARING	CHORD DISTANCE	ARC LENGTH	RADIUS
01	N01°15'15"W	818.77	818.77	718.20
02	S89°52'49"W	297.44	297.44	262.25
03	N01°57'11"W	118.17	118.17	103.12
04	N24°34'18"W	207.09	207.09	182.12
05	S84°31'38"W	133.10	133.10	116.12
06	N47°22'50"E	895.72	895.72	780.12
07	N01°51'51"E	159.80	159.80	139.12
08	N01°13'16"W	4.37	4.37	3.80
09	N71°39'38"W	163.50	163.50	142.12
10	CHORD BEARING	32.82	32.82	28.12
11	N18°00'31"E	32.81	32.81	28.12
12	S85°40'59"E	254.64	254.64	222.12
13	N08°00'19"E	120.14	120.14	105.12
14	S89°05'11"E	855.84	855.84	745.12
15	CHORD BEARING	817.09	817.09	710.12
16	CHORD BEARING	817.09	817.09	710.12
17	CHORD BEARING	817.09	817.09	710.12

STATE OF NEW MEXICO, COUNTY OF EDDY, I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD ON THE _____ DAY OF _____, 20____.

AT _____, _____, _____.

COUNTY _____, STATE _____.

SUBSCRIBED AND SIGNED COUNTY CLERK _____.

BY _____.

Zoning Ordinance

Criteria for Appeals - Sec. 56-150(c)(4):

The purpose of the appeal procedure is to determine if the decision being appealed meets the requirements of this Zoning Ordinance. The City Council or the Planning and Zoning Commission, when hearing an appeal, is limited to the following determinations:

- (a) The decision-maker made an error in reviewing whether a standard was met, by a misreading of the facts, plans, regulations or an error in judgment.
- (b) Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility.
- (c) The decision-maker made the decision on standards not contained in this or other City ordinances, regulations or state law; or a standard was applied more strictly or broadly than is appropriate to implement the City's Comprehensive Plan and this Zoning Ordinance.

Subdivision Regulations

Criteria for Appeals – Sec. 47-7

Whenever, in the opinion of the board of appeals, the strict application of the requirements contained in this chapter would result in extreme practical difficulties or undue misuse of property, the board may modify such requirements as are necessary so that the subdivider is allowed to develop his/her property in a reasonable manner providing that the public interests of the community and its citizens are protected and the general intent and spirit of these regulations are preserved. **The board shall grant such a variance or modification only upon determination that:**

1. The variance will not be detrimental to the public health, safety and general welfare of the community;
2. The variance will not adversely affect the reasonable development of adjacent property;
3. The variance is justified because of topographic or other special conditions unique to the property involved in contradistinction to mere inconvenience or financial disadvantage;
4. The variance is consistent with the objectives of this chapter and will not have the effect of nullifying the intent or purpose of this chapter or the comprehensive plan.

FOR OFFICIAL USE ONLY:

Required prior to P & Z:

Complete Application Including:

- | | | | |
|---|---|---------------------------------------|--|
| <input type="checkbox"/> Site Plan | <input type="checkbox"/> Fee | <input type="checkbox"/> Notification | <input type="checkbox"/> Letter of Explanation |
| <input type="checkbox"/> Sign Posting Agreement | | | <input type="checkbox"/> Sign Posted |
| <input type="checkbox"/> ABM | <input type="checkbox"/> Staff Comments | | <input type="checkbox"/> Application Packet |

P & Z Action: ☐ Approved ☐ Denied ☐ Other Date: _____

NOTIFICATION SIGN POSTING AGREEMENT

Notification of Public Hearings before the City of Carlsbad Planning and Zoning Commission is required pursuant to Sec. 56-140(i).

- Signs shall be posted a minimum of 5 days prior to and shall be removed a maximum of 5 days after the public hearing.
- If the sign is not posted as required, the application will be delayed and will not be considered at the public hearing as scheduled.
- The sign shall be posted at the street side property line with a secure stake provided by the applicant.

I have read and understand these requirements. I understand where the sign is to be located and my obligation to post the sign prior to the public hearing and remove it afterwards.


APPLICANT SIGNATURE


DATE

Sign issued by: 
Staff Member

Date: 4/4/14

Dear Property Owner,

This letter serves as legal notification of a pending action before the City of Carlsbad Planning and Zoning Commission in accordance with Code of Ordinances Sec. 56-140(i). You are being notified because you are a property owner within one-hundred feet (100') of the subject site.

Applicant: DON MIEHS 916 FOUNTAIN DRIVE (575) 887-6132
Name Address Phone

Subject Site Location: CHRISTEL'S PLACE OFF MIEHLS DRIVE

The proposed action is a:

☐ Zoning Change from _____ to _____ in accordance with Sec. 56-150(b).

☒ Variance/Appeal from Sec. 56-90 (B) in accordance with Sec. 56-150(c).

The purpose of the variance/appeal is:

The reason for the Building Setback variance is to enable the developer to work with the existing steep terrain in the Fountain Hills area.

☐ Conditional Use Permit in accordance with Sec. 56-150(f). The purpose of the permit is for a:

☐ Home Occupation: _____

☐ Other Use: _____

The Planning and Zoning Commission will consider this request at a Public Hearing on:

Date: 5/5/2014

Time: 5:00pm

Place: City Hall Planning Room, 2nd Floor

101 N. Halagueno St.

Carlsbad, NM 88220

The Code of Ordinances can be found on the City's website www.cityofcarlsbadnm.com.

For details about this request contact the applicant OR contact the City Planner at

575-234-7923 or via email at sshumsky@cityofcarlsbadnm.com.

Sincerely,



Applicant/Agent

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	00.00
Certified Fee		03.75
Return Receipt Fee (Endorsement Required)		00.00
Restricted Delivery Fee (Endorsement Required)		00.00
Total Postage & Fees	\$	03.75

Postmark Here

04/09/2014

Sent To: Friend, Mark
 Street, Apt. No., or PO Box No.: 1104 miehls Dr
 City, State, ZIP+4: Carlsbad NM 88220

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
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Certified Fee		03.75
Return Receipt Fee (Endorsement Required)		00.00
Restricted Delivery Fee (Endorsement Required)		00.00
Total Postage & Fees	\$	03.75

Postmark Here

04/09/2014

Sent To: Cox, Jeffery & Helen
 Street, Apt. No., or PO Box No.: PO Box 1971
 City, State, ZIP+4: Carlsbad NM 88221

PS Form 3800, August 2006 See Reverse for Instructions

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Postage	\$	00.00
Certified Fee		03.75
Return Receipt Fee (Endorsement Required)		00.00
Restricted Delivery Fee (Endorsement Required)		00.00
Total Postage & Fees	\$	03.75

Postmark Here

04/09/2014

Sent To: Mohesky-Roybal, Lila J
 Street, Apt. No., or PO Box No.: 912 Fountain Dr
 City, State, ZIP+4: Carlsbad NM 88220

PS Form 3800, August 2006 See Reverse for Instructions

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Certified Fee		03.75
Return Receipt Fee (Endorsement Required)		00.00
Restricted Delivery Fee (Endorsement Required)		00.00
Total Postage & Fees	\$	03.75

Postmark Here

04/09/2014

Sent To: Prather Pau TR, Frank & Francis
 Street, Apt. No., or PO Box No.: 815 E Riverside Dr
 City, State, ZIP+4: Carlsbad NM 88220

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
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Postage	\$	00.00
Certified Fee		03.75
Return Receipt Fee (Endorsement Required)		00.00
Restricted Delivery Fee (Endorsement Required)		00.00
Total Postage & Fees	\$	03.75

Postmark Here

04/09/2014

Sent To: Zenger, William J & Linda
 Street, Apt. No., or PO Box No.: 28 Chapala Rd
 City, State, ZIP+4: Sanita Fe NM 87508

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
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Postage	\$	00.00
Certified Fee		03.75
Return Receipt Fee (Endorsement Required)		00.00
Restricted Delivery Fee (Endorsement Required)		00.00
Total Postage & Fees	\$	03.75

Postmark Here

04/09/2014

Sent To: Jensen Revocable Family Trust
 Street, Apt. No., or PO Box No.: 1100 miehls Dr
 City, State, ZIP+4: Carlsbad NM 88220

PS Form 3800, August 2006 See Reverse for Instructions

7013 2630 0000 3103 3147

7013 2630 0000 3103 3147

7013 2630 0000 3103 3147

7013 2630 0000 3103 3178

U.S. Postal Service™
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For delivery information, visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 20.00
Certified Fee	3.00
Return Receipt Fee (Endorsement Required)	2.00
Restricted Delivery Fee (Endorsement Required)	0.00
Total Postage & Fees	\$ 25.00

Sent To: Tawater Family trust
Street, Apt. No.,
or PO Box No. 908 Fountain Dr
City, State, ZIP+4® Ladshaw NM 88220

PS Form 3800, August 2005 See Reverse for Instructions

7013 2630 0000 3103 3192

U.S. Postal Service™
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Postage	\$ 0.00
Certified Fee	0.00
Return Receipt Fee (Endorsement Required)	0.00
Restricted Delivery Fee (Endorsement Required)	0.00
Total Postage & Fees	\$ 0.00

Sent To: 440, James + Loretta
Street, Apt. No.,
or PO Box No. 908 Fountain Dr
City, State, ZIP+4® Ladshaw NM 88220

PS Form 3800, August 2005 See Reverse for Instructions

7013 2630 0000 3103 3208

U.S. Postal Service™
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(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 0.00
Certified Fee	0.00
Return Receipt Fee (Endorsement Required)	0.00
Restricted Delivery Fee (Endorsement Required)	0.00
Total Postage & Fees	\$ 0.00

Sent To: Sifarnock, Brandon + Suzanne
Street, Apt. No.,
or PO Box No. 511 S Tidwell Rd
City, State, ZIP+4® Ladshaw NM 88220

PS Form 3800, August 2005 See Reverse for Instructions

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

COUNCIL MEETING DATE: 6/10/14

DEPARTMENT: Planning, Engineering and Regulation	BY: Stephanie Shumsky, Planning Director	DATE: 5/29/14
<p>SUBJECT: Appeal of the Planning and Zoning Commission's decision to approve a variance from Section 47-42(i)(1) that would allow the proposed cul-de-sac to be 899' in length rather than the required 800' and to serve 17 lots instead of the maximum 15 lots, in Fountain Hills Subdivision – Phase 11, Zoned Rural Residential District (R-R).</p> <p>Appellant (Primary Contact): Dave Tawater 908 Fountain Drive Carlsbad, NM 88220</p>		
<p>SYNOPSIS, HISTORY and IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.): At their regularly scheduled meeting on May 5, 2014, the Planning and Zoning Commission considered the request as stated above. The Commission voted to approve the requested variance, as described in the attached P&Z meeting packet and minutes, with a vote of 4-0.</p> <p>The process and criteria for appeals related to the Subdivision Ordinance is different than the process and criteria for appeals related to the Zoning Ordinance. For appeals related to the Subdivision Ordinance, the Board of Appeals, which in this case is the City Council, reviews the appeal based on the same criteria that the Planning and Zoning Commission's decision was based on. This criteria is provided in Code of Ordinances Section 47-7, which states:</p> <p>“Whenever, in the opinion of the Board of Appeals, the strict application of the requirements contained in this chapter would result in extreme practical difficulties or undue misuse of property, the board may modify such requirements as necessary so that the subdivider is allowed to develop his/her property in a reasonable manner providing that the public interests of the community and its citizens are protected and the general intent and spirit of these regulations are preserved.</p> <p>(a) <i>Criteria.</i> The Board shall grant the minimum variance or modification to relieve the hardship only upon determination that:</p> <ol style="list-style-type: none">(1) The variance will not be detrimental to the public health, safety and general welfare of the community; and(2) The variance will not adversely affect the reasonable development of adjacent property; and(3) The variance is justified because of topographic or other special conditions unique to the property involved in contradistinction to mere inconvenience or financial disadvantage; and(4) The variance is consistent with the objectives of this chapter and will not have the effect of nullifying the intent or purpose of this chapter or the comprehensive plan; and(5) The variance has been shown to be in the best interest of the general public and not only of interest to the developer, land owner or other interested party; and(6) The hardship must not be pecuniary and must be a direct result of the land location, topography or other characteristic; and(7) Where a variance is requested from the required provision of sidewalks, an ADA complaint, alternative route to the nearest bus stop or school is required. If an alternative route cannot be provided, a variance shall not be approved. <p>(b) <i>Procedure.</i></p> <ol style="list-style-type: none">(1) An application for a variance shall be submitted in writing on the prescribed forms by the subdivider at the time when the preliminary plat is filed for consideration by the		

Board of Appeals. The application shall state fully the grounds for the application, a response to the criteria for a variance as stated in Section 47-7(a), and all of the facts relied upon by the applicant.

- (2) Notification for the requested variance shall be posted by the applicant, on the property at the property line closest to a street, on a sign provided by the City, a minimum of five (5) days prior to the Board of Appeals hearing of the request. The sign shall state the date, time and location of the Board of Appeals hearing and a description of the request.
- (3) The Board of Appeals shall hear the request at its next regularly scheduled meeting the following month. The Board of Appeals may approve, approve with conditions, deny, continue or defer the request. In the case of deferral or continuance, the Board of Appeals shall make a decision within 90 days of the initial hearing.

In accordance with the appeal procedure stated above, the applicant complied with all of the notification requirements (see P&Z packet attached).

The appellant filed the appeal on May 19, 2014. The reason for the appeal is stated in the appellant's letter.

The Board of Appeals (City Council), by a simple majority vote of the members present, may approve, approve with conditions, deny, continue or defer the request. In the case of deferral or continuance, the Board of Appeals shall make a decision within 90 days of the initial hearing.

BOARD/COMMISSION/COMMITTEE ACTION:

<input checked="" type="checkbox"/> P&Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	<input checked="" type="checkbox"/> APPROVED
<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> DISSAPPROVED
<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> _____ Committee	

Reviewed by

City Administrator: /s/ Steve McCutcheon

Date: June 5, 2014

ATTACHMENTS: appellant's letter, P&Z meeting packet and minutes

May 19, 2014



Ms. Stephanie Shumsky

City of Carlsbad Planning Department

Carlsbad, NM 88220

Dear Ms. Shumsky,

Enclosed you will find a presentation of 4 signed protests of the Planning and Zoning actions of May 5, 2014, regarding Fountain Hills.

We request notification of the time and date of the City Council meeting when these protests will be heard. We request a date of June 10 or later for this City Council hearing.

Primary contact is Dave Tawater, 908 Fountain, 885-5722

Secondary contact is Marie Wilburn, 1210 Miehl Drive, 887-2440

Sincerely,

Dave Tawater

To: Carlsbad City Administrator

May 19, 2014



Subject: Protest of the City Planning and Zoning Commission decision on May 5, 2014

Reference: Zoning variance 47-42 C4 to allow proposed street length to be extended from 800 feet to 889 feet

The above referenced variance request 47-42 C4 allows a street ending in a cul-de-sac to be 889 feet in length instead of the normal maximum of 800 feet and to serve 17 lots instead of the normal 15 lots within Fountain Hills Subdivision Phase II

The Carlsbad Planning and Zoning Commission's decision to approve the subject variance was arbitrary and did not support a due diligence evaluation of the overall impact to the existing neighborhood. The decision contributes to a greater density of new home construction and will adversely affect the interest of the below signed property owners.

The Fountain Hills development was established over an extended period of approximately 40 years under the existing zoning regulations which defined a neighborhood home density and architecturally diverse character.

The aggrieved parties request a reversal of the decision by the Planning and Zoning Commission for the variances and require the Phase II subdivision to comply with all existing zoning regulations which would promote a continuation of the neighborhood character as it exists today.

Respectfully submitted,

David M. Darter 908 Fountain Dr.
Alan M. Darter

Mark A. F.
1104 MISTLES DR.

Paul Blendon 902 Fountain Dr.

Paul Legend 803 Dennis Way

Brad Hensch

Jim B.B.
Deen Coomede

John S. Parker 914 Fountain Dr.

Marv S. Parker 914 Fountain

Barbara Dalton 811 Dennis Way

MINUTES OF THE REGULAR MEETING OF THE

**City of Carlsbad
Planning & Zoning Commission**

May 5, 2014, at 5:00 p.m.

Meeting Held in the Planning Room

CITY OF CARLSBAD
CARLSBAD, NEW MEXICO

AGENDA

PLANNING AND ZONING COMMISSION
REGULAR MEETING

Monday, May 5, 2014 at 5:00 PM

Municipal Building 101 N. Halagueno Street
Planning Room (Second Floor)

1. Roll call of voting members and determination of quorum.
2. Approval of Agenda.
3. Approval of Minutes from the Regular Meeting held April 7, 2014.
4. Consider an appeal (variance) from Section 47-42(c)(3) to allow the right-of-way of a future street to be 42' in width rather than the required 60', within Fountain Hills Subdivision – Phase 11.
5. Consider an appeal (variance) from Section 47-62(d) to allow the pavement width of a future street to be 26' in width rather than the required 28' and to allow the construction of the street without curb and gutter, within Fountain Hills Subdivision – Phase 11,
6. Consider an appeal (variance) from Section 47-42(c)(4) to allow a street ending in a cul-de-sac to be 889' in length instead of the maximum 800' and to serve 17 lots instead of the maximum 15 lots, within Fountain Hills Subdivision – Phase 11.
7. Consider an appeal (variance) from Section 56-90(b) to allow front-yard setbacks of 20' instead of the required 30', within Fountain Hills Subdivision – Phase 11.
8. Consider a Preliminary Plat for Fountain Hills Subdivision - Phase 11, creating 17 new lots, with lots zoned "R-R" and "R-1", pursuant to Code of Ordinances Chapter 47.
9. Consider an appeal (variance) from Sections 47-44(b)(1) and 56-90(b) to allow the subdivision of Block 5, Lot 9, La Huerta Subdivision, Zoned "R-R", with 65.96' of street frontage rather than the required 110'.
10. Consider a request for a Conditional Use Permit to allow a massage therapy business as a home occupation, in accordance with Sections 56-41(g) and 56-70(d)(9)(a)(xii), at 901 N. Thomas St., Zoned R-1.
11. Consider a request for a Conditional Use Permit to allow a trucking company and storage of oil field fluids, to be located at 221 W. Rose St., in accordance with Section 56-41(g)(Table 4(1)(b)), Zoned C-2.
12. Consider a request to vacate a portion of an existing alley located within Everts Subdivision, Block 177, located north of Church St. between Canal St. and Halagueno St., pursuant to 3-20-12 NMSA 1978.
13. Consider a recommendation regarding a Zoning Change from "R-1" Residential District to "C-2" Commercial District for an approximately 7.7 acre site, located at

1702 W. Fox St., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.

14. Consider a recommendation regarding a Zoning Change from "R-1" Residential District to "C-2" Commercial District for an approximately 5.5 acre area, which is a portion of the property located at 3500 National Parks Hwy., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
15. Consider a recommendation regarding a Zoning Change from "R-R" Rural Residential District to "C-2" Commercial District for an approximately 10.8 acre parcel, which is a portion of the property located at 3711 San Jose Boulevard, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
16. Consider a recommendation regarding the Annexation (and subsequent establishment of PUD zoning) of an approximately 20.28 acre parcel located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk, pursuant to the petition method as provided for in Section 3-7-1 et. Seq. NMSA 1978.
17. Consider a recommendation regarding the Establishment of Planned Unit Development (PUD) zoning (in conjunction with the previous annexation) of an approximately 20.28 acre area, located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk.
18. Report regarding plats approved through Summary Review process.
19. Adjourn.

***Note: The zoning change requests for 509 W. Pierce St. will be scheduled for the June 2, 2014 Commission meeting (adjacent property owners had been sent notification letters with a May 5, 2014 meeting date on it).**

If you require hearing interpreters, language interpreters, auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's offices at (575) 887-1191 at least 48 hours prior to the scheduled meeting.

**MINUTES OF A REGULAR MEETING OF THE CITY OF CARLSBAD PLANNING &
ZONING COMMISSION HELD IN THE MUNICIPAL BUILDING PLANNING ROOM,
101 N. HALAGUENO STREET, MAY 5, 2014, AT 5:00 P.M.**

VOTING MEMBERS PRESENT:

**JAMES KNOTT
RICK BROWN
WANDA DURHAM
EDDIE RODRIGUEZ**

**CHAIRPERSON
COMMISSIONER
COMMISSIONER
COMMISSIONER**

VOTING MEMBERS ABSENT:

JAMES MCCORMICK

COMMISSION SECRETARY

EX-OFFICIO MEMBERS PRESENT:

STEPHANIE SHUMSKY

PLANNING DIRECTOR

BOARD SECRETARY PRESENT:

PATTIE PISTOLE

**PLANNING, ENGINEERING
AND REGULATION DEPARTMENT
SECRETARY**

OTHERS PRESENT:

DAVID CHURCH	3280 VIEW DR., LAS CRUCES
KEN THURSTON	1880 E. LOHMAN, LAS CRUCES
BARBRA DALTON	811 DENNIS WAY
MICHAEL CLEARY	206 TAYLOR CIRCLE
LUZ E PUEDA	101 E. HAMILTON
TESS GADBURY	1314 DOEPP DRIVE
GRACE KNOX	2084 N. CANAL
ROBERT KNOX	2084 N. CANAL
KERRI DUNAGAN HARVEY	1206 APACHE
ANITA J. SELF	6511 KEVIL ROAD
DENNIS S. MIEHLS	1202 MIEHLS DRIVE
RIC CORDER	1106 MIEHLS DRIVE
CRAIG STEPHENS	101 S. CANYON
AMIT BHAKTA	2420 E. RIVERSIDE
PETE LONGORIA	221 W. ROSE
MILAN PATEL	1834 HAYS DRIVE
DEAN COONRADT	910 FOUNTAIN
DIANA RINCK	2121 W. CHANDLER, PHOENIX
GOSIE ALLISON-KOSIOR	901 N. THOMAS
STAN ALLISON	901 N. THOMAS
KEN SKINNER	4430 N. 22ND, PHOENIX
BRAD HERNDON	1326 W. SHAW
SAM PLUMLEE	100 N. HALAGUENO
MATT BYERS	112 N. CANYON
HELEN TAWATER	908 FOUNTAIN DRIVE
DAVID TAWATER	908 FOUNTAIN DRIVE
& SEVERAL OTHERS WHO DIDN'T SIGN IN	

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:00 Start Recording [5:02:04 PM]

0:00:03 **1. Roll call of voting members and determination of quorum.**

Mr. Knott called roll. There was a quorum. Present: **Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown.** Absent: **Mr. McCormick.**

0:00:18 **2. Approval of Agenda.**

Motion was made by **Ms. Durham** for approval of an amended Agenda. Item #14 was moved to follow Item #8. **Mr. Brown** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

0:01:14 **3. Approval of Minutes from the Regular Meeting held April 7, 2014.**

Motion made by **Mr. Brown** and seconded by **Ms. Durham** for approval of the Minutes. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

0:01:52 **4. Consider an appeal (variance) from Section 47-42(c)(3) to allow the right-of-way of a future street to be 42' in width rather than the required 60', within Fountain Hills Subdivision – Phase 11.**

Mr. Thurston came forward to represent Mr. Miehl, who was also present in the audience. **Ms. Shumsky** stated that Staff recommended approval, because the special topography of the area met the criteria for a variance. **Mr. Thurston** added that the site is difficult because of the steep slant of the terrain. **Mr. Tawater** came forward during public comment. He wanted to know why the other part of the subdivision was built within the ordinance as it existed, with retaining walls to deal with the terrain. **Ms. Shumsky** explained that the existing subdivision did not adhere to the previous subdivision regulations, because it has no curbs, gutters, or sidewalks, and the new road will be the same width as the existing one. **Mr. Thurston** said the concept is to put the houses a little closer to the front, so that the first story will be at street level, with walk-out basements below. Some homes will be three stories high. **Mr. Coonradt**, another resident in the area, expressed concern that all the houses there are special, custom-built homes. **Mr. Thurston** said his intention was to increase the value of the area, not decrease. He said a few may be the same, but most will have to be different because the topography is different for each lot. **Ms. Dalton** wanted to know if the new utilities would be underground like the existing ones, or if there would be poles. **Mr. Thurston** explained that they will be underground. **Mr. Herndon** asked about the narrowing pavement, but **Mr. Thurston** explained that the pavement will be the same width as the existing pavement.

Motion made by **Mr. Brown** for approval of the Variance. **Mr. Rodriguez** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

0:23:25 **5. Consider an appeal (variance) from Section 47-62(d) to allow the pavement width of a future street to be 26' in width rather than the required 28' and to allow the construction of the street without curb and gutter, within Fountain Hills Subdivision – Phase 11.**

Ms. Shumsky stated that Staff had recommended approval after reviewing the Drainage Master Plan. Curbs and gutters are good for run-off in flat areas, but in hilly areas you want to keep the water draining as naturally as possible and build around it. That also keeps the area as natural-looking as possible. **Mr. Thurston** added that there will be a sidewalk, however, which will be 6" thick and 4' wide. **Mr. Church**, the hydrologist for the project, stated that there would be a change in the elevation of the road only.

Motion was made by **Mr. Rodriguez** for approval of the Variance. **Ms. Durham** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

0:29:43 **6. Consider an appeal (variance) from Section 47-42(c)(4) to allow a street ending in a cul-de-sac to be 889' in length instead of the maximum 800' and to serve 17 lots instead of the maximum 15 lots, within Fountain Hills Subdivision – Phase 11.**

Ms. Shumsky explained that there would still be the required space needed for emergency trucks to turn around and for fire hoses to reach. The Fire Department did not object. Staff recommended approval, with conditions. **Ms. Dalton** wanted to know about the effect on water pressure for the neighborhood, because she did not have adequate pressure now. **Mr. Church** said he talked with Luis Camaro about a possible pressure booster. The City is conscious of the problem and is trying to address it. **Mr. Herndon** wanted to know about the cul-de-sac width. **Ms. Shumsky** stated that it meets City standards.

Mr. Brown made a motion for approval of the Variance, with conditions. The motion was seconded by **Ms. Durham**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

0:39:16 **7. Consider an appeal (variance) from Section 56-90(b) to allow front-yard setbacks of 20' instead of the required 30', within Fountain Hills Subdivision – Phase 11.**

Ms. Shumsky stated that Staff recommended approval, even though it did not meet the strict criteria for a variance, because topography limits development in the area. The applicant listed justification on the application. **Mr. Thurston** added that the variance was from the property line, not the pavement, and that this will keep more room between the houses. **Mr. Tawater** was concerned about changing the look of the subdivision that currently exists. He thought the lots would have to be stepped. **Mr. Church** explained that because of all the rock there would not be any mass grading for this project. **Mr. Thurston** also explained that the cables and wires for the utilities would all be underground in the 9' utility easement, while the sewer line will be in the street under the pavement.

Ms. Durham made a motion for approval of the Variance. **Mr. Rodriguez** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

0:50:19 **8. Consider a Preliminary Plat for Fountain Hills Subdivision - Phase 11, creating 17 new lots, with lots zoned “R-R” and “R-1”, pursuant to Code of Ordinances Chapter 47.**

Ms. Shumsky said the City Engineer had recommended approval after reviewing the Drainage Study. He had also reviewed plans for infrastructure and recommended conditions of approval. **Mr. Thurston** concurred with the conditions. **Mr. Coonradt** expressed concern about density in the area. **Ms. Shumsky** explained that R-R zoning is the least dense allowed, with the greatest lot size. The lots meet all the zoning regulations regarding frontage, setbacks, and lot size. The houses will be a variety of housing types and will not take up the entire buildable area. Builders will have to acquire building permits; the setbacks will be verified and inspected during construction. **Mr. Thurston** explained that the existing homes in the area are in a different zoning than spring hollow. That zone allows for much smaller lots. These new homes will have a minimum of 10,890’ for each lot. They want the larger-sized lots. They didn’t want smaller lots like the ones already there. **Mr. Tawater** complained about the water pressure. **Ms. Shumsky** explained how the water is pumped from the City into the tank on the hill and then to the houses. She is going to ask the utilities department to test the water pressure to make sure it is working properly. **Mr. Tawater** also wanted to know if the houses would be built as the land is bought, or if homes would be built ahead without buyers. **Mr. Thurston** said he tries to have around four spec homes on the market at a time. Others would be built as the land was sold. As one home is sold, another will be built. Another area resident said the water pressure varies. **Ms. Shumsky** explained that pressure changes as needed. When the tank is low and they are pumping it up from the City, there is not as much pressure. Also, when everyone is using the water at the same time, such as now when everyone has to water during the same time of the day for water conservation, then the pressure is less.

Mr. Brown made a motion to approve the Preliminary Plat. The motion was seconded by **Mr. Rodriguez**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:09:44 **14. Consider a recommendation regarding a Zoning Change from “R-1” Residential District to “C-2” Commercial District for an approximately 5.5 acre area, which is a portion of the property located at 3500 National Parks Hwy., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Ms. Shumsky stated that the zone change is justified, because a zone line shouldn’t go right down the middle of a property. This change will make it consistent for the whole lot. Property to the south, north and west are commercial already, so it is not a spot zone. Staff recommended approval. **Dave McFadden** related that it was going to be a quality development of hotels, concrete streets, and an upscale restaurant. **Ms. Shumsky** added that Lewis Road provides a buffer to the residential area. **Mr. Cleary** said he supports the zone change 100% and is pleased to hear the plans proposed. He was afraid it was going to be a man-camp.

Mr. Rodriguez made a motion to recommend approval of the Zone change. **Mr. Brown** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr.**

Rodriguez, Mr. Brown; No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:17:01 **9. Consider an appeal (variance) from Sections 47-44(b)(1) and 56-90(b) to allow the subdivision of Block 5, Lot 9, La Huerta Subdivision, Zoned “R-R”, with 65.96’ of street frontage rather than the required 110’.**

Ms. Gadbury was the representative for this issue. **Ms. Shumsky** said Staff had recommended denial, because it didn’t meet the strict criteria for a variance. However, it does make sense for what they want to do and will make the situation better. The leech line crosses the other property, as it is. The change would have the leech line on its own property and all the buildings would be on one property. **Ms. Gadbury** pointed out that LaHuerta has other houses with narrow drives leading to homes behind them. The change in this instance will make the access wider. There was no public comment.

Mr. Brown made a motion to approve the Variance. The motion was seconded by **Ms. Durham.** The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:24:56 **10. Consider a request for a Conditional Use Permit to allow a massage therapy business as a home occupation, in accordance with Sections 56-41(g) and 56-70(d)(9)(a)(xii), at 901 N. Thomas St., Zoned R-1.**

Ms. Allison-Kosior was present to make her request. **Ms. Shumsky** stated that Staff recommended approval and it would be compatible with surrounding uses. **Ms. Allison-Kosier** said she would like to provide a place of quiet repose for body and spirit, with appointments Wednesday through Saturday. She wants to have no more than four clients per day. She would also like to travel to the elderly or those in the hospital who need her services.

Ms. Durham made a motion to approve the Conditional Use. The motion was seconded by **Mr. Brown.** The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:29:42 **11. Consider a request for a Conditional Use Permit to allow a trucking company and storage of oil field fluids, to be located at 221 W. Rose St., in accordance with Section 56-41(g)(Table 4(1)(b)), Zoned C-2.**

Ms. Shumsky explained that trucking is allowed in this zone with a conditional use permit. Staff recommended approval with conditions. There needs to be a 6’ fence erected around the fluid storage area and the applicant must provide a copy of all appropriate state and federal permits. **Mr. Longoria** said he is using one of the RV’s on the site as his office when he is in town from Roswell. Two other RV’s on the property do not belong to him and should be moved soon. They are not occupied and are not hooked up to utilities. **Ms. Shumsky** confirmed that RV’s are permissible as offices or for a night watchman.

Mr. Brown made a motion to approve the Conditional Use, with conditions. Motion was seconded by **Ms. Durham.** The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:35:32 **12. Consider a request to vacate a portion of an existing alley located within Everts Subdivision, Block 177, located north of Church St. between Canal St. and Halagueno St., pursuant to 3-20-12 NMSA 1978.**

Mr. Byers and Ms. Rinck came forward on behalf of the applicant. They want to combine lots, demolish buildings, realign the sewer line, and have the alley vacated for a CVS Pharmacy to be built. When an alley is vacated, owners on either side take possession of it down the middle. Since CVS is the owner of both sides, they will have all of it. (The north part of the alley will still be open to traffic for Red Chimney.) Staff recommended approval. CVS understands all the conditions and has agreed to follow them. There was no public comment.

Ms. Durham made a motion to approve the Vacation, which was seconded by **Mr. Brown**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:47:02 **13. Consider a recommendation regarding a Zoning Change from “R-1” Residential District to “C-2” Commercial District for an approximately 7.7 acre site, located at 1702 W. Fox St., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Mr. Plumlee, IT Director for the City of Carlsbad, was present as representative for the request. **Ms. Shumsky** explained that City facilities can be located in any zone within the City, but changing the zone makes it more consistent with the use. The City wants to install a tower in the future to improve data communication between the different facilities. They do not have any towers for that purpose at this time. During discussion regarding the tower, it was decided that a zoning change would be a good idea. There was no public comment.

Mr. Brown made a motion to recommend approval of the Zone Change. **Mr. Rodriguez** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:52:00 **15. Consider a recommendation regarding a Zoning Change from “R-R” Rural Residential District to “C-2” Commercial District for an approximately 10.8 acre parcel, which is a portion of the property located at 3711 San Jose Boulevard, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Mr. Stephens, Mr. Bhakta, and Mr. Patel came forward with their request for a zone change. There is commercial development in the area, and the property is surrounded on two sides by commercial zoning. The applicants want to put a hotel and restaurants on the property. There was no public comment.

Mr. Knott made a motion to recommend approval of the Zone Change, which was seconded by **Ms. Durham**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:56:10 **16. Consider a recommendation regarding the Annexation (and subsequent establishment of PUD zoning) of an approximately 20.28 acre parcel located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk, pursuant to the petition method as provided for in Section 3-7-1 et. Seq. NMSA 1978.** (CONSIDERED TOGETHER WITH THE NEXT ITEM--#17)

AND **17. Consider a recommendation regarding the Establishment of Planned Unit Development (PUD) zoning (in conjunction with the previous annexation) of an approximately 20.28 acre area, located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk.**

Mr. Skinner was on hand to answer any questions regarding the requested Annexation and PUD Zoning. **Ms. Shumsky** said that Staff recommended approval contingent on the 1,300 acre annexation from last month's meeting being approved by City Council on May 27th. If that one is not approved, this one won't be either. The concept plan includes some industrial warehouse space and apartments for workforce housing. There will be a 6' opaque wall that separates ingress and egress for residential and industrial uses. Prior to development, the Planning and Zoning commission will have a follow-up for the final PUD and a development agreement. All individual structures and building will also need to get building permits. The modular structures will be approved through the State, but the City building inspectors will approve foundations for the structures. **Mr. Skinner** explained that the efficiency apartments will be exceptionally strong and semi-permanent. The walls have Styrofoam on both sides, with concrete poured into the mesh-reinforced space between after they are placed on the foundation footing. This reduces heating and cooling expenses by 40%. **Ms. Self** expressed her dismay that the sign posted for the annexation had listed her address. She said it was a very unpopular annexation and she had been getting threats to herself and her dogs. **Ms. Shumsky** said that a new sign would be issued and that the address would be corrected.

Mr. Rodriguez made a motion to recommend approval of both the Annexation and Establishment of the PUD (Items 16 and 17). He also noted that the address on the posted sign needs to be changed. **Mr. Brown** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown; No – None; Abstained – None; Absent – Mr. McCormick.** The motion carried.

Mr. Skinner said he had worked on over a hundred zoning cases in New Mexico and Arizona and that we were lucky to have Ms. Shumsky here. He said she is smart and makes it so much easier to work through projects, because she is so capable.

2:17:10 **18. Report regarding plats approved through Summary Review process.**

Ms. Shumsky reported regarding the plats she had signed in March. There was brief discussion of the plat for the property where Church Street Grill is located, where they are combining lots and remodeling their building.

2:20:11 **19. Adjourn.**

There being no further business, the meeting was adjourned.

2:20:38

Stop Recording [7:22:42 PM]

Chairman

Date

DRAFT

CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM
PLANNING AND ZONING COMMISSION

Meeting Date: 5/5/14

DEPARTMENT: Planning,
Engineering and Regulation

BY: Eric Navarrete, City
Engineer

DATE: 4/28/14

SUBJECT: Appeal (variance) from Section 47-42(c)(4) to allow a single cul-de-sac roadway of 889 ft to service 17 lots located within Fountain Hills Subdivision – Phase 11, the City Standard requires all cul-de-sacs to be no more than 800 feet in length and service only 15 dwelling units. The applicant is requesting to build an 889 ft long cul-de-sac to service 17 dwelling units.

Applicant:

Ken Thurston Development Corp.
1880 E. Lohman
Las Cruces, NM 88001

Property Owner:

Don Miehl
916 Fountain Drive
Carlsbad, NM 88220

****The applicant provided the required notification to property owners within 100' and agreed to post the required sign 5-days prior to the public hearing as required by Sec. 56-140(i).***

SYNOPSIS: his variance request accompanies a preliminary plat approval request along with three other variances for Fountain Hills Subdivision – Phase 11, which consists of 17 new lots for residential development. The applicant is requesting a variance from Section 47-42(c)(4) (as shown in Illustration 4) to build an 889 ft long cul-de-sac to service 17 dwelling units. All other geometric roadway design requirements for turnarounds and eliminating any future roadway extensions shall be followed.

Variances may be permitted by the Planning and Zoning Commission if certain criteria are met according to Section 47-7 which states:

“Whenever, in the opinion of the Board of Appeals, the strict application of the requirements contained in this chapter would result in extreme practical difficulties or undue misuse of property, the board may modify such requirements as necessary so that the subdivider is allowed to develop his/her property in a reasonable manner providing that the public interests of the community and its citizens are protected and the general intent and spirit of these regulations are preserved.

(a) *Criteria.* The Board shall grant the minimum variance or modification to relieve the hardship only upon determination that:

- (1) The variance will not be detrimental to the public health, safety and general welfare of the community; and
- (2) The variance will not adversely affect the reasonable development of adjacent property; and
- (3) The variance is justified because of topographic or other special conditions unique to the property involved in contradistinction to mere inconvenience or financial disadvantage; and
- (4) The variance is consistent with the objectives of this chapter and will not have the effect of nullifying the intent or purpose of this chapter or the comprehensive plan; and
- (5) The variance has been shown to be in the best interest of the general public and not only of interest to the developer, land owner or other interested party; and
- (6) The hardship must not be pecuniary and must be a direct result of the land location, topography or other characteristic; and
- (7) Where a variance is requested from the required provision of sidewalks, an ADA complaint, alternative route to the nearest bus stop or school is required. If an alternative

route cannot be provided, a variance shall not be approved."

The applicant provided justification of this request that meets the criteria above. Specifically, subsection 3. The request is the minimum necessary and the justification is reasonable. The site is steeply sloped and is very rocky.

IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.):

The cul-de-sac requirements are intended to limit the length of roadways for servicing lots so that land developments have sufficient ingress and egress for roadways and for proper utility operations. However, in some cases, due to the infill subdivision constraints the land development must be modified based upon topography, available right-of-way, business economics, etc. The current variance is less than 14% in each category and in other governments or quasi-judicial bodies would be allowed by administrative variance procedures if it is within a 20% fluctuation. Granting of the subject variance would allow for an infill subdivision development of an existing property which will reduce the impact of costs and city resources to service new land developments associated with urban sprawl.

The following *Greater Carlsbad Comprehensive Plan: Strategy 2030* goals apply to this request:

Section 4 Land Use

Goal 5: "The City of Carlsbad will strive to promote and enhance the general social welfare through land use planning."

Goal 6: "The City of Carlsbad will strive to create an aesthetically pleasing built environment."

Chapter 4: Housing

Goal 2: Carlsbad will ensure that local housing protects the health, safety, and welfare of residents and their neighbors.

PLANNING STAFF RECOMMENDATION: based on review of the application and staff comments, engineering staff recommends approval based on the following condition:

1. No additional roadway extension shall be made to the roadway.

DEPARTMENT RECOMMENDATION (please check):

	Approval	Denial	n/a		Approval	Denial	n/a
Public Works				Plng., Eng. & Reg. Dept:			
Fire Department	x			Code Enforcement Division			
Legal Department				Engineering Division	x		
Police Department				Planning Division	x		
Utilities Department				Building & Regulation Division			
Culture & Rec. Dept.							

DEPARTMENT COMMENTS:

Public Works:

Utilities Department:

Building Department:

Fire Department: reviewed, no comments.

Code Enforcement:

Legal Department:

Planning Department: recommend approval based on condition stated above.

Police Department:

Culture and Recreation Department:

City Engineer: recommend approval based on the following condition:

1. No additional roadway extension shall be made to the roadway

ATTACHMENTS: Application materials

**CITY OF CARLSBAD**

*Planning, Engineering,
and Regulation Department*

PO Box 1569, Carlsbad, NM 88221

Phone (575) 887-1191

Fax (575) 885-9871

BOARD OF APPEALS APPLICATION
(VARIANCE FROM SUBDIVISION OR ZONING ORDINANCE)
Sec. 47-7 or Sec. 56-150(c)

Application Date: 4/4/14

Fee Paid (\$50.00): ✓ 44

APPLICANT INFORMATION:

<u>DON MIEHLS DBA FOUNTAIN HILLS DEVELOPMENT COMPANY</u>			<u>916 FOUNTAIN DRIVE</u>	
NAME			ADDRESS	
<u>CARLSBAD</u>	<u>NM</u>	<u>88220</u>	<u>(575) 887 6132</u>	<u>DONRMIEHLS@GMAIL.COM</u>
CITY	STATE	ZIP	PHONE	EMAIL

PROPERTY OWNER INFORMATION (IF DIFFERENT FROM APPLICANT):

<u>NAME</u>			<u>ADDRESS</u>	
NAME			ADDRESS	
<u>CITY</u>	<u>STATE</u>	<u>ZIP</u>	<u>PHONE</u>	<u>EMAIL</u>
CITY	STATE	ZIP	PHONE	EMAIL

LEGAL DESCRIPTION AND/OR STREET ADDRESS OF PROPERTY (FOR WHICH VARIANCE IS REQUESTED): _____

TYPE OF REQUEST (CHECK ONE):

 X VARIANCE FROM THE **SUBDIVISION REGULATIONS** (CHAPTER 47 - CODE OF ORDINANCES) AS PROVIDED FOR IN SECTION 47-7, VARIANCES.

SPECIFY REGULATION AND/OR SUBSECTION: SECTION 47-42 C, 4

_____ VARIANCE FROM THE **ZONING ORDINANCE** (CHAPTER 56 - CODE OF ORDINANCES) AS PROVIDED FOR IN SECTION 56-150(c).

SPECIFY REGULATION AND/OR SUBSECTION: _____



CITY OF CARLSBAD

*Planning, Engineering,
and Regulation Department*

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Phone (575) 887-1191

Fax (575) 885-9871

BOARD OF APPEALS APPLICATION

(VARIANCE FROM SUBDIVISION OR ZONING ORDINANCE)

Sec. 47-7 or Sec. 56-150(c)

PROCESS FOR ACCEPTANCE AND REVIEW OF PLANNING AND ZONING COMMISSION MATTERS

1. The Planning and Zoning Commission's regularly scheduled meetings are on the **FIRST MONDAY OF THE MONTH**. Applicant should obtain an Application Packet for the particular type of request (Zone Change, Subdivision, Variance, Annexation, Conditional Use, etc.) from the City of Carlsbad, Licensing and Permits Office.
2. **Applicant must submit a completed Application to the Licensing and Permits Office on, or before, the FIRST FRIDAY OF THE MONTH prior to the desired Commission meeting.** The minimum application packet submittal is one (1) copy of the Application with original signatures and all required supporting documents. A letter of explanation or clarification may also be provided. The required non-refundable application fee is due with submittal of the application.

The desired maximum size for all documents is 11"x17". **However, if the applicant wishes to support his or her application with larger size documents, an original and fifteen (15) copies need to be provided.** Separate arrangements for copying these large documents may be possible, but will incur additional costs.
3. The Licensing and Permits Office will give the Application an initial cursory review. If deficiencies or questions are noted, the Applicant will be advised and provided an opportunity to supplement the application. If the Applicant fails to complete and resubmit the application prior to the above deadline, the matter will not be heard until the next subsequent Commission meeting. The original application fee will be retained and will suffice for the specific original application for a period of 90-days from the date of the original application.
4. Applications appearing complete will be set for full evaluation by City Staff prior to the Commission meeting. The purpose of this evaluation is to develop and provide a full briefing report for the Commission. Applicants will be advised of deficiencies noted during this review and will be afforded opportunity to supplement their application during their presentation to the Commission, if they so desire.
5. The Planning and Zoning Commission will vote to approve or deny the request. Applicant or his/her representative must be present to address any questions that Planning and Zoning Commissioners may have. Appeals of Planning and Zoning Commission decisions will be heard by the City Council pursuant to Sec. 56-150(c).
6. The applicant shall mail notice of the Planning and Zoning Commission hearing, via certified mail, to all property owners within one-hundred feet (100') of the subject site. Evidence of such notification shall be provided with the application. In addition, the applicant shall post a sign, provided by the City, at the property at least 5 days prior to the public hearing.

JUSTIFICATION FOR REQUEST AND SITE PLAN: (Describe the topographical uniqueness of the property or extreme practical difficulties or undue hardship that would result from the strict application of the requirement(s) contained in the ordinance section from which the variance is requested. Include a site plan drawn to scale or with accurate dimensions showing property lines, existing and proposed fences and/or walls, setbacks, building and structure locations and parking areas. Attach a separate sheet if necessary.)

FOUNTAIN HILLS #11

VARIANCE REQUEST

DEAD-END STREETS- City of Carlsbad Design Standard Section 47-42, Part C-4

Standard Length of Dead-End Streets 800 Feet

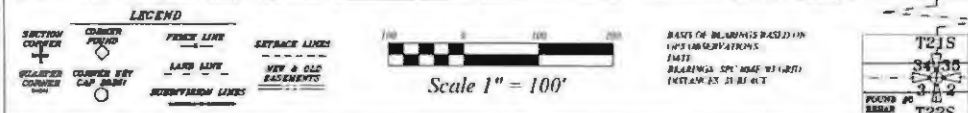
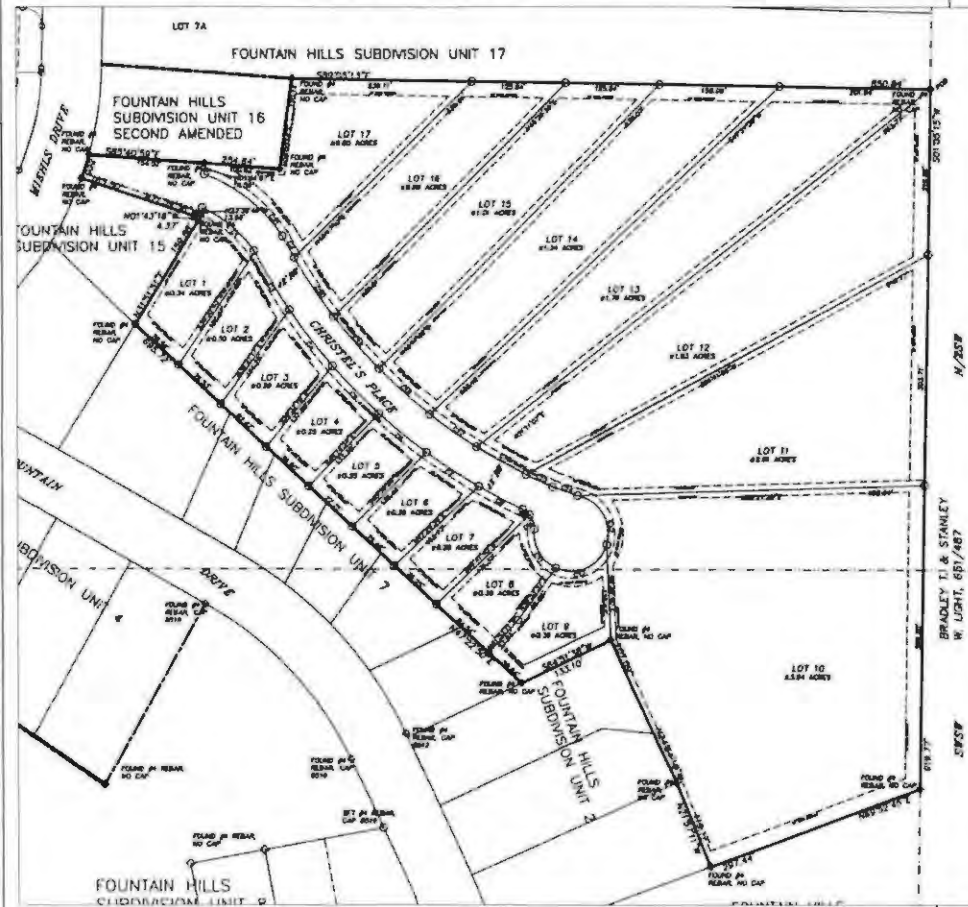
A. A variance is requested from the 800 feet length to a requested length of 889 feet.

The reason for the increase in street length is partially due to the existing entrance road of Christel's place being 193 feet before we arrive at the first lot of Fountain Hills 11. Due to the existing site criteria we do not have the right of way to loop the road back to Fountain Hills Drive. Please note that there is only approximately 696 feet of street that will have direct property access.

FOUNTAIN HILLS SUBDIVISION UNIT 11

A SUBDIVISION OF THAT PART OF THE SE 1/4 OF SECTION 34, TOWNSHIP 21 SOUTH, RANGE 26 EAST, N.M.P.M., EDDY COUNTY, NEW MEXICO, LYING WEST OF FOUNTAIN HILLS UNIT 5 SUBDIVISION, NORTH OF FOUNTAIN HILLS UNIT 3 SUBDIVISION, IN WHICH THE PERIMETER OF THE SUBDIVISION IS DESCRIBED AS FOLLOWS:

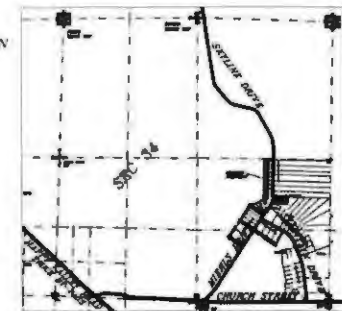
BEGINNING AT A POINT THAT LIES ON THE INTERSECTION POINT OF THE EAST LINE OF THE SW 1/4 OF SAID SECTION 34, AND THE SOUTHEAST CORNER OF FOUNTAIN HILLS UNIT 17; THEN S01°05'15"W, ALONG THE EAST LINE OF SW 1/4, FOR 819.77 FEET, TO THE NORTH LINE OF FOUNTAIN HILLS SUBDIVISION UNIT 6; THEN S89°22'45"W, ALONG THE NORTH LINE OF UNIT 6, FOR 297.44 FEET, TO THE EAST LINE OF FOUNTAIN HILLS SUBDIVISION UNIT 2; THEN N21°37'11"W, ALONG THE EAST LINE OF UNIT 2, FOR 119.17 FEET, THEN N24°54'18"W, CONTINUING ALONG THE NORTH LINE OF UNIT 2, FOR 207.09 FEET, THEN S84°31'38"W, ALONG THE NORTHERLY LINE OF UNIT 2, FOR 133.10 FEET, TO THE NORTHERLY LINE OF FOUNTAIN HILLS SUBDIVISION UNIT 7; THEN N47°22'50"E, ALONG THE NORTHERLY LINE OF UNIT 7, FOR 695.72 FEET, TO THE SOUTHEAST CORNER OF FOUNTAIN HILLS UNIT 15; THEN N31°31'51"E, ALONG THE EAST LINE OF UNIT 15, FOR 159.68 FEET, THEN N01°43'16"W, ALONG THE EAST LINE OF UNIT 15, FOR 4.37 FEET, THEN N71°39'36"W, ALONG THE NORTHERLY LINE OF UNIT 15, FOR 163.50 FEET, TO THE EAST R.O.W. OF MICHAEL DRIVE, THEN THRU A CURVE TO THE LEFT (RAD=449.26 FEET) 32.82 FEET, WHOSE CHORD BEARS N18°09'31"E FOR 32.81 FEET, TO THE SOUTH LINE OF FOUNTAIN HILLS UNIT 16 SECOND AMENDED; THEN S85°40'59"E, ALONG THE SOUTH LINE OF UNIT 16, FOR 254.64 FEET, THEN N08°00'10"E, ALONG THE EAST LINE OF UNIT 16, FOR 120.14 FEET, TO THE SOUTH LINE OF FOUNTAIN HILLS UNIT 17; THEN S89°05'13"E, ALONG THE SOUTH LINE OF UNIT 17, FOR 650.84 FEET, BACK TO THE POINT OF BEGINNING, CONTAINING ±17.09 ACRES MORE OR LESS.



APPROVAL BY THE CITY COUNCIL
 THIS IS TO CERTIFY THAT THIS REPLAT HAS BEEN EXAMINED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO, DURING A REGULARLY SCHEDULED MEETING HELD ON
 THIS _____ DAY OF _____, 20____.

APPROVAL BY THE CITY PLANNING COMMISSION
 THIS IS TO CERTIFY THAT THIS REPLAT HAS BEEN APPROVED BY THE CITY PLANNING COMMISSION OF THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO, DURING A REGULARLY SCHEDULED MEETING HELD ON
 THIS _____ DAY OF _____, 20____.

APPROVAL BY THE CITY PLANNING COMMISSION
 THIS IS TO CERTIFY THAT THIS REPLAT HAS BEEN APPROVED BY THE CITY PLANNING COMMISSION OF THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO, DURING A REGULARLY SCHEDULED MEETING HELD ON
 THIS _____ DAY OF _____, 20____.



VICINITY MAP
 NO SCALE

FOUNTAIN HILLS SUBDIVISION UNIT 11

AREA: ±17.09 ACRES

NUMBER OF LOTS: 17

SIZE OF LOTS:	1 - ±0.25 ACRES	1 - ±0.33 ACRES	1 - ±1.78 ACRES
2 - ±0.25 ACRES	1 - ±0.34 ACRES	1 - ±1.88 ACRES	
1 - ±0.28 ACRES	2 - ±0.80 ACRES	1 - ±2.00 ACRES	
1 - ±0.29 ACRES	1 - ±1.00 ACRES	1 - ±3.00 ACRES	
2 - ±0.30 ACRES	1 - ±1.34 ACRES		

SETBACKS: FRONT SETBACK-30'
 SIDES SETBACK-7.5'
 REAR SETBACK-20'

ZONED: "R-R" RURAL RESIDENTIAL

SET BACK LINES: PER APPLICABLE BUILDING CODES

NO LOTS TO BE DEDICATED TO THE PUBLIC

NO LOTS TO BE DEDICATED FOR PARKS, SCHOOLS, CHURCHES OR INDUSTRY

FLOODPLAIN: DETERMINED TO BE IN ZONE "X", AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD PLAIN, AS DETERMINED BY THE DIGITAL FLOOD INSURANCE RATE MAP COMMUNITY - #350017 1045 D, THE CITY OF CARLSBAD, REVISED - 08/04/2010

COUNTY - #330120 1045 D, EDDY COUNTY

MAP PANEL - #33015 C 1045 D

CURVE #	CHORD BEARING	CHORD LENGTH	ARC BEARING	ARC LENGTH	RADIUS
C1	S89°22'45"W	297.44	N21°37'11"E	119.17	127.50
C2	N21°37'11"E	119.17	S84°31'38"W	133.10	127.50
C3	S84°31'38"W	133.10	N47°22'50"E	695.72	127.50
C4	N47°22'50"E	695.72	N31°31'51"E	159.68	127.50
C5	N31°31'51"E	159.68	N01°43'16"W	4.37	127.50
C6	N01°43'16"W	4.37	N71°39'36"W	163.50	127.50
C7	N71°39'36"W	163.50	N18°09'31"E	32.81	127.50
C8	N18°09'31"E	32.81	S85°40'59"E	254.64	127.50
C9	S85°40'59"E	254.64	N08°00'10"E	120.14	127.50
C10	N08°00'10"E	120.14	S89°05'13"E	650.84	127.50

CARLSBAD "C" MOUNTAIN LLC
 KENNETH R. THURSTON, MANAGING MEMBER
 OF CARLSBAD "C" MOUNTAIN LLC
 OWNERS STATEMENT AND AFFIDAVIT

STATE OF _____

COUNTY OF _____

THE ABOVE SIGNED BEING FIRST DULY SWORN ON OATH, STATE:

AS THE OWNERS AND PROPRIETORS, WE HAVE OF OUR OWN FREE WILL AND CONSENT CAUSED THIS PLAT WITH ITS LOTS AND EASEMENTS TO BE PLATTED, THE PROPERTY DESCRIBED ON THIS PLAT LIES WITHIN THE PLATTING JURISDICTION OF: **CITY OF CARLSBAD**

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED BEFORE ME, THIS _____ DAY OF _____, 20____.

NOTARY PUBLIC

I, MELVIN R. PATE, JR., A NEW MEXICO REGISTERED PROFESSIONAL LAND SURVEYOR, CERTIFY THAT I CONDUCTED, AND AM RESPONSIBLE FOR THIS SURVEY, AND THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY AND PLAT MEET THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO.

MELVIN R. PATE, JR., 423 W. GREENE ST., CARLSBAD, N.M. 88502 CERTIFICATE NO. 20357 TEL# 885-887 FAX 885-4887



R&R SURVEYING LLC
 A LAND SURVEYING COMPANY
 10000 HWY. 100, SUITE 100
 CARLSBAD, NM 88502

PROJECT: FOUNTAIN HILLS SUBDIVISION UNIT 11
 CLIENT: CARLSBAD "C" MOUNTAIN LLC
 COUNTY: EDDY
 STATE: NEW MEXICO
 DATE: APRIL 9, 2014
 ACCESS: YES
 AREA: ±17.09 ACRES

STATE OF NEW MEXICO, COUNTY OF EDDY, I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD ON THE _____ DAY OF _____, 20____, AT _____, N.M.

CERTIFY: _____
 CARLSBAD PLANNING-COUNTY CLERK

Zoning Ordinance

Criteria for Appeals - Sec. 56-150(c)(4):

The purpose of the appeal procedure is to determine if the decision being appealed meets the requirements of this Zoning Ordinance. The City Council or the Planning and Zoning Commission, when hearing an appeal, is limited to the following determinations:

- (a) The decision-maker made an error in reviewing whether a standard was met, by a misreading of the facts, plans, regulations or an error in judgment.
- (b) Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility.
- (c) The decision-maker made the decision on standards not contained in this or other City ordinances, regulations or state law; or a standard was applied more strictly or broadly than is appropriate to implement the City's Comprehensive Plan and this Zoning Ordinance.

Subdivision Regulations

Criteria for Appeals – Sec. 47-7

Whenever, in the opinion of the board of appeals, the strict application of the requirements contained in this chapter would result in extreme practical difficulties or undue misuse of property, the board may modify such requirements as are necessary so that the subdivider is allowed to develop his/her property in a reasonable manner providing that the public interests of the community and its citizens are protected and the general intent and spirit of these regulations are preserved. **The board shall grant such a variance or modification only upon determination that:**

1. The variance will not be detrimental to the public health, safety and general welfare of the community;
2. The variance will not adversely affect the reasonable development of adjacent property;
3. The variance is justified because of topographic or other special conditions unique to the property involved in contradistinction to mere inconvenience or financial disadvantage;
4. The variance is consistent with the objectives of this chapter and will not have the effect of nullifying the intent or purpose of this chapter or the comprehensive plan.

FOR OFFICIAL USE ONLY:

Required prior to P & Z:

Complete Application Including: ☐ Site Plan ☐ Fee ☐ Notification ☐ Letter of Explanation
☐ Sign Posting Agreement ☐ Sign Posted
☐ ABM ☐ Staff Comments ☐ Application Packet

P & Z Action: ☐ Approved ☐ Denied ☐ Other Date: _____

Date: 4/4/14

Dear Property Owner,

This letter serves as legal notification of a pending action before the City of Carlsbad Planning and Zoning Commission in accordance with Code of Ordinances Sec. 56-140(i). You are being notified because you are a property owner within one-hundred feet (100') of the subject site.

Applicant: DON MIEHLS 916 FOUNTAIN DRIVE (575) 887-6132
Name Address Phone

Subject Site Location: CHRISTEL'S PLACE OFF MIEHLS DRIVE

The proposed action is a:

☐ Zoning Change from _____ to _____ in accordance with Sec. 56-150(b).

☒ Variance/Appeal from Sec. 47-42, C, 4 in accordance with Sec. 56-150(c).

The purpose of the variance/appeal is:

THERE IS NO EXISTING RIGHT OF WAY ACCESS TO LOOP ROAD AND SO WE
ARE REQUESTING ADDITIONAL LENGTH FOR THE DEAD-END STREET

☐ Conditional Use Permit in accordance with Sec. 56-150(f). The purpose of the permit is for a:

☐ Home Occupation: _____

☐ Other Use: _____

The Planning and Zoning Commission will consider this request at a Public Hearing on:

Date: 5/5/2014

Time: 5:00pm

Place: City Hall Planning Room, 2nd Floor

101 N. Halagueno St.


Carlsbad, NM 88220

The Code of Ordinances can be found on the City's website www.cityofcarlsbadnm.com.

For details about this request contact the applicant OR contact the City Planner at

575-234-7923 or via email at sshumsky@cityofcarlsbadnm.com.

Sincerely,


Applicant/Agent

NOTIFICATION SIGN POSTING AGREEMENT

Notification of Public Hearings before the City of Carlsbad Planning and Zoning Commission is required pursuant to Sec. 56-140(i).

- Signs shall be posted a minimum of 5 days prior to and shall be removed a maximum of 5 days after the public hearing.
- If the sign is not posted as required, the application will be delayed and will not be considered at the public hearing as scheduled.
- The sign shall be posted at the street side property line with a secure stake provided by the applicant.

I have read and understand these requirements. I understand where the sign is to be located and my obligation to post the sign prior to the public hearing and remove it afterwards.


APPLICANT SIGNATURE


DATE

Sign issued by: 
Staff Member

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Total Postage & Fees	\$ 53.75

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04/09/2014

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City, State, ZIP+4[®] Carlsbad NM 88220
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Restricted Delivery Fee (Endorsement Required)	\$ 0.00
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04/09/2014

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Street, Apt. No.,
or PO Box No. PO Box 1971
City, State, ZIP+4[®] Carlsbad NM 88221
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or PO Box No. 912 fountain DR
City, State, ZIP+4[®] Carlsbad NM 88220

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City, State, ZIP+4[®] Carlsbad NM 88220
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Total Postage & Fees	\$ 53.75

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Sent To: Zenger, William J & Linda
Street, Apt. No.,
or PO Box No. 28 Chapala Rd
City, State, ZIP+4[®] Santa Fe NM 87508
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Total Postage & Fees	\$ 53.75

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04/09/2014

Sent To: Jensen Revocable Family Trust
Street, Apt. No.,
or PO Box No. 1104 miehls Dr
City, State, ZIP+4[®] Carlsbad NM 88220

7013 2630 0000 3103 3178

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Total Postage & Fees	\$	1.17

Sent To: Tawater Family trust
Street, Apt. No.: 908 Fountain Dr
or PO Box No.:
City, State, ZIP+4: Larkland NM 88220
PS Form 3800, August 2006 See Reverse for Instructions

7013 2630 0000 3103 3192

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Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	1.17

Sent To: Alto, James + Loretta
Street, Apt. No.: 908 Fountain Dr
or PO Box No.:
City, State, ZIP+4: Larkland NM 88220
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7013 2630 0000 3103 3208

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Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	1.17

Sent To: Sformento, Brandon + Suzanne
Street, Apt. No.: 511 S Tidwell RD
or PO Box No.:
City, State, ZIP+4: Larkland NM 88220
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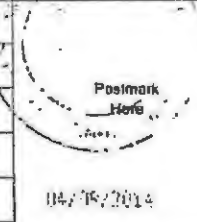
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Total Postage & Fees	\$ 6.79	04/09/2014

Sent To: Miehls, Dennis + Janet
Street, Apt. No., or PO Box No. 1702 Miehls Drive
City, State, ZIP+4 Carlsbad NM 88220
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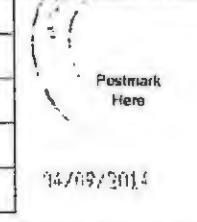
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Sent To: M Bonde-Kange - Grace
Street, Apt. No., or PO Box No. 1206 Miehls Dr
City, State, ZIP+4 Carlsbad NM 88220
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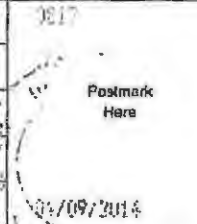
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Sent To: Parker, Joe Ed + Mary
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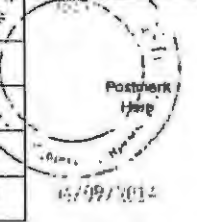
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Sent To: Blenden, James Phillip
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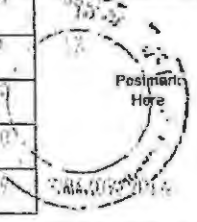
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Total Postage & Fees	\$ 6.79	04/09/2014

Sent To: CONRADT, Dean + Alice
Street, Apt. No., or PO Box No. 910 Fountain Dr
City, State, ZIP+4 Carlsbad NM 88220

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

COUNCIL MEETING DATE: 6/10/14

DEPARTMENT: Planning, Engineering and Regulation	BY: Stephanie Shumsky, Planning Director	DATE: 5/29/14
<p>SUBJECT: Appeal of the Planning and Zoning Commission's decision to approve a variance from Section 47-42(c)(3) that would allow the platted right-of-way of a future street to be 42' in width, with additional 9' utility and access easements on both sides (equating to a total of 60'), rather than the required platted 60', in the Fountain Hills Subdivision – Phase 11, Zoned Rural Residential District (R-R).</p> <p>Appellant (Primary Contact): Dave Tawater 908 Fountain Drive Carlsbad, NM 88220</p>		
<p>SYNOPSIS, HISTORY and IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.): At their regularly scheduled meeting on May 5, 2014, the Planning and Zoning Commission considered the request as stated above. The Commission voted to approve the requested variance, as described in the attached P&Z meeting packet and minutes, with a vote of 4-0.</p> <p>The process and criteria for appeals related to the Subdivision Ordinance is different than the process and criteria for appeals related to the Zoning Ordinance. For appeals related to the Subdivision Ordinance, the Board of Appeals, which in this case is the City Council, reviews the appeal based on the same criteria that the Planning and Zoning Commission's decision was based on. This criteria is provided in Code of Ordinances Section 47-7, which states:</p> <p>“Whenever, in the opinion of the Board of Appeals, the strict application of the requirements contained in this chapter would result in extreme practical difficulties or undue misuse of property, the board may modify such requirements as necessary so that the subdivider is allowed to develop his/her property in a reasonable manner providing that the public interests of the community and its citizens are protected and the general intent and spirit of these regulations are preserved.</p> <p>(a) <i>Criteria.</i> The Board shall grant the minimum variance or modification to relieve the hardship only upon determination that:</p> <ol style="list-style-type: none">(1) The variance will not be detrimental to the public health, safety and general welfare of the community; and(2) The variance will not adversely affect the reasonable development of adjacent property; and(3) The variance is justified because of topographic or other special conditions unique to the property involved in contradistinction to mere inconvenience or financial disadvantage; and(4) The variance is consistent with the objectives of this chapter and will not have the effect of nullifying the intent or purpose of this chapter or the comprehensive plan; and(5) The variance has been shown to be in the best interest of the general public and not only of interest to the developer, land owner or other interested party; and(6) The hardship must not be pecuniary and must be a direct result of the land location, topography or other characteristic; and(7) Where a variance is requested from the required provision of sidewalks, an ADA complaint, alternative route to the nearest bus stop or school is required. If an alternative route cannot be provided, a variance shall not be approved. <p>(b) <i>Procedure.</i></p> <ol style="list-style-type: none">(1) An application for a variance shall be submitted in writing on the prescribed forms by the subdivider at the time when the preliminary plat is filed for consideration by the		

Board of Appeals. The application shall state fully the grounds for the application, a response to the criteria for a variance as stated in Section 47-7(a), and all of the facts relied upon by the applicant.

- (2) Notification for the requested variance shall be posted by the applicant, on the property at the property line closest to a street, on a sign provided by the City, a minimum of five (5) days prior to the Board of Appeals hearing of the request. The sign shall state the date, time and location of the Board of Appeals hearing and a description of the request.
- (3) The Board of Appeals shall hear the request at its next regularly scheduled meeting the following month. The Board of Appeals may approve, approve with conditions, deny, continue or defer the request. In the case of deferral or continuance, the Board of Appeals shall make a decision within 90 days of the initial hearing.

In accordance with the appeal procedure stated above, the applicant complied with all of the notification requirements (see P&Z packet attached).

The appellant filed the appeal on May 19, 2014. The reason for the appeal is stated in the appellant's letter.

The Board of Appeals (City Council), by a simple majority vote of the members present, may approve, approve with conditions, deny, continue or defer the request. In the case of deferral or continuance, the Board of Appeals shall make a decision within 90 days of the initial hearing.

BOARD/COMMISSION/COMMITTEE ACTION:

<input checked="" type="checkbox"/> P&Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	<input checked="" type="checkbox"/> APPROVED
<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> DISSAPPROVED
<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> _____ Committee	

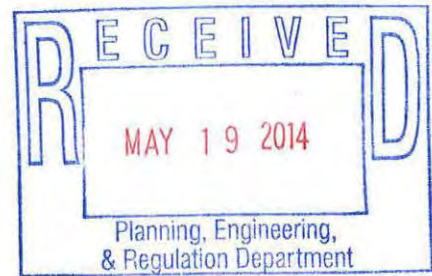
Reviewed by

City Administrator: /s/ Steve McCutcheon

Date: June 5, 2014

ATTACHMENTS: appellant's letter, P&Z meeting packet and minutes

May 19, 2014



Ms. Stephanie Shumsky

City of Carlsbad Planning Department

Carlsbad, NM 88220

Dear Ms. Shumsky,

Enclosed you will find a presentation of 4 signed protests of the Planning and Zoning actions of May 5, 2014, regarding Fountain Hills.

We request notification of the time and date of the City Council meeting when these protests will be heard. We request a date of June 10 or later for this City Council hearing.

Primary contact is Dave Tawater, 908 Fountain, 885-5722

Secondary contact is Marie Wilburn, 1210 Miehl Drive, 887-2440

Sincerely,

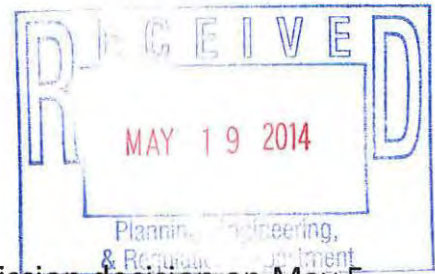
Dave Tawater

To: Carlsbad City Administrator

May 19, 2014

Subject: Protest of the City Planning and Zoning Commission decision on May 5, 2014

Reference: Zoning variance 47-42 C3 for allowance of the street right of way to be 42 feet in width



The above referenced variance request (47-42-C3) allows for a variance in the proposed street width from a required 60 feet to 42 feet in order to help with the slope of the terrain and associated utility issues.

The Carlsbad Planning and Zoning Commission's decision to approve the subject variance was arbitrary and did not support a due diligence evaluation of the overall impact to the existing neighborhood. The decision contributes to a greater density of new home construction and will adversely affect the interest of the below signed property owners.

The Fountain Hills Development was established over an extended period (approximately 40 years) under the existing zoning regulations and on a terrain variation similar to the proposed Phase II development. There is therefore no reason to deviate from the existing requirements. This proposed street is a cul-de-sac. Since more people utilize street parking for vehicles, there is a safety hazard with a narrow street which has only one outlet.

The aggrieved parties request a reversal of the decision of the zoning variance and request that the Subdivision Phase II comply with existing zoning regulations which would promote a continuation of the neighborhood character as it exists today.

Respectfully submitted,

Dwight K. Sawater 908 Fountain Dr.
Dee McSawater 82 E Palm 714 Fountain Dr.
Mark A. F.
1104 MIDDLE DR.
Paul Blenden 902 Fountain Dr.

Barbara Dalton
Jim B.
Dee Coonick
Paul Cogswell 803 Dennis Way
Brad Neundor
Mary Parker 914 Fountain

MINUTES OF THE REGULAR MEETING OF THE

**City of Carlsbad
Planning & Zoning Commission**

May 5, 2014, at 5:00 p.m.

Meeting Held in the Planning Room

CITY OF CARLSBAD
CARLSBAD, NEW MEXICO

AGENDA

PLANNING AND ZONING COMMISSION
REGULAR MEETING

Monday, May 5, 2014 at 5:00 PM

Municipal Building 101 N. Halagueno Street
Planning Room (Second Floor)

1. Roll call of voting members and determination of quorum.
2. Approval of Agenda.
3. Approval of Minutes from the Regular Meeting held April 7, 2014.
4. Consider an appeal (variance) from Section 47-42(c)(3) to allow the right-of-way of a future street to be 42' in width rather than the required 60', within Fountain Hills Subdivision – Phase 11.
5. Consider an appeal (variance) from Section 47-62(d) to allow the pavement width of a future street to be 26' in width rather than the required 28' and to allow the construction of the street without curb and gutter, within Fountain Hills Subdivision – Phase 11,
6. Consider an appeal (variance) from Section 47-42(c)(4) to allow a street ending in a cul-de-sac to be 889' in length instead of the maximum 800' and to serve 17 lots instead of the maximum 15 lots, within Fountain Hills Subdivision – Phase 11.
7. Consider an appeal (variance) from Section 56-90(b) to allow front-yard setbacks of 20' instead of the required 30', within Fountain Hills Subdivision – Phase 11.
8. Consider a Preliminary Plat for Fountain Hills Subdivision - Phase 11, creating 17 new lots, with lots zoned "R-R" and "R-1", pursuant to Code of Ordinances Chapter 47.
9. Consider an appeal (variance) from Sections 47-44(b)(1) and 56-90(b) to allow the subdivision of Block 5, Lot 9, La Huerta Subdivision, Zoned "R-R", with 65.96' of street frontage rather than the required 110'.
10. Consider a request for a Conditional Use Permit to allow a massage therapy business as a home occupation, in accordance with Sections 56-41(g) and 56-70(d)(9)(a)(xii), at 901 N. Thomas St., Zoned R-1.
11. Consider a request for a Conditional Use Permit to allow a trucking company and storage of oil field fluids, to be located at 221 W. Rose St., in accordance with Section 56-41(g)(Table 4(1)(b)), Zoned C-2.
12. Consider a request to vacate a portion of an existing alley located within Everts Subdivision, Block 177, located north of Church St. between Canal St. and Halagueno St., pursuant to 3-20-12 NMSA 1978.
13. Consider a recommendation regarding a Zoning Change from "R-1" Residential District to "C-2" Commercial District for an approximately 7.7 acre site, located at

1702 W. Fox St., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.

14. Consider a recommendation regarding a Zoning Change from "R-1" Residential District to "C-2" Commercial District for an approximately 5.5 acre area, which is a portion of the property located at 3500 National Parks Hwy., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
15. Consider a recommendation regarding a Zoning Change from "R-R" Rural Residential District to "C-2" Commercial District for an approximately 10.8 acre parcel, which is a portion of the property located at 3711 San Jose Boulevard, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
16. Consider a recommendation regarding the Annexation (and subsequent establishment of PUD zoning) of an approximately 20.28 acre parcel located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk, pursuant to the petition method as provided for in Section 3-7-1 et. Seq. NMSA 1978.
17. Consider a recommendation regarding the Establishment of Planned Unit Development (PUD) zoning (in conjunction with the previous annexation) of an approximately 20.28 acre area, located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk.
18. Report regarding plats approved through Summary Review process.
19. Adjourn.

***Note: The zoning change requests for 509 W. Pierce St. will be scheduled for the June 2, 2014 Commission meeting (adjacent property owners had been sent notification letters with a May 5, 2014 meeting date on it).**

If you require hearing interpreters, language interpreters, auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's offices at (575) 887-1191 at least 48 hours prior to the scheduled meeting.

**MINUTES OF A REGULAR MEETING OF THE CITY OF CARLSBAD PLANNING &
ZONING COMMISSION HELD IN THE MUNICIPAL BUILDING PLANNING ROOM,
101 N. HALAGUENO STREET, MAY 5, 2014, AT 5:00 P.M.**

VOTING MEMBERS PRESENT:

**JAMES KNOTT
RICK BROWN
WANDA DURHAM
EDDIE RODRIGUEZ**

**CHAIRPERSON
COMMISSIONER
COMMISSIONER
COMMISSIONER**

VOTING MEMBERS ABSENT:

JAMES MCCORMICK

COMMISSION SECRETARY

EX-OFFICIO MEMBERS PRESENT:

STEPHANIE SHUMSKY

PLANNING DIRECTOR

BOARD SECRETARY PRESENT:

PATTIE PISTOLE

**PLANNING, ENGINEERING
AND REGULATION DEPARTMENT
SECRETARY**

OTHERS PRESENT:

DAVID CHURCH	3280 VIEW DR., LAS CRUCES
KEN THURSTON	1880 E. LOHMAN, LAS CRUCES
BARBRA DALTON	811 DENNIS WAY
MICHAEL CLEARY	206 TAYLOR CIRCLE
LUZ E PUEDA	101 E. HAMILTON
TESS GADBURY	1314 DOEPP DRIVE
GRACE KNOX	2084 N. CANAL
ROBERT KNOX	2084 N. CANAL
KERRI DUNAGAN HARVEY	1206 APACHE
ANITA J. SELF	6511 KEVIL ROAD
DENNIS S. MIEHLS	1202 MIEHLS DRIVE
RIC CORDER	1106 MIEHLS DRIVE
CRAIG STEPHENS	101 S. CANYON
AMIT BHAKTA	2420 E. RIVERSIDE
PETE LONGORIA	221 W. ROSE
MILAN PATEL	1834 HAYS DRIVE
DEAN COONRADT	910 FOUNTAIN
DIANA RINCK	2121 W. CHANDLER, PHOENIX
GOSIE ALLISON-KOSIOR	901 N. THOMAS
STAN ALLISON	901 N. THOMAS
KEN SKINNER	4430 N. 22ND, PHOENIX
BRAD HERNDON	1326 W. SHAW
SAM PLUMLEE	100 N. HALAGUENO
MATT BYERS	112 N. CANYON
HELEN TAWATER	908 FOUNTAIN DRIVE
DAVID TAWATER	908 FOUNTAIN DRIVE
& SEVERAL OTHERS WHO DIDN'T SIGN IN	

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:00 Start Recording [5:02:04 PM]

0:00:03 **1. Roll call of voting members and determination of quorum.**

Mr. Knott called roll. There was a quorum. Present: **Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown.** Absent: **Mr. McCormick.**

0:00:18 **2. Approval of Agenda.**

Motion was made by **Ms. Durham** for approval of an amended Agenda. Item #14 was moved to follow Item #8. **Mr. Brown** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

0:01:14 **3. Approval of Minutes from the Regular Meeting held April 7, 2014.**

Motion made by **Mr. Brown** and seconded by **Ms. Durham** for approval of the Minutes. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

0:01:52 **4. Consider an appeal (variance) from Section 47-42(c)(3) to allow the right-of-way of a future street to be 42' in width rather than the required 60', within Fountain Hills Subdivision – Phase 11.**

Mr. Thurston came forward to represent Mr. Miehl, who was also present in the audience. **Ms. Shumsky** stated that Staff recommended approval, because the special topography of the area met the criteria for a variance. **Mr. Thurston** added that the site is difficult because of the steep slant of the terrain. **Mr. Tawater** came forward during public comment. He wanted to know why the other part of the subdivision was built within the ordinance as it existed, with retaining walls to deal with the terrain. **Ms. Shumsky** explained that the existing subdivision did not adhere to the previous subdivision regulations, because it has no curbs, gutters, or sidewalks, and the new road will be the same width as the existing one. **Mr. Thurston** said the concept is to put the houses a little closer to the front, so that the first story will be at street level, with walk-out basements below. Some homes will be three stories high. **Mr. Coonradt**, another resident in the area, expressed concern that all the houses there are special, custom-built homes. **Mr. Thurston** said his intention was to increase the value of the area, not decrease. He said a few may be the same, but most will have to be different because the topography is different for each lot. **Ms. Dalton** wanted to know if the new utilities would be underground like the existing ones, or if there would be poles. **Mr. Thurston** explained that they will be underground. **Mr. Herndon** asked about the narrowing pavement, but **Mr. Thurston** explained that the pavement will be the same width as the existing pavement.

Motion made by **Mr. Brown** for approval of the Variance. **Mr. Rodriguez** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

0:23:25 **5. Consider an appeal (variance) from Section 47-62(d) to allow the pavement width of a future street to be 26' in width rather than the required 28' and to allow the construction of the street without curb and gutter, within Fountain Hills Subdivision – Phase 11.**

Ms. Shumsky stated that Staff had recommended approval after reviewing the Drainage Master Plan. Curbs and gutters are good for run-off in flat areas, but in hilly areas you want to keep the water draining as naturally as possible and build around it. That also keeps the area as natural-looking as possible. **Mr. Thurston** added that there will be a sidewalk, however, which will be 6" thick and 4' wide. **Mr. Church**, the hydrologist for the project, stated that there would be a change in the elevation of the road only.

Motion was made by **Mr. Rodriguez** for approval of the Variance. **Ms. Durham** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

0:29:43 **6. Consider an appeal (variance) from Section 47-42(c)(4) to allow a street ending in a cul-de-sac to be 889' in length instead of the maximum 800' and to serve 17 lots instead of the maximum 15 lots, within Fountain Hills Subdivision – Phase 11.**

Ms. Shumsky explained that there would still be the required space needed for emergency trucks to turn around and for fire hoses to reach. The Fire Department did not object. Staff recommended approval, with conditions. **Ms. Dalton** wanted to know about the effect on water pressure for the neighborhood, because she did not have adequate pressure now. **Mr. Church** said he talked with Luis Camaro about a possible pressure booster. The City is conscious of the problem and is trying to address it. **Mr. Herndon** wanted to know about the cul-de-sac width. **Ms. Shumsky** stated that it meets City standards.

Mr. Brown made a motion for approval of the Variance, with conditions. The motion was seconded by **Ms. Durham**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

0:39:16 **7. Consider an appeal (variance) from Section 56-90(b) to allow front-yard setbacks of 20' instead of the required 30', within Fountain Hills Subdivision – Phase 11.**

Ms. Shumsky stated that Staff recommended approval, even though it did not meet the strict criteria for a variance, because topography limits development in the area. The applicant listed justification on the application. **Mr. Thurston** added that the variance was from the property line, not the pavement, and that this will keep more room between the houses. **Mr. Tawater** was concerned about changing the look of the subdivision that currently exists. He thought the lots would have to be stepped. **Mr. Church** explained that because of all the rock there would not be any mass grading for this project. **Mr. Thurston** also explained that the cables and wires for the utilities would all be underground in the 9' utility easement, while the sewer line will be in the street under the pavement.

Ms. Durham made a motion for approval of the Variance. **Mr. Rodriguez** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

0:50:19 **8. Consider a Preliminary Plat for Fountain Hills Subdivision - Phase 11, creating 17 new lots, with lots zoned “R-R” and “R-1”, pursuant to Code of Ordinances Chapter 47.**

Ms. Shumsky said the City Engineer had recommended approval after reviewing the Drainage Study. He had also reviewed plans for infrastructure and recommended conditions of approval. **Mr. Thurston** concurred with the conditions. **Mr. Coonradt** expressed concern about density in the area. **Ms. Shumsky** explained that R-R zoning is the least dense allowed, with the greatest lot size. The lots meet all the zoning regulations regarding frontage, setbacks, and lot size. The houses will be a variety of housing types and will not take up the entire buildable area. Builders will have to acquire building permits; the setbacks will be verified and inspected during construction. **Mr. Thurston** explained that the existing homes in the area are in a different zoning than spring hollow. That zone allows for much smaller lots. These new homes will have a minimum of 10,890’ for each lot. They want the larger-sized lots. They didn’t want smaller lots like the ones already there. **Mr. Tawater** complained about the water pressure. **Ms. Shumsky** explained how the water is pumped from the City into the tank on the hill and then to the houses. She is going to ask the utilities department to test the water pressure to make sure it is working properly. **Mr. Tawater** also wanted to know if the houses would be built as the land is bought, or if homes would be built ahead without buyers. **Mr. Thurston** said he tries to have around four spec homes on the market at a time. Others would be built as the land was sold. As one home is sold, another will be built. Another area resident said the water pressure varies. **Ms. Shumsky** explained that pressure changes as needed. When the tank is low and they are pumping it up from the City, there is not as much pressure. Also, when everyone is using the water at the same time, such as now when everyone has to water during the same time of the day for water conservation, then the pressure is less.

Mr. Brown made a motion to approve the Preliminary Plat. The motion was seconded by **Mr. Rodriguez**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:09:44 **14. Consider a recommendation regarding a Zoning Change from “R-1” Residential District to “C-2” Commercial District for an approximately 5.5 acre area, which is a portion of the property located at 3500 National Parks Hwy., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Ms. Shumsky stated that the zone change is justified, because a zone line shouldn’t go right down the middle of a property. This change will make it consistent for the whole lot. Property to the south, north and west are commercial already, so it is not a spot zone. Staff recommended approval. **Dave McFadden** related that it was going to be a quality development of hotels, concrete streets, and an upscale restaurant. **Ms. Shumsky** added that Lewis Road provides a buffer to the residential area. **Mr. Cleary** said he supports the zone change 100% and is pleased to hear the plans proposed. He was afraid it was going to be a man-camp.

Mr. Rodriguez made a motion to recommend approval of the Zone change. **Mr. Brown** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr.**

Rodriguez, Mr. Brown; No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:17:01 **9. Consider an appeal (variance) from Sections 47-44(b)(1) and 56-90(b) to allow the subdivision of Block 5, Lot 9, La Huerta Subdivision, Zoned “R-R”, with 65.96’ of street frontage rather than the required 110’.**

Ms. Gadbury was the representative for this issue. **Ms. Shumsky** said Staff had recommended denial, because it didn’t meet the strict criteria for a variance. However, it does make sense for what they want to do and will make the situation better. The leech line crosses the other property, as it is. The change would have the leech line on its own property and all the buildings would be on one property. **Ms. Gadbury** pointed out that LaHuerta has other houses with narrow drives leading to homes behind them. The change in this instance will make the access wider. There was no public comment.

Mr. Brown made a motion to approve the Variance. The motion was seconded by **Ms. Durham.** The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:24:56 **10. Consider a request for a Conditional Use Permit to allow a massage therapy business as a home occupation, in accordance with Sections 56-41(g) and 56-70(d)(9)(a)(xii), at 901 N. Thomas St., Zoned R-1.**

Ms. Allison-Kosior was present to make her request. **Ms. Shumsky** stated that Staff recommended approval and it would be compatible with surrounding uses. **Ms. Allison-Kosier** said she would like to provide a place of quiet repose for body and spirit, with appointments Wednesday through Saturday. She wants to have no more than four clients per day. She would also like to travel to the elderly or those in the hospital who need her services.

Ms. Durham made a motion to approve the Conditional Use. The motion was seconded by **Mr. Brown.** The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:29:42 **11. Consider a request for a Conditional Use Permit to allow a trucking company and storage of oil field fluids, to be located at 221 W. Rose St., in accordance with Section 56-41(g)(Table 4(1)(b)), Zoned C-2.**

Ms. Shumsky explained that trucking is allowed in this zone with a conditional use permit. Staff recommended approval with conditions. There needs to be a 6’ fence erected around the fluid storage area and the applicant must provide a copy of all appropriate state and federal permits. **Mr. Longoria** said he is using one of the RV’s on the site as his office when he is in town from Roswell. Two other RV’s on the property do not belong to him and should be moved soon. They are not occupied and are not hooked up to utilities. **Ms. Shumsky** confirmed that RV’s are permissible as offices or for a night watchman.

Mr. Brown made a motion to approve the Conditional Use, with conditions. Motion was seconded by **Ms. Durham.** The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:35:32 **12. Consider a request to vacate a portion of an existing alley located within Everts Subdivision, Block 177, located north of Church St. between Canal St. and Halagueno St., pursuant to 3-20-12 NMSA 1978.**

Mr. Byers and Ms. Rinck came forward on behalf of the applicant. They want to combine lots, demolish buildings, realign the sewer line, and have the alley vacated for a CVS Pharmacy to be built. When an alley is vacated, owners on either side take possession of it down the middle. Since CVS is the owner of both sides, they will have all of it. (The north part of the alley will still be open to traffic for Red Chimney.) Staff recommended approval. CVS understands all the conditions and has agreed to follow them. There was no public comment.

Ms. Durham made a motion to approve the Vacation, which was seconded by **Mr. Brown**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:47:02 **13. Consider a recommendation regarding a Zoning Change from “R-1” Residential District to “C-2” Commercial District for an approximately 7.7 acre site, located at 1702 W. Fox St., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Mr. Plumlee, IT Director for the City of Carlsbad, was present as representative for the request. **Ms. Shumsky** explained that City facilities can be located in any zone within the City, but changing the zone makes it more consistent with the use. The City wants to install a tower in the future to improve data communication between the different facilities. They do not have any towers for that purpose at this time. During discussion regarding the tower, it was decided that a zoning change would be a good idea. There was no public comment.

Mr. Brown made a motion to recommend approval of the Zone Change. **Mr. Rodriguez** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:52:00 **15. Consider a recommendation regarding a Zoning Change from “R-R” Rural Residential District to “C-2” Commercial District for an approximately 10.8 acre parcel, which is a portion of the property located at 3711 San Jose Boulevard, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Mr. Stephens, Mr. Bhakta, and Mr. Patel came forward with their request for a zone change. There is commercial development in the area, and the property is surrounded on two sides by commercial zoning. The applicants want to put a hotel and restaurants on the property. There was no public comment.

Mr. Knott made a motion to recommend approval of the Zone Change, which was seconded by **Ms. Durham**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:56:10 **16. Consider a recommendation regarding the Annexation (and subsequent establishment of PUD zoning) of an approximately 20.28 acre parcel located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk, pursuant to the petition method as provided for in Section 3-7-1 et. Seq. NMSA 1978. (CONSIDERED TOGETHER WITH THE NEXT ITEM--#17)**

AND **17. Consider a recommendation regarding the Establishment of Planned Unit Development (PUD) zoning (in conjunction with the previous annexation) of an approximately 20.28 acre area, located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk.**

Mr. Skinner was on hand to answer any questions regarding the requested Annexation and PUD Zoning. **Ms. Shumsky** said that Staff recommended approval contingent on the 1,300 acre annexation from last month's meeting being approved by City Council on May 27th. If that one is not approved, this one won't be either. The concept plan includes some industrial warehouse space and apartments for workforce housing. There will be a 6' opaque wall that separates ingress and egress for residential and industrial uses. Prior to development, the Planning and Zoning commission will have a follow-up for the final PUD and a development agreement. All individual structures and building will also need to get building permits. The modular structures will be approved through the State, but the City building inspectors will approve foundations for the structures. **Mr. Skinner** explained that the efficiency apartments will be exceptionally strong and semi-permanent. The walls have Styrofoam on both sides, with concrete poured into the mesh-reinforced space between after they are placed on the foundation footing. This reduces heating and cooling expenses by 40%. **Ms. Self** expressed her dismay that the sign posted for the annexation had listed her address. She said it was a very unpopular annexation and she had been getting threats to herself and her dogs. **Ms. Shumsky** said that a new sign would be issued and that the address would be corrected.

Mr. Rodriguez made a motion to recommend approval of both the Annexation and Establishment of the PUD (Items 16 and 17). He also noted that the address on the posted sign needs to be changed. **Mr. Brown** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown; No – None; Abstained – None; Absent – Mr. McCormick.** The motion carried.

Mr. Skinner said he had worked on over a hundred zoning cases in New Mexico and Arizona and that we were lucky to have Ms. Shumsky here. He said she is smart and makes it so much easier to work through projects, because she is so capable.

2:17:10 **18. Report regarding plats approved through Summary Review process.**

Ms. Shumsky reported regarding the plats she had signed in March. There was brief discussion of the plat for the property where Church Street Grill is located, where they are combining lots and remodeling their building.

2:20:11 **19. Adjourn.**

There being no further business, the meeting was adjourned.

2:20:38

Stop Recording [7:22:42 PM]

Chairman

Date

DRAFT

CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM
PLANNING AND ZONING COMMISSION

Meeting Date: 5/5/14

DEPARTMENT: Planning,
Engineering and Regulation

BY: Eric Navarrete, City
Engineer

DATE: 4/28/14

SUBJECT: Appeal (variance) from Section 47-42(c)(3) to allow the right-of-way of a future local street, located within Fountain Hills Subdivision – Phase 11, to be 42' in width rather than the required 60'.

Applicant:

Ken Thurston Development Corp.
1880 E. Lohman
Las Cruces, NM 88001

Property Owner:

Don Miehl
916 Fountain Drive
Carlsbad, NM 88220

****The applicant provided the required notification to property owners within 100' and agreed to post the required sign 5-days prior to the public hearing as required by Sec. 56-140(i).***

SYNOPSIS: This variance request accompanies a preliminary plat approval request along with three other variances for Fountain Hills Subdivision – Phase 11, which consists of 17 new lots for residential development. The applicant is requesting a variance from Section 47-42(c)(3) to allow the right-of-way width for the future Christel's Place Road to be 42' instead of the required 60'.

Variances may be permitted by the Planning and Zoning Commission if certain criteria are met according to Section 47-7 which states:

"Whenever, in the opinion of the Board of Appeals, the strict application of the requirements contained in this chapter would result in extreme practical difficulties or undue misuse of property, the board may modify such requirements as necessary so that the subdivider is allowed to develop his/her property in a reasonable manner providing that the public interests of the community and its citizens are protected and the general intent and spirit of these regulations are preserved.

(a) *Criteria.* The Board shall grant the minimum variance or modification to relieve the hardship only upon determination that:

- (1) The variance will not be detrimental to the public health, safety and general welfare of the community; and
- (2) The variance will not adversely affect the reasonable development of adjacent property; and
- (3) The variance is justified because of topographic or other special conditions unique to the property involved in contradistinction to mere inconvenience or financial disadvantage; and
- (4) The variance is consistent with the objectives of this chapter and will not have the effect of nullifying the intent or purpose of this chapter or the comprehensive plan; and
- (5) The variance has been shown to be in the best interest of the general public and not only of interest to the developer, land owner or other interested party; and
- (6) The hardship must not be pecuniary and must be a direct result of the land location, topography or other characteristic; and
- (7) Where a variance is requested from the required provision of sidewalks, an ADA complaint, alternative route to the nearest bus stop or school is required. If an alternative route cannot be provided, a variance shall not be approved."

The applicant provided justification of this request that meets the criteria above. Specifically, subsection 3. The request is the minimum necessary and the justification is reasonable. The site is

steeply sloped and is very rocky.

IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.): The required 60' right-of-way width is meant to provide a uniform look to streets and neighborhoods throughout the city. However, in some areas, it is not feasible to provide this much right-of-way because of topography, existing buildings or structures, uncooperative land owners, etc. The request is the minimum necessary and is reasonable due to the steep slope and rocky terrain of the site. In addition, the narrower right-of-way will allow for the infill development of an existing property which will reduce the impact of costs and city resources to service new land developments associated with urban sprawl.

The following *Greater Carlsbad Comprehensive Plan: Strategy 2030* goals apply to this request:

Section 4 Land Use

Goal 5: "The City of Carlsbad will strive to promote and enhance the general social welfare through land use planning."

Goal 6: "The City of Carlsbad will strive to create an aesthetically pleasing built environment."

Chapter 4: Housing

Goal 2: Carlsbad will ensure that local housing protects the health, safety, and welfare of residents and their neighbors.

PLANNING STAFF RECOMMENDATION: based on review of the application, engineering and planning staff recommends approval.

DEPARTMENT RECOMMENDATION (please check):

	Approval	Denial	n/a		Approval	Denial	n/a
Public Works				Plng., Eng. & Reg. Dept:			
Fire Department	x			Code Enforcement Division			
Legal Department				Engineering Division	x		
Police Department				Planning Division	x		
Utilities Department				Building & Regulation Division			
Culture & Rec. Dept.							

DEPARTMENT COMMENTS:

Public Works:

Utilities Department:

Building Department:

Fire Department: recommend approval, no comments.

Code Enforcement:

Legal Department:

Planning Department: recommend approval, no comments.

Police Department:

Culture and Recreation Department:

City Engineer: recommend approval, no comments.

ATTACHMENTS: Application materials

**CITY OF CARLSBAD**

*Planning, Engineering,
and Regulation Department*

PO Box 1569, Carlsbad, NM 88221

Phone (575) 887-1191

Fax (575) 885-9871

BOARD OF APPEALS APPLICATION
(VARIANCE FROM SUBDIVISION OR ZONING ORDINANCE)
Sec. 47-7 or Sec. 56-150(c)

Application Date: 4/4/14

Fee Paid (\$50.00): ✓ M

APPLICANT INFORMATION:

DON MIEHLS DBA FOUNTIAN HILLS DEVELOPMENT COMPANY 916 FOUNTAIN DRIVE

NAME

ADDRESS

CARLSBAD NM 88220 (575) 887-6132 DONRMEIHLS@GMAIL.COM

CITY

STATE

ZIP

PHONE

EMAIL

PROPERTY OWNER INFORMATION (IF DIFFERENT FROM APPLICANT):

NAME

ADDRESS

CITY

STATE

ZIP

PHONE

EMAIL

LEGAL DESCRIPTION AND/OR STREET ADDRESS OF PROPERTY (FOR WHICH VARIANCE IS REQUESTED): CHRISTEL'S PLACE

TYPE OF REQUEST (CHECK ONE):

X VARIANCE FROM THE **SUBDIVISION REGULATIONS** (CHAPTER 47 - CODE OF ORDINANCES) AS PROVIDED FOR IN SECTION 47-7, VARIANCES.

SPECIFY REGULATION AND/OR SUBSECTION: SECTION 47-42, C, 3

VARIANCE FROM THE **ZONING ORDINANCE** (CHAPTER 56 - CODE OF ORDINANCES) AS PROVIDED FOR IN SECTION 56-150(c).

SPECIFY REGULATION AND/OR SUBSECTION: _____



CITY OF CARLSBAD

*Planning, Engineering,
and Regulation Department*

PO Box 1569, Carlsbad, NM 88221

Phone (575) 887-1191

Fax (575) 885-9871

BOARD OF APPEALS APPLICATION

(VARIANCE FROM SUBDIVISION OR ZONING ORDINANCE)

Sec. 47-7 or Sec. 56-150(c)

PROCESS FOR ACCEPTANCE AND REVIEW OF PLANNING AND ZONING COMMISSION MATTERS

1. The Planning and Zoning Commission's regularly scheduled meetings are on the **FIRST MONDAY OF THE MONTH**. Applicant should obtain an Application Packet for the particular type of request (Zone Change, Subdivision, Variance, Annexation, Conditional Use, etc.) from the City of Carlsbad, Licensing and Permits Office.
2. **Applicant must submit a completed Application to the Licensing and Permits Office on, or before, the FIRST FRIDAY OF THE MONTH prior to the desired Commission meeting.** The minimum application packet submittal is one (1) copy of the Application with original signatures and all required supporting documents. A letter of explanation or clarification may also be provided. The required non-refundable application fee is due with submittal of the application.

The desired maximum size for all documents is 11"x17". **However, if the applicant wishes to support his or her application with larger size documents, an original and fifteen (15) copies need to be provided.** Separate arrangements for copying these large documents may be possible, but will incur additional costs.

3. The Licensing and Permits Office will give the Application an initial cursory review. If deficiencies or questions are noted, the Applicant will be advised and provided an opportunity to supplement the application. If the Applicant fails to complete and resubmit the application prior to the above deadline, the matter will not be heard until the next subsequent Commission meeting. The original application fee will be retained and will suffice for the specific original application for a period of 90-days from the date of the original application.
4. Applications appearing complete will be set for full evaluation by City Staff prior to the Commission meeting. The purpose of this evaluation is to develop and provide a full briefing report for the Commission. Applicants will be advised of deficiencies noted during this review and will be afforded opportunity to supplement their application during their presentation to the Commission, if they so desire.
5. The Planning and Zoning Commission will vote to approve or deny the request. Applicant or his/her representative must be present to address any questions that Planning and Zoning Commissioners may have. Appeals of Planning and Zoning Commission decisions will be heard by the City Council pursuant to Sec. 56-150(c).
6. The applicant shall mail notice of the Planning and Zoning Commission hearing, via certified mail, to all property owners within one-hundred feet (100') of the subject site. Evidence of such notification shall be provided with the application. In addition, the applicant shall post a sign, provided by the City, at the property at least 5 days prior to the public hearing.

JUSTIFICATION FOR REQUEST AND SITE PLAN: (Describe the topographical uniqueness of the property or extreme practical difficulties or undue hardship that would result from the strict application of the requirement(s) contained in the ordinance section from which the variance is requested. Include a site plan drawn to scale or with accurate dimensions showing property lines, existing and proposed fences and/or walls, setbacks, building and structure locations and parking areas. Attach a separate sheet if necessary.)

FOUNTAIN HILLS #11

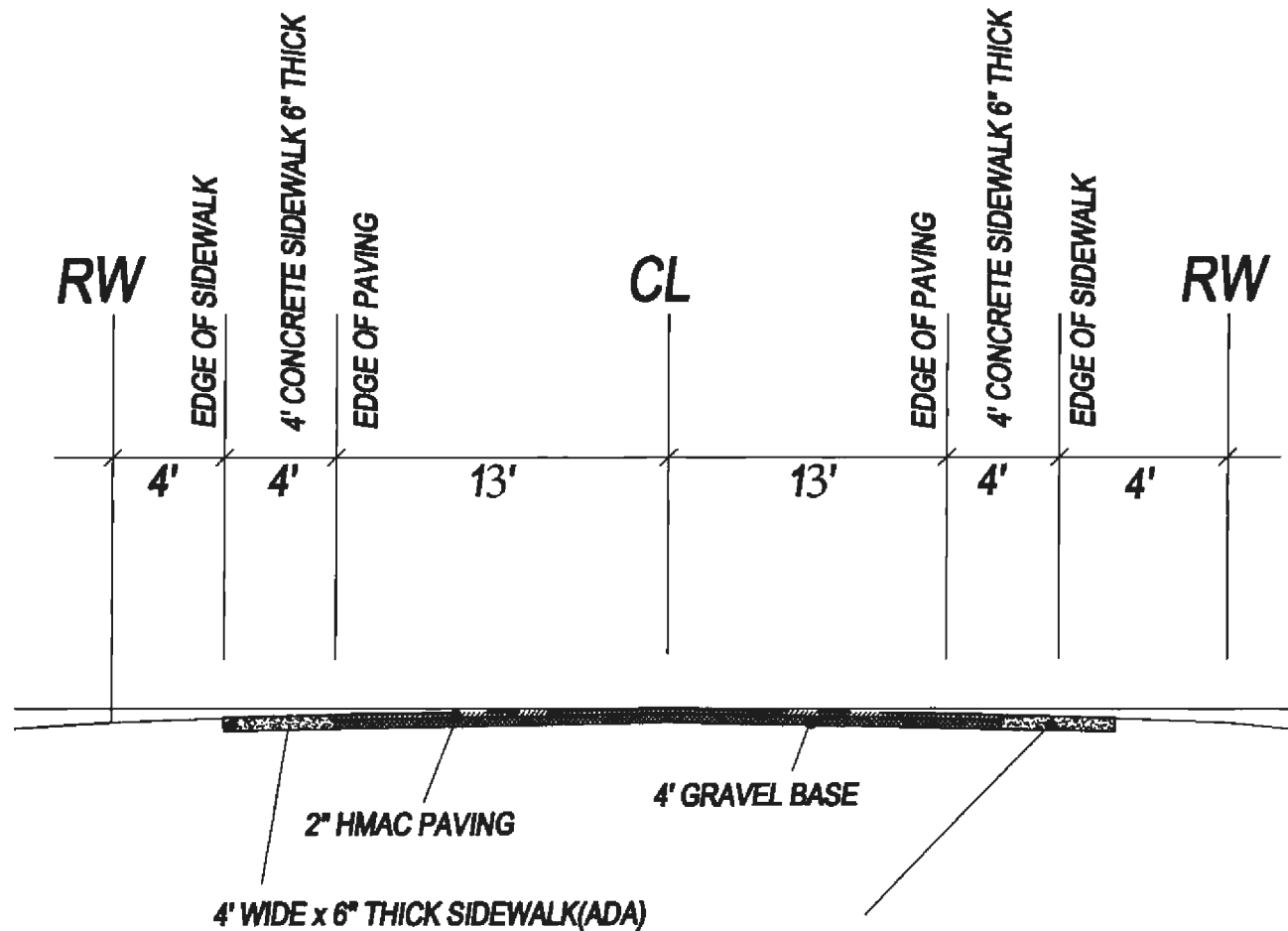
VARIANCE REQUEST

STREET WIDTH – City of Carlsbad Design Standard Section 47-42, Part C-3

Standard Width of Roadway Right-of-Way 60'

A. Variance is requested from the 60' width to a requested Street Width of 42' Right-of Way.

The reason for the right-of-way width variance request is to enable the developer to work with the existing steep terrain in the Fountain Hills area. The concept for the construction of the roadways is to generally build the roadway section on the top of the existing ridge lines in general. Considering the steepness of the terrain, we request to be allowed to narrow the right of way to a minimum and position the home as close to the roadway as possible. To assist in that design goal, we ask that the right-of- way for the in the area be reduced to 42' wide for the roadway. As the typical details shows, there will be many locations where we are planning to construct a split level structure that will accommodate the steep terrain.



**TYPICAL ROADWAY SECTION
FOUNTAIN HILLS # 11**

Zoning Ordinance

Criteria for Appeals - Sec. 56-150(c)(4):

The purpose of the appeal procedure is to determine if the decision being appealed meets the requirements of this Zoning Ordinance. The City Council or the Planning and Zoning Commission, when hearing an appeal, is limited to the following determinations:

- (a) The decision-maker made an error in reviewing whether a standard was met, by a misreading of the facts, plans, regulations or an error in judgment.
- (b) Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility.
- (c) The decision-maker made the decision on standards not contained in this or other City ordinances, regulations or state law; or a standard was applied more strictly or broadly than is appropriate to implement the City's Comprehensive Plan and this Zoning Ordinance.

Subdivision Regulations

Criteria for Appeals – Sec. 47-7

Whenever, in the opinion of the board of appeals, the strict application of the requirements contained in this chapter would result in extreme practical difficulties or undue misuse of property, the board may modify such requirements as are necessary so that the subdivider is allowed to develop his/her property in a reasonable manner providing that the public interests of the community and its citizens are protected and the general intent and spirit of these regulations are preserved. **The board shall grant such a variance or modification only upon determination that:**

- 1. The variance will not be detrimental to the public health, safety and general welfare of the community;**
- 2. The variance will not adversely affect the reasonable development of adjacent property;**
- 3. The variance is justified because of topographic or other special conditions unique to the property involved in contradistinction to mere inconvenience or financial disadvantage;**
- 4. The variance is consistent with the objectives of this chapter and will not have the effect of nullifying the intent or purpose of this chapter or the comprehensive plan.**

FOR OFFICIAL USE ONLY:

Required prior to P & Z:

Complete Application Including:

- | | | | |
|---|---|---------------------------------------|--|
| <input type="checkbox"/> Site Plan | <input type="checkbox"/> Fee | <input type="checkbox"/> Notification | <input type="checkbox"/> Letter of Explanation |
| <input type="checkbox"/> Sign Posting Agreement | | | <input type="checkbox"/> Sign Posted |
| <input type="checkbox"/> ABM | <input type="checkbox"/> Staff Comments | | <input type="checkbox"/> Application Packet |

P & Z Action: ☐ Approved ☐ Denied ☐ Other Date: _____

NOTIFICATION SIGN POSTING AGREEMENT

Notification of Public Hearings before the City of Carlsbad Planning and Zoning Commission is required pursuant to Sec. 56-140(i).

- Signs shall be posted a minimum of 5 days prior to and shall be removed a maximum of 5 days after the public hearing.
- If the sign is not posted as required, the application will be delayed and will not be considered at the public hearing as scheduled.
- The sign shall be posted at the street side property line with a secure stake provided by the applicant.

I have read and understand these requirements. I understand where the sign is to be located and my obligation to post the sign prior to the public hearing and remove it afterwards.


APPLICANT SIGNATURE


DATE

Sign issued by:


Staff Member

Date: 4/4/14

Dear Property Owner,

This letter serves as legal notification of a pending action before the City of Carlsbad Planning and Zoning Commission in accordance with Code of Ordinances Sec. 56-140(i). You are being notified because you are a property owner within one-hundred feet (100') of the subject site.

Applicant: DON MIEHLS 916 FOUNTIAN DRIVE (575) 887-6132
Name Address Phone

Subject Site Location: CHRISTEL'S PLACE OFF MIEHLS DRIVE

The proposed action is a:

☐ Zoning Change from _____ to _____ in accordance with Sec. 56-150(b).

☒ Variance/Appeal from Sec. 47-42, C, 3 in accordance with Sec. 56-150(c).

The purpose of the variance/appeal is:

The variance is requested to help with the steep slope of the terrain and associated utility issues.

☐ Conditional Use Permit in accordance with Sec. 56-150(f). The purpose of the permit is for a:

☐ Home Occupation: _____

☐ Other Use: _____

The Planning and Zoning Commission will consider this request at a Public Hearing on:

Date: 5/5/14

Time: 5:00pm

Place: City Hall Planning Room, 2nd Floor

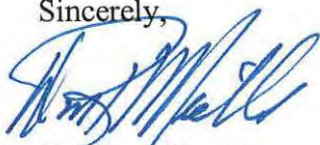
101 N. Halagueno St.

Carlsbad, NM 88220

The Code of Ordinances can be found on the City's website www.cityofcarlsbadnm.com.

For details about this request contact the applicant OR contact the City Planner at 575-234-7923 or via email at sshumsky@cityofcarlsbadnm.com.

Sincerely,

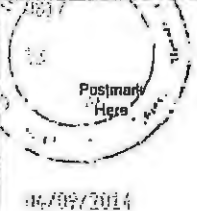


Applicant/Agent

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Total Postage & Fees	\$ 4.47	

04/09/2014

Sent To: Friend, Mark
 Street, Apt. No., or PO Box No. 1104 miehls Dr
 City, State, ZIP+4[®] Carlsbad NM 88220

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Sent To: Cox, Jeffery + Helen
 Street, Apt. No., or PO Box No. PO Box 1971
 City, State, ZIP+4[®] Carlsbad NM 88221

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Total Postage & Fees	\$ 4.47	

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Sent To: Moheky-Roybal, Lita J
 Street, Apt. No., or PO Box No. 912 fountain DR
 City, State, ZIP+4[®] Carlsbad NM 88220

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Sent To: Prather Pau TR, Frank & Francis
 Street, Apt. No., or PO Box No. 815 E Riverside Dr
 City, State, ZIP+4[®] Carlsbad NM 88220

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Sent To: Zenger, William J + Linda
 Street, Apt. No., or PO Box No. 28 Chapala Rd
 City, State, ZIP+4[®] Santa Fe NM 87508

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Sent To: Jensen Revocable Family Trust
 Street, Apt. No., or PO Box No. 1106 miehls Dr
 City, State, ZIP+4[®] Carlsbad NM 88220

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7013 2630 0000 3103 3178

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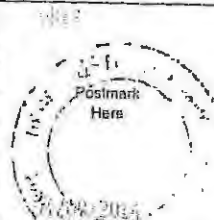


Sent To Tawater Family Trust
 Street, Apt. No.,
 or PO Box No. 908 Fountain Dr
 City, State, ZIP+4 Carlsbad NM 88220
 PS Form 3800, August 2006 See Reverse for Instructions

7013 2630 0000 3103 3192

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Restricted Delivery Fee (Endorsement Required)		00.00
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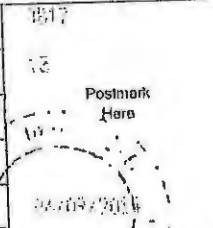


Sent To Atto, James + Loretta
 Street, Apt. No.,
 or PO Box No. 908 Fountain Dr
 City, State, ZIP+4 Carlsbad NM 88220
 PS Form 3800, August 2006 See Reverse for Instructions

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Restricted Delivery Fee (Endorsement Required)		00.00
Total Postage & Fees	\$	00.00



Sent To Sferneck, Brandon + Suzanne
 Street, Apt. No.,
 or PO Box No. 511 S Tidwell RD
 City, State, ZIP+4 Carlsbad NM 88220
 PS Form 3800, August 2006 See Reverse for Instructions

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Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 34.79	04/09/2014

Sent To: Michls, Dennis + Janet
Street, Apt. No.,
or PO Box No. 1202 Michls Drive
City, State, ZIP+4 Carlsbad NM 88220
PS Form 3800, August 2008 See Reverse for Instructions

7013 2630 0000 3103 3130

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Certified Fee	\$ 3.30	
Return Receipt Fee (Endorsement Required)	\$ 0.00	
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 34.99	04/09/2014

Sent To: Blenden, James Phillip
Street, Apt. No.,
or PO Box No. 902 Fountain Drive
City, State, ZIP+4 Carlsbad NM 88220
PS Form 3800, August 2008 See Reverse for Instructions

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Postage	\$ 31.79	0817
Certified Fee	\$ 3.30	
Return Receipt Fee (Endorsement Required)	\$ 0.00	
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 34.79	04/09/2014

Sent To: M BONDRE-Kange - Grace
Street, Apt. No.,
or PO Box No. 1206 Michls Dr
City, State, ZIP+4 Carlsbad NM 88220
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7013 2630 0000 3103 3079

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Certified Fee	\$ 3.30	
Return Receipt Fee (Endorsement Required)	\$ 0.00	
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 34.79	04/09/2014

Sent To: Light, Bradley T & Stanley W
Street, Apt. No.,
or PO Box No. P.O. Box 1359
City, State, ZIP+4 Carlsbad NM 88221
PS Form 3800, August 2008 See Reverse for Instructions

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Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
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Sent To: Parker, Joe Ed & Mary
Street, Apt. No.,
or PO Box No. 914 Fountain Dr
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7013 2630 0000 3102 7672

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Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
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Sent To: COONRADT, Dean & Alice
Street, Apt. No.,
or PO Box No. 910 Fountain Dr
City, State, ZIP+4 Carlsbad NM 88220
PS Form 3800, August 2008 See Reverse for Instructions

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

COUNCIL MEETING DATE: 6/10/14

DEPARTMENT: Planning, Engineering and Regulation	BY: Stephanie Shumsky, Planning Director	DATE: 5/29/14
<p>SUBJECT: Appeal of the Planning and Zoning Commission's decision to approve a variance from Section 47-62(d) that would allow the pavement width of future streets to be 26' in width rather than the required 28' and to allow the construction of the street without curb and gutter, in Fountain Hills Subdivision – Phase 11, Zoned Rural Residential District (R-R).</p> <p>Appellant (Primary Contact): Dave Tawater 908 Fountain Drive Carlsbad, NM 88220</p>		
<p>SYNOPSIS, HISTORY and IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.): At their regularly scheduled meeting on May 5, 2014, the Planning and Zoning Commission considered the request as stated above. The Commission voted to approve the requested variance, as described in the attached P&Z meeting packet and minutes, with a vote of 4-0.</p> <p>The process and criteria for appeals related to the Subdivision Ordinance is different than the process and criteria for appeals related to the Zoning Ordinance. For appeals related to the Subdivision Ordinance, the Board of Appeals, which in this case is the City Council, reviews the appeal based on the same criteria that the Planning and Zoning Commission's decision was based on. This criteria is provided in Code of Ordinances Section 47-7, which states:</p> <p>“Whenever, in the opinion of the Board of Appeals, the strict application of the requirements contained in this chapter would result in extreme practical difficulties or undue misuse of property, the board may modify such requirements as necessary so that the subdivider is allowed to develop his/her property in a reasonable manner providing that the public interests of the community and its citizens are protected and the general intent and spirit of these regulations are preserved.</p> <p>(a) <i>Criteria.</i> The Board shall grant the minimum variance or modification to relieve the hardship only upon determination that:</p> <ol style="list-style-type: none">(1) The variance will not be detrimental to the public health, safety and general welfare of the community; and(2) The variance will not adversely affect the reasonable development of adjacent property; and(3) The variance is justified because of topographic or other special conditions unique to the property involved in contradistinction to mere inconvenience or financial disadvantage; and(4) The variance is consistent with the objectives of this chapter and will not have the effect of nullifying the intent or purpose of this chapter or the comprehensive plan; and(5) The variance has been shown to be in the best interest of the general public and not only of interest to the developer, land owner or other interested party; and(6) The hardship must not be pecuniary and must be a direct result of the land location, topography or other characteristic; and(7) Where a variance is requested from the required provision of sidewalks, an ADA complaint, alternative route to the nearest bus stop or school is required. If an alternative route cannot be provided, a variance shall not be approved. <p>(b) <i>Procedure.</i></p> <ol style="list-style-type: none">(1) An application for a variance shall be submitted in writing on the prescribed forms by the subdivider at the time when the preliminary plat is filed for consideration by the Board of Appeals. The application shall state fully the grounds for the application, a		

response to the criteria for a variance as stated in Section 47-7(a), and all of the facts relied upon by the applicant.

- (2) Notification for the requested variance shall be posted by the applicant, on the property at the property line closest to a street, on a sign provided by the City, a minimum of five (5) days prior to the Board of Appeals hearing of the request. The sign shall state the date, time and location of the Board of Appeals hearing and a description of the request.
- (3) The Board of Appeals shall hear the request at its next regularly scheduled meeting the following month. The Board of Appeals may approve, approve with conditions, deny, continue or defer the request. In the case of deferral or continuance, the Board of Appeals shall make a decision within 90 days of the initial hearing.

In accordance with the appeal procedure stated above, the applicant complied with all of the notification requirements (see P&Z packet attached).

The appellant filed the appeal on May 19, 2014. The reason for the appeal is stated in the appellant's letter.

The Board of Appeals (City Council), by a simple majority vote of the members present, may approve, approve with conditions, deny, continue or defer the request. In the case of deferral or continuance, the Board of Appeals shall make a decision within 90 days of the initial hearing.

BOARD/COMMISSION/COMMITTEE ACTION:

<input checked="" type="checkbox"/> P&Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	<input checked="" type="checkbox"/> APPROVED
<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> DISSAPPROVED
<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> _____ Committee	

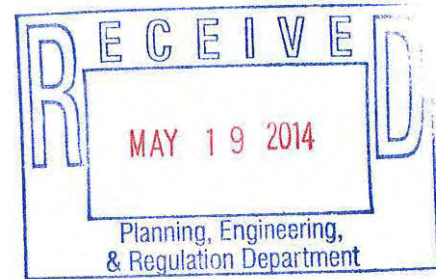
Reviewed by

City Administrator: /s/ Steve McCutcheon

Date: June 5, 2014

ATTACHMENTS: appellant's letter, P&Z meeting packet and minutes

May 19, 2014



Ms. Stephanie Shumsky

City of Carlsbad Planning Department

Carlsbad, NM 88220

Dear Ms. Shumsky,

Enclosed you will find a presentation of 4 signed protests of the Planning and Zoning actions of May 5, 2014, regarding Fountain Hills.

We request notification of the time and date of the City Council meeting when these protests will be heard. We request a date of June 10 or later for this City Council hearing.

Primary contact is Dave Tawater, 908 Fountain, 885-5722

Secondary contact is Marie Wilburn, 1210 Miehl Drive, 887-2440

Sincerely,

A handwritten signature in dark ink, appearing to read "Dave Tawater", written in a cursive style.

Dave Tawater

To: Carlsbad City Administrator

May 19, 2014



Subject: Protest of the City Planning and Zoning Commission decision on May 5, 2014

Reference: Zoning variance 47-62D for allowance of the street pavement width to be 26 feet rather than the required 28 feet.

The above referenced variance request (47-62 D) allows the pavement width of a future street to be 26 feet rather than the required 28 feet and to allow the construction of the street without curb and gutter in the proposed Fountain Hills Subdivision Phase II.

The Carlsbad Planning and Zoning Commission's decision to approve the subject variance was arbitrary and did not support a due diligence evaluation of the overall impact to the existing neighborhood. The decision contributes to a greater density of new home construction and will adversely affect the interest of the below signed property owners. This decision also increases the probability of greater water runoff during extreme rainfall events.

Streets without curb and gutter allow water to flow to the lowest point, allowing for flooded front and back yards as well as the possibility of water in the houses. Curb and gutter directs water so that run-off can be controlled and drainage allowed. Curb and gutter should especially be required in hilly areas.

The aggrieved parties request a reversal of the decision by the Planning and Zoning Commission that will require the subdivision to comply with existing zoning regulations and require curbing of the proposed street to be consistent with the existing road entrance to the subdivision.

Respectfully submitted,

David A. Sawyer
Debra M. Sawyer
Mark A. F.
1104 MYRTLES DR.
Paul Blenden 902 Fountain Dr.

92 E Park 914 Fountain Dr.
908 Fountain Dr.
Mary Parker 914 Fountain

Jim B.R.
Debra Coonrod
Paul Brand 803 Dennis Way
Brad Hendon
Barbara Dalton

MINUTES OF THE REGULAR MEETING OF THE

**City of Carlsbad
Planning & Zoning Commission**

May 5, 2014, at 5:00 p.m.

Meeting Held in the Planning Room

CITY OF CARLSBAD
CARLSBAD, NEW MEXICO

AGENDA

PLANNING AND ZONING COMMISSION
REGULAR MEETING

Monday, May 5, 2014 at 5:00 PM

Municipal Building 101 N. Halagueno Street
Planning Room (Second Floor)

1. Roll call of voting members and determination of quorum.
2. Approval of Agenda.
3. Approval of Minutes from the Regular Meeting held April 7, 2014.
4. Consider an appeal (variance) from Section 47-42(c)(3) to allow the right-of-way of a future street to be 42' in width rather than the required 60', within Fountain Hills Subdivision – Phase 11.
5. Consider an appeal (variance) from Section 47-62(d) to allow the pavement width of a future street to be 26' in width rather than the required 28' and to allow the construction of the street without curb and gutter, within Fountain Hills Subdivision – Phase 11,
6. Consider an appeal (variance) from Section 47-42(c)(4) to allow a street ending in a cul-de-sac to be 889' in length instead of the maximum 800' and to serve 17 lots instead of the maximum 15 lots, within Fountain Hills Subdivision – Phase 11.
7. Consider an appeal (variance) from Section 56-90(b) to allow front-yard setbacks of 20' instead of the required 30', within Fountain Hills Subdivision – Phase 11.
8. Consider a Preliminary Plat for Fountain Hills Subdivision - Phase 11, creating 17 new lots, with lots zoned "R-R" and "R-1", pursuant to Code of Ordinances Chapter 47.
9. Consider an appeal (variance) from Sections 47-44(b)(1) and 56-90(b) to allow the subdivision of Block 5, Lot 9, La Huerta Subdivision, Zoned "R-R", with 65.96' of street frontage rather than the required 110'.
10. Consider a request for a Conditional Use Permit to allow a massage therapy business as a home occupation, in accordance with Sections 56-41(g) and 56-70(d)(9)(a)(xii), at 901 N. Thomas St., Zoned R-1.
11. Consider a request for a Conditional Use Permit to allow a trucking company and storage of oil field fluids, to be located at 221 W. Rose St., in accordance with Section 56-41(g)(Table 4(1)(b)), Zoned C-2.
12. Consider a request to vacate a portion of an existing alley located within Everts Subdivision, Block 177, located north of Church St. between Canal St. and Halagueno St., pursuant to 3-20-12 NMSA 1978.
13. Consider a recommendation regarding a Zoning Change from "R-1" Residential District to "C-2" Commercial District for an approximately 7.7 acre site, located at

1702 W. Fox St., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.

14. Consider a recommendation regarding a Zoning Change from "R-1" Residential District to "C-2" Commercial District for an approximately 5.5 acre area, which is a portion of the property located at 3500 National Parks Hwy., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
15. Consider a recommendation regarding a Zoning Change from "R-R" Rural Residential District to "C-2" Commercial District for an approximately 10.8 acre parcel, which is a portion of the property located at 3711 San Jose Boulevard, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
16. Consider a recommendation regarding the Annexation (and subsequent establishment of PUD zoning) of an approximately 20.28 acre parcel located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk, pursuant to the petition method as provided for in Section 3-7-1 et. Seq. NMSA 1978.
17. Consider a recommendation regarding the Establishment of Planned Unit Development (PUD) zoning (in conjunction with the previous annexation) of an approximately 20.28 acre area, located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk.
18. Report regarding plats approved through Summary Review process.
19. Adjourn.

***Note: The zoning change requests for 509 W. Pierce St. will be scheduled for the June 2, 2014 Commission meeting (adjacent property owners had been sent notification letters with a May 5, 2014 meeting date on it).**

If you require hearing interpreters, language interpreters, auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's offices at (575) 887-1191 at least 48 hours prior to the scheduled meeting.

**MINUTES OF A REGULAR MEETING OF THE CITY OF CARLSBAD PLANNING &
ZONING COMMISSION HELD IN THE MUNICIPAL BUILDING PLANNING ROOM,
101 N. HALAGUENO STREET, MAY 5, 2014, AT 5:00 P.M.**

VOTING MEMBERS PRESENT:

**JAMES KNOTT
RICK BROWN
WANDA DURHAM
EDDIE RODRIGUEZ**

**CHAIRPERSON
COMMISSIONER
COMMISSIONER
COMMISSIONER**

VOTING MEMBERS ABSENT:

JAMES MCCORMICK

COMMISSION SECRETARY

EX-OFFICIO MEMBERS PRESENT:

STEPHANIE SHUMSKY

PLANNING DIRECTOR

BOARD SECRETARY PRESENT:

PATTIE PISTOLE

**PLANNING, ENGINEERING
AND REGULATION DEPARTMENT
SECRETARY**

OTHERS PRESENT:

DAVID CHURCH	3280 VIEW DR., LAS CRUCES
KEN THURSTON	1880 E. LOHMAN, LAS CRUCES
BARBRA DALTON	811 DENNIS WAY
MICHAEL CLEARY	206 TAYLOR CIRCLE
LUZ E PUEDA	101 E. HAMILTON
TESS GADBURY	1314 DOEPP DRIVE
GRACE KNOX	2084 N. CANAL
ROBERT KNOX	2084 N. CANAL
KERRI DUNAGAN HARVEY	1206 APACHE
ANITA J. SELF	6511 KEVIL ROAD
DENNIS S. MIEHLS	1202 MIEHLS DRIVE
RIC CORDER	1106 MIEHLS DRIVE
CRAIG STEPHENS	101 S. CANYON
AMIT BHAKTA	2420 E. RIVERSIDE
PETE LONGORIA	221 W. ROSE
MILAN PATEL	1834 HAYS DRIVE
DEAN COONRADT	910 FOUNTAIN
DIANA RINCK	2121 W. CHANDLER, PHOENIX
GOSIE ALLISON-KOSIOR	901 N. THOMAS
STAN ALLISON	901 N. THOMAS
KEN SKINNER	4430 N. 22ND, PHOENIX
BRAD HERNDON	1326 W. SHAW
SAM PLUMLEE	100 N. HALAGUENO
MATT BYERS	112 N. CANYON
HELEN TAWATER	908 FOUNTAIN DRIVE
DAVID TAWATER	908 FOUNTAIN DRIVE
& SEVERAL OTHERS WHO DIDN'T SIGN IN	

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:00 Start Recording [5:02:04 PM]

0:00:03 **1. Roll call of voting members and determination of quorum.**

Mr. Knott called roll. There was a quorum. Present: **Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown.** Absent: **Mr. McCormick.**

0:00:18 **2. Approval of Agenda.**

Motion was made by **Ms. Durham** for approval of an amended Agenda. Item #14 was moved to follow Item #8. **Mr. Brown** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

0:01:14 **3. Approval of Minutes from the Regular Meeting held April 7, 2014.**

Motion made by **Mr. Brown** and seconded by **Ms. Durham** for approval of the Minutes. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

0:01:52 **4. Consider an appeal (variance) from Section 47-42(c)(3) to allow the right-of-way of a future street to be 42' in width rather than the required 60', within Fountain Hills Subdivision – Phase 11.**

Mr. Thurston came forward to represent Mr. Miehl, who was also present in the audience. **Ms. Shumsky** stated that Staff recommended approval, because the special topography of the area met the criteria for a variance. **Mr. Thurston** added that the site is difficult because of the steep slant of the terrain. **Mr. Tawater** came forward during public comment. He wanted to know why the other part of the subdivision was built within the ordinance as it existed, with retaining walls to deal with the terrain. **Ms. Shumsky** explained that the existing subdivision did not adhere to the previous subdivision regulations, because it has no curbs, gutters, or sidewalks, and the new road will be the same width as the existing one. **Mr. Thurston** said the concept is to put the houses a little closer to the front, so that the first story will be at street level, with walk-out basements below. Some homes will be three stories high. **Mr. Coonradt**, another resident in the area, expressed concern that all the houses there are special, custom-built homes. **Mr. Thurston** said his intention was to increase the value of the area, not decrease. He said a few may be the same, but most will have to be different because the topography is different for each lot. **Ms. Dalton** wanted to know if the new utilities would be underground like the existing ones, or if there would be poles. **Mr. Thurston** explained that they will be underground. **Mr. Herndon** asked about the narrowing pavement, but **Mr. Thurston** explained that the pavement will be the same width as the existing pavement.

Motion made by **Mr. Brown** for approval of the Variance. **Mr. Rodriguez** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

0:23:25 **5. Consider an appeal (variance) from Section 47-62(d) to allow the pavement width of a future street to be 26' in width rather than the required 28' and to allow the construction of the street without curb and gutter, within Fountain Hills Subdivision – Phase 11.**

Ms. Shumsky stated that Staff had recommended approval after reviewing the Drainage Master Plan. Curbs and gutters are good for run-off in flat areas, but in hilly areas you want to keep the water draining as naturally as possible and build around it. That also keeps the area as natural-looking as possible. **Mr. Thurston** added that there will be a sidewalk, however, which will be 6" thick and 4' wide. **Mr. Church**, the hydrologist for the project, stated that there would be a change in the elevation of the road only.

Motion was made by **Mr. Rodriguez** for approval of the Variance. **Ms. Durham** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

0:29:43 **6. Consider an appeal (variance) from Section 47-42(c)(4) to allow a street ending in a cul-de-sac to be 889' in length instead of the maximum 800' and to serve 17 lots instead of the maximum 15 lots, within Fountain Hills Subdivision – Phase 11.**

Ms. Shumsky explained that there would still be the required space needed for emergency trucks to turn around and for fire hoses to reach. The Fire Department did not object. Staff recommended approval, with conditions. **Ms. Dalton** wanted to know about the effect on water pressure for the neighborhood, because she did not have adequate pressure now. **Mr. Church** said he talked with Luis Camaro about a possible pressure booster. The City is conscious of the problem and is trying to address it. **Mr. Herndon** wanted to know about the cul-de-sac width. **Ms. Shumsky** stated that it meets City standards.

Mr. Brown made a motion for approval of the Variance, with conditions. The motion was seconded by **Ms. Durham**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

0:39:16 **7. Consider an appeal (variance) from Section 56-90(b) to allow front-yard setbacks of 20' instead of the required 30', within Fountain Hills Subdivision – Phase 11.**

Ms. Shumsky stated that Staff recommended approval, even though it did not meet the strict criteria for a variance, because topography limits development in the area. The applicant listed justification on the application. **Mr. Thurston** added that the variance was from the property line, not the pavement, and that this will keep more room between the houses. **Mr. Tawater** was concerned about changing the look of the subdivision that currently exists. He thought the lots would have to be stepped. **Mr. Church** explained that because of all the rock there would not be any mass grading for this project. **Mr. Thurston** also explained that the cables and wires for the utilities would all be underground in the 9' utility easement, while the sewer line will be in the street under the pavement.

Ms. Durham made a motion for approval of the Variance. **Mr. Rodriguez** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

0:50:19 **8. Consider a Preliminary Plat for Fountain Hills Subdivision - Phase 11, creating 17 new lots, with lots zoned “R-R” and “R-1”, pursuant to Code of Ordinances Chapter 47.**

Ms. Shumsky said the City Engineer had recommended approval after reviewing the Drainage Study. He had also reviewed plans for infrastructure and recommended conditions of approval. **Mr. Thurston** concurred with the conditions. **Mr. Coonradt** expressed concern about density in the area. **Ms. Shumsky** explained that R-R zoning is the least dense allowed, with the greatest lot size. The lots meet all the zoning regulations regarding frontage, setbacks, and lot size. The houses will be a variety of housing types and will not take up the entire buildable area. Builders will have to acquire building permits; the setbacks will be verified and inspected during construction. **Mr. Thurston** explained that the existing homes in the area are in a different zoning than spring hollow. That zone allows for much smaller lots. These new homes will have a minimum of 10,890’ for each lot. They want the larger-sized lots. They didn’t want smaller lots like the ones already there. **Mr. Tawater** complained about the water pressure. **Ms. Shumsky** explained how the water is pumped from the City into the tank on the hill and then to the houses. She is going to ask the utilities department to test the water pressure to make sure it is working properly. **Mr. Tawater** also wanted to know if the houses would be built as the land is bought, or if homes would be built ahead without buyers. **Mr. Thurston** said he tries to have around four spec homes on the market at a time. Others would be built as the land was sold. As one home is sold, another will be built. Another area resident said the water pressure varies. **Ms. Shumsky** explained that pressure changes as needed. When the tank is low and they are pumping it up from the City, there is not as much pressure. Also, when everyone is using the water at the same time, such as now when everyone has to water during the same time of the day for water conservation, then the pressure is less.

Mr. Brown made a motion to approve the Preliminary Plat. The motion was seconded by **Mr. Rodriguez**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:09:44 **14. Consider a recommendation regarding a Zoning Change from “R-1” Residential District to “C-2” Commercial District for an approximately 5.5 acre area, which is a portion of the property located at 3500 National Parks Hwy., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Ms. Shumsky stated that the zone change is justified, because a zone line shouldn’t go right down the middle of a property. This change will make it consistent for the whole lot. Property to the south, north and west are commercial already, so it is not a spot zone. Staff recommended approval. **Dave McFadden** related that it was going to be a quality development of hotels, concrete streets, and an upscale restaurant. **Ms. Shumsky** added that Lewis Road provides a buffer to the residential area. **Mr. Cleary** said he supports the zone change 100% and is pleased to hear the plans proposed. He was afraid it was going to be a man-camp.

Mr. Rodriguez made a motion to recommend approval of the Zone change. **Mr. Brown** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr.**

Rodriguez, Mr. Brown; No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:17:01 **9. Consider an appeal (variance) from Sections 47-44(b)(1) and 56-90(b) to allow the subdivision of Block 5, Lot 9, La Huerta Subdivision, Zoned “R-R”, with 65.96’ of street frontage rather than the required 110’.**

Ms. Gadbury was the representative for this issue. **Ms. Shumsky** said Staff had recommended denial, because it didn’t meet the strict criteria for a variance. However, it does make sense for what they want to do and will make the situation better. The leech line crosses the other property, as it is. The change would have the leech line on its own property and all the buildings would be on one property. **Ms. Gadbury** pointed out that LaHuerta has other houses with narrow drives leading to homes behind them. The change in this instance will make the access wider. There was no public comment.

Mr. Brown made a motion to approve the Variance. The motion was seconded by **Ms. Durham.** The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:24:56 **10. Consider a request for a Conditional Use Permit to allow a massage therapy business as a home occupation, in accordance with Sections 56-41(g) and 56-70(d)(9)(a)(xii), at 901 N. Thomas St., Zoned R-1.**

Ms. Allison-Kosior was present to make her request. **Ms. Shumsky** stated that Staff recommended approval and it would be compatible with surrounding uses. **Ms. Allison-Kosier** said she would like to provide a place of quiet repose for body and spirit, with appointments Wednesday through Saturday. She wants to have no more than four clients per day. She would also like to travel to the elderly or those in the hospital who need her services.

Ms. Durham made a motion to approve the Conditional Use. The motion was seconded by **Mr. Brown.** The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:29:42 **11. Consider a request for a Conditional Use Permit to allow a trucking company and storage of oil field fluids, to be located at 221 W. Rose St., in accordance with Section 56-41(g)(Table 4(1)(b)), Zoned C-2.**

Ms. Shumsky explained that trucking is allowed in this zone with a conditional use permit. Staff recommended approval with conditions. There needs to be a 6’ fence erected around the fluid storage area and the applicant must provide a copy of all appropriate state and federal permits. **Mr. Longoria** said he is using one of the RV’s on the site as his office when he is in town from Roswell. Two other RV’s on the property do not belong to him and should be moved soon. They are not occupied and are not hooked up to utilities. **Ms. Shumsky** confirmed that RV’s are permissible as offices or for a night watchman.

Mr. Brown made a motion to approve the Conditional Use, with conditions. Motion was seconded by **Ms. Durham.** The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown;** No – None; Abstained – None; Absent – **Mr. McCormick.** The motion carried.

1:35:32 **12. Consider a request to vacate a portion of an existing alley located within Everts Subdivision, Block 177, located north of Church St. between Canal St. and Halagueno St., pursuant to 3-20-12 NMSA 1978.**

Mr. Byers and Ms. Rinck came forward on behalf of the applicant. They want to combine lots, demolish buildings, realign the sewer line, and have the alley vacated for a CVS Pharmacy to be built. When an alley is vacated, owners on either side take possession of it down the middle. Since CVS is the owner of both sides, they will have all of it. (The north part of the alley will still be open to traffic for Red Chimney.) Staff recommended approval. CVS understands all the conditions and has agreed to follow them. There was no public comment.

Ms. Durham made a motion to approve the Vacation, which was seconded by **Mr. Brown**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:47:02 **13. Consider a recommendation regarding a Zoning Change from “R-1” Residential District to “C-2” Commercial District for an approximately 7.7 acre site, located at 1702 W. Fox St., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Mr. Plumlee, IT Director for the City of Carlsbad, was present as representative for the request. **Ms. Shumsky** explained that City facilities can be located in any zone within the City, but changing the zone makes it more consistent with the use. The City wants to install a tower in the future to improve data communication between the different facilities. They do not have any towers for that purpose at this time. During discussion regarding the tower, it was decided that a zoning change would be a good idea. There was no public comment.

Mr. Brown made a motion to recommend approval of the Zone Change. **Mr. Rodriguez** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:52:00 **15. Consider a recommendation regarding a Zoning Change from “R-R” Rural Residential District to “C-2” Commercial District for an approximately 10.8 acre parcel, which is a portion of the property located at 3711 San Jose Boulevard, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Mr. Stephens, Mr. Bhakta, and Mr. Patel came forward with their request for a zone change. There is commercial development in the area, and the property is surrounded on two sides by commercial zoning. The applicants want to put a hotel and restaurants on the property. There was no public comment.

Mr. Knott made a motion to recommend approval of the Zone Change, which was seconded by **Ms. Durham**. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown**; No – None; Abstained – None; Absent – **Mr. McCormick**. The motion carried.

1:56:10 **16. Consider a recommendation regarding the Annexation (and subsequent establishment of PUD zoning) of an approximately 20.28 acre parcel located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk, pursuant to the petition method as provided for in Section 3-7-1 et. Seq. NMSA 1978. (CONSIDERED TOGETHER WITH THE NEXT ITEM--#17)**

AND **17. Consider a recommendation regarding the Establishment of Planned Unit Development (PUD) zoning (in conjunction with the previous annexation) of an approximately 20.28 acre area, located at the north end of Kevil Road, legally described on the boundary survey recorded in Cabinet 2, Slide 149-1, in the Office of the Eddy County Clerk.**

Mr. Skinner was on hand to answer any questions regarding the requested Annexation and PUD Zoning. **Ms. Shumsky** said that Staff recommended approval contingent on the 1,300 acre annexation from last month's meeting being approved by City Council on May 27th. If that one is not approved, this one won't be either. The concept plan includes some industrial warehouse space and apartments for workforce housing. There will be a 6' opaque wall that separates ingress and egress for residential and industrial uses. Prior to development, the Planning and Zoning commission will have a follow-up for the final PUD and a development agreement. All individual structures and building will also need to get building permits. The modular structures will be approved through the State, but the City building inspectors will approve foundations for the structures. **Mr. Skinner** explained that the efficiency apartments will be exceptionally strong and semi-permanent. The walls have Styrofoam on both sides, with concrete poured into the mesh-reinforced space between after they are placed on the foundation footing. This reduces heating and cooling expenses by 40%. **Ms. Self** expressed her dismay that the sign posted for the annexation had listed her address. She said it was a very unpopular annexation and she had been getting threats to herself and her dogs. **Ms. Shumsky** said that a new sign would be issued and that the address would be corrected.

Mr. Rodriguez made a motion to recommend approval of both the Annexation and Establishment of the PUD (Items 16 and 17). He also noted that the address on the posted sign needs to be changed. **Mr. Brown** seconded the motion. The vote was as follows: **Yes – Ms. Durham, Mr. Knott, Mr. Rodriguez, Mr. Brown; No – None; Abstained – None; Absent – Mr. McCormick.** The motion carried.

Mr. Skinner said he had worked on over a hundred zoning cases in New Mexico and Arizona and that we were lucky to have Ms. Shumsky here. He said she is smart and makes it so much easier to work through projects, because she is so capable.

2:17:10 **18. Report regarding plats approved through Summary Review process.**

Ms. Shumsky reported regarding the plats she had signed in March. There was brief discussion of the plat for the property where Church Street Grill is located, where they are combining lots and remodeling their building.

2:20:11 **19. Adjourn.**

There being no further business, the meeting was adjourned.

2:20:38

Stop Recording [7:22:42 PM]

Chairman

Date

DRAFT

CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM
PLANNING AND ZONING COMMISSION

Meeting Date: 5/5/14

DEPARTMENT: Planning,
Engineering and Regulation

BY: Eric Navarrete, City
Engineer

DATE: 4/28/14

SUBJECT: Appeal (variance) from Section 47-62(d) to allow the pavement width of a future local street, located within Fountain Hills Subdivision – Phase 11, to be 26' in width rather than the required 28' and to allow the construction of the street without curb and gutter, as required.

Applicant:

Ken Thurston Development Corp.
1880 E. Lohman
Las Cruces, NM 88001

Property Owner:

Don Miehl
916 Fountain Drive
Carlsbad, NM 88220

****The applicant provided the required notification to property owners within 100' and agreed to post the required sign 5-days prior to the public hearing as required by Sec. 56-140(i).***

SYNOPSIS: This variance request accompanies a preliminary plat approval request along with three other variances for Fountain Hills Subdivision – Phase 11, which consists of 17 new lots for residential development. The applicant is requesting a variance from Section 47-62(d) (as shown in Illustration 5) to allow the paving width for the future Christel's Place Road to be 26' instead of the required 28' and to allow the road to be constructed without curb and gutter. The applicant will be constructing the required ADA compliant sidewalks adjacent to the roadway.

Variances may be permitted by the Planning and Zoning Commission if certain criteria are met according to Section 47-7 which states:

"Whenever, in the opinion of the Board of Appeals, the strict application of the requirements contained in this chapter would result in extreme practical difficulties or undue misuse of property, the board may modify such requirements as necessary so that the subdivider is allowed to develop his/her property in a reasonable manner providing that the public interests of the community and its citizens are protected and the general intent and spirit of these regulations are preserved.

(a) *Criteria.* The Board shall grant the minimum variance or modification to relieve the hardship only upon determination that:

- (1) The variance will not be detrimental to the public health, safety and general welfare of the community; and
- (2) The variance will not adversely affect the reasonable development of adjacent property; and
- (3) The variance is justified because of topographic or other special conditions unique to the property involved in contradistinction to mere inconvenience or financial disadvantage; and
- (4) The variance is consistent with the objectives of this chapter and will not have the effect of nullifying the intent or purpose of this chapter or the comprehensive plan; and
- (5) The variance has been shown to be in the best interest of the general public and not only of interest to the developer, land owner or other interested party; and
- (6) The hardship must not be pecuniary and must be a direct result of the land location, topography or other characteristic; and
- (7) Where a variance is requested from the required provision of sidewalks, an ADA complaint, alternative route to the nearest bus stop or school is required. If an alternative route cannot be provided, a variance shall not be approved."

The applicant provided justification of this request that meets the criteria above. Specifically, subsection 3. The request is the minimum necessary and the justification is reasonable. The site is steeply sloped and is very rocky.

IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.): The required 28' pavement width is meant to provide a uniform minimum width for local streets throughout the city. However, in some areas, it is not feasible to provide this much pavement because of topography, available right-of-way, etc. Stand-up curb and gutter is required in order to convey runoff in a particular direction. According to the applicant's justification letter, he wishes to maintain the natural drainage pattern as much as possible due to the rugged topography. He asserts that directing flow to one point of discharge could pose future problems.

The request is the minimum necessary and is reasonable due to the steep slope and rocky terrain of the site. In addition, the narrower right-of-way will allow for the infill development of an existing property which will reduce the impact of costs and city resources to service new land developments associated with urban sprawl. The lack of curb could pose a safety issue since the driving surface will not be physically defined. Variations in the roadway and sidewalk materials would help to visually define the separation and the fact that the proposed roadway is closed to thru traffic.

The following *Greater Carlsbad Comprehensive Plan: Strategy 2030* goals apply to this request:

Section 4 Land Use

Goal 5: "The City of Carlsbad will strive to promote and enhance the general social welfare through land use planning."

Goal 6: "The City of Carlsbad will strive to create an aesthetically pleasing built environment."

Chapter 4: Housing

Goal 2: Carlsbad will ensure that local housing protects the health, safety, and welfare of residents and their neighbors.

PLANNING STAFF RECOMMENDATION: based on review of the application and staff comments, engineering and planning staff recommends approval.

DEPARTMENT RECOMMENDATION (please check):

	Approval	Denial	n/a		Approval	Denial	n/a
Public Works				Plng., Eng. & Reg. Dept:			
Fire Department	x			Code Enforcement Division			
Legal Department				Engineering Division	x		
Police Department				Planning Division	x		
Utilities Department				Building & Regulation Division			
Culture & Rec. Dept.							

DEPARTMENT COMMENTS:

Public Works:

Utilities Department:

Building Department:

Fire Department: recommend approval, no comments.

Code Enforcement:

Legal Department:

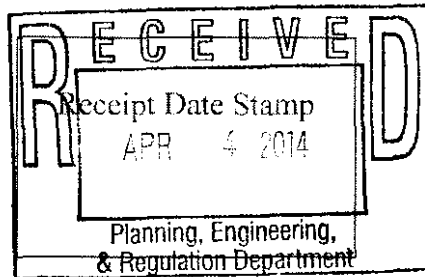
Planning Department: recommend approval due to the difficult topography of the site.

Police Department:

Culture and Recreation Department:

City Engineer: recommend approval, no comments.

ATTACHMENTS: Application materials



CITY OF CARLSBAD
*Planning, Engineering,
 and Regulation Department*
 PO Box 1569, Carlsbad, NM 88221
 Phone (575) 887-1191
 Fax (575) 885-9871

BOARD OF APPEALS APPLICATION
 (VARIANCE FROM SUBDIVISION OR ZONING ORDINANCE)
 Sec. 47-7 or Sec. 56-150(c)

Application Date: 4-4-14

Fee Paid (\$50.00): ✓ *MS*

APPLICANT INFORMATION:

<u>DON MIEHLS DBA FOUNTIAN HILLS DEVELOPMENT COMPANY</u>			<u>916 FOUNTAIN DRIVE</u>	
NAME			ADDRESS	
<u>CARLSBAD</u>	<u>NM</u>	<u>88220</u>	<u>(575) 887-6132</u>	<u>DONRMEIHLS@GMAIL.COM</u>
CITY	STATE	ZIP	PHONE	EMAIL

PROPERTY OWNER INFORMATION (IF DIFFERENT FROM APPLICANT):

NAME			ADDRESS	
CITY	STATE	ZIP	PHONE	EMAIL

LEGAL DESCRIPTION AND/OR STREET ADDRESS OF PROPERTY (FOR WHICH VARIANCE IS REQUESTED): CHRISTEL'S PLACE

TYPE OF REQUEST (CHECK ONE):

X VARIANCE FROM THE **SUBDIVISION REGULATIONS** (CHAPTER 47 - CODE OF ORDINANCES) AS PROVIDED FOR IN SECTION 47-7, VARIANCES.

SPECIFY REGULATION AND/OR SUBSECTION: SEC 47-62 PART D

VARIANCE FROM THE **ZONING ORDINANCE** (CHAPTER 56 - CODE OF ORDINANCES) AS PROVIDED FOR IN SECTION 56-150(c).

SPECIFY REGULATION AND/OR SUBSECTION: _____



CITY OF CARLSBAD

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BOARD OF APPEALS APPLICATION

(VARIANCE FROM SUBDIVISION OR ZONING ORDINANCE)

Sec. 47-7 or Sec. 56-150(c)

PROCESS FOR ACCEPTANCE AND REVIEW OF PLANNING AND ZONING COMMISSION MATTERS

1. The Planning and Zoning Commission's regularly scheduled meetings are on the FIRST MONDAY OF THE MONTH. Applicant should obtain an Application Packet for the particular type of request (Zone Change, Subdivision, Variance, Annexation, Conditional Use, etc.) from the City of Carlsbad, Licensing and Permits Office.
2. **Applicant must submit a completed Application to the Licensing and Permits Office on, or before, the FIRST FRIDAY OF THE MONTH prior to the desired Commission meeting.**
The minimum application packet submittal is one (1) copy of the Application with original signatures and all required supporting documents. A letter of explanation or clarification may also be provided. The required non-refundable application fee is due with submittal of the application.

The desired maximum size for all documents is 11"x17". **However, if the applicant wishes to support his or her application with larger size documents, an original and fifteen (15) copies need to be provided.** Separate arrangements for copying these large documents may be possible, but will incur additional costs.
3. The Licensing and Permits Office will give the Application an initial cursory review. If deficiencies or questions are noted, the Applicant will be advised and provided an opportunity to supplement the application. If the Applicant fails to complete and resubmit the application prior to the above deadline, the matter will not be heard until the next subsequent Commission meeting. The original application fee will be retained and will suffice for the specific original application for a period of 90-days from the date of the original application.
4. Applications appearing complete will be set for full evaluation by City Staff prior to the Commission meeting. The purpose of this evaluation is to develop and provide a full briefing report for the Commission. Applicants will be advised of deficiencies noted during this review and will be afforded opportunity to supplement their application during their presentation to the Commission, if they so desire.
5. The Planning and Zoning Commission will vote to approve or deny the request. Applicant or his/her representative must be present to address any questions that Planning and Zoning Commissioners may have. Appeals of Planning and Zoning Commission decisions will be heard by the City Council pursuant to Sec. 56-150(c).
6. The applicant shall mail notice of the Planning and Zoning Commission hearing, via certified mail, to all property owners within one-hundred feet (100') of the subject site. Evidence of such notification shall be provided with the application. In addition, the applicant shall post a sign, provided by the City, at the property at least 5 days prior to the public hearing.

JUSTIFICATION FOR REQUEST AND SITE PLAN: (Describe the topographical uniqueness of the property or extreme practical difficulties or undue hardship that would result from the strict application of the requirement(s) contained in the ordinance section from which the variance is requested. Include a site plan drawn to scale or with accurate dimensions showing property lines, existing and proposed fences and/or walls, setbacks, building and structure locations and parking areas. Attach a separate sheet if necessary.)

FOUNTAIN HILLS #11

VARIANCE REQUEST

STREET CROSS SECTION – City of Carlsbad Design Standard Section 47-62, Part d
Standard Width of Paved Section 28' Paving with Stand Up Curb and 2 – 4' sidewalks.

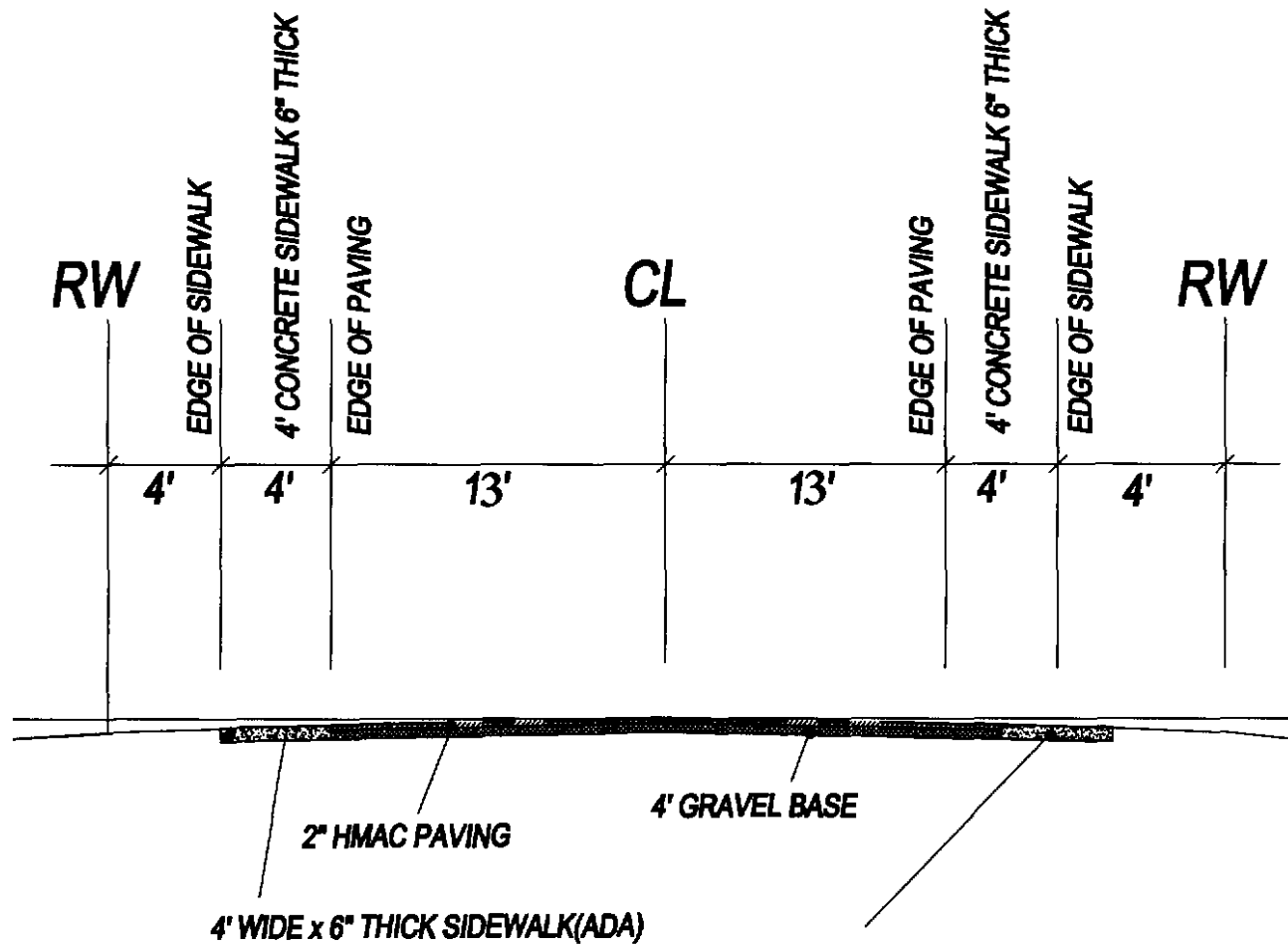
A Variance is requested from the 28' Paving Width to a 26' Paving Width

The reason for the paving width variance is to enable the developer to work with the existing steep terrain in the Fountain Hills area. The concept for the construction of the roadways and residences is to position the home as close to the roadway as possible. To assist in that design goal, we ask that the paving width of 28' be reduced to 26'. The area is currently zoned R-R (which is a low density area) and the area is not expected be subjected to offsite traffic flows, thus the 26' paving section will allow the residents sufficient right-of- way access for their homes.

B Variance is requested from the Stand Up Curb

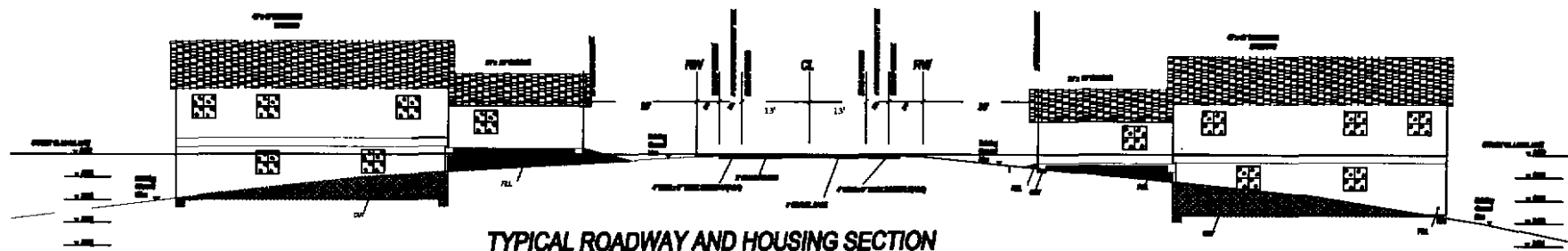
The reason for the variance request from a stand up curb is that the drainage concept for the site is to allow the existing drainage ways to follow the historical flow paths. We do not want to gather up the street flows for discharge at a single point. We feel that the rocky nature of the terrain and the natural drainage courses will be sufficient to convey and control the storm runoff from the site (see Drainage Report for Fountain Hills # 11).

C 2- 4' Sidewalks The developer does not request to obtain a variance for the 2 each - 4' wide concrete ADA Sidewalks. We propose to install 2 - 4' wide sidewalks at the edges of the paved section to provide an ADA walking path and to help secure the edge of the roadway section, similar to the function that a normal curbstone does. We also propose to make the sidewalk 6" thick to withstand any traffic loads that may occur.



**TYPICAL ROADWAY SECTION
FOUNTAIN HILLS # 11**

**FOUNTAIN HILLS DEVELOPMENT
PROPOSED CONSTRUCTION LAYOUT**



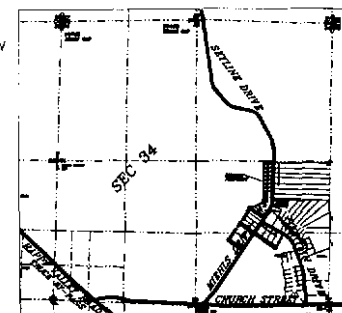
FOUNTAIN HILLS SUBDIVISION UNIT 11

A SUBDIVISION OF THAT PART OF THE SE1/4 OF SECTION 34, TOWNSHIP 21 SOUTH, RANGE 26 EAST, N.M.P.M., EDDY COUNTY, NEW MEXICO, LYING WEST OF FOUNTAIN HILLS UNIT 5 SUBDIVISION, NORTH OF FOUNTAIN HILLS UNIT 3 SUBDIVISION, IN WHICH THE PERIMETER OF THE SUBDIVISION IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT LIES ON THE INTERSECTION POINT OF THE EAST LINE OF THE SW1/4 OF SAID SECTION 35, AND THE SOUTHEAST CORNER OF FOUNTAIN HILLS UNIT 17; THEN S01°15'15"W, ALONG THE EAST LINE OF SW1/4, FOR 119.77 FEET, TO THE NORTH LINE OF FOUNTAIN HILLS SUBDIVISION UNIT 6; THEN S89°32'45"W, ALONG THE NORTH LINE OF UNIT 6, FOR 287.44 FEET, TO THE EAST LINE OF FOUNTAIN HILLS SUBDIVISION UNIT 2; THEN N21°37'11"W, ALONG THE EAST LINE OF UNIT 2, FOR 119.17 FEET; THEN N24°54'18"W, CONTINUING ALONG THE NORTH LINE OF UNIT 2, FOR 207.09 FEET; THEN S84°51'38"W, ALONG THE NORTHERLY LINE OF UNIT 2, FOR 133.10 FEET, TO THE NORTHERLY LINE OF FOUNTAIN HILLS SUBDIVISION UNIT 7; THEN N47°22'50"E, ALONG THE NORTHERLY LINE OF UNIT 7, FOR 89.72 FEET, TO THE SOUTHEAST CORNER OF FOUNTAIN HILLS UNIT 15; THEN N31°51'51"E, ALONG THE EAST LINE OF UNIT 15, FOR 159.88 FEET; THEN N01°43'16"W, ALONG THE EAST LINE OF UNIT 15, FOR 4.37 FEET; THEN N71°59'34"W, ALONG THE NORTHERLY LINE OF UNIT 15, FOR 163.50 FEET, TO THE EAST R.O.W. OF WHEAT DRIVE; THEN THRU A CURVE TO THE LEFT (RAD=449.26 FEET) 32.82 FEET, WHOSE CHORD BEARS N18°09'31"E FOR 32.81 FEET, TO THE SOUTH LINE OF FOUNTAIN HILLS UNIT 16 SECOND AMENDED; THEN S85°40'59"E, ALONG THE SOUTH LINE OF UNIT 16, FOR 254.64 FEET; THEN N08°00'19"E, ALONG THE EAST LINE OF UNIT 16, FOR 120.14 FEET, TO THE SOUTH LINE OF FOUNTAIN HILLS UNIT 17; THEN S89°05'11"E, ALONG THE SOUTH LINE OF UNIT 17, FOR 850.84 FEET, BACK TO THE POINT OF BEGINNING, CONTAINING ±17.09 ACRES MORE OR LESS.



APPROVAL BY THE CITY COUNCIL
THIS IS TO CERTIFY THAT THIS REPLAT HAS BEEN EXAMINED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO, DURING A REGULARLY SCHEDULED MEETING HELD ON
THIS _____ DAY OF _____, 20____



VICINITY MAP
NO SCALE

APPROVAL BY THE CITY PLANNING COMMISSION
THIS IS TO CERTIFY THAT THIS REPLAT HAS BEEN APPROVED BY THE CITY PLANNING COMMISSION OF THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO, DURING A REGULARLY SCHEDULED MEETING HELD ON
THIS _____ DAY OF _____, 20____

CHAIRMAN _____ SECRETARY _____

FOUNTAIN HILLS SUBDIVISION UNIT 11			
AREA: ±17.09 ACRES			
NUMBER OF LOTS: 17			
SIZE OF LOTS:			
1 - ±0.25 ACRES	1 - ±0.33 ACRES	1 - ±1.78 ACRES	
1 - ±0.28 ACRES	1 - ±0.34 ACRES	1 - ±1.87 ACRES	
1 - ±0.28 ACRES	2 - ±0.80 ACRES	1 - ±2.00 ACRES	
1 - ±0.29 ACRES	1 - ±1.01 ACRES	1 - ±3.80 ACRES	
2 - ±0.30 ACRES	1 - ±1.34 ACRES		
SETBACKS: FRONT SETBACK-30'			
SIDES SETBACK-7.5'			
REAR SETBACK-20'			
ZONED: "R-R" RURAL RESIDENTIAL			
SET BACK LINES: PER APPLICABLE BUILDING CODES			
NO LOTS TO BE DEDICATED TO THE PUBLIC			
NO LOTS TO BE DEDICATED FOR PARKS, SCHOOLS, CHURCHES OR INDUSTRY			
FLOODPLAIN: DETERMINED TO BE IN ZONE "X", AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD PLAIN, AS DETERMINED BY THE DIGITAL FLOOD INSURANCE RATE MAP			
COMMUNITY - 4350012 1045 D, THE CITY OF CARLSBAD, REVISED -06/04/2010			
COUNTY - 4350120 1045 D, EDDY COUNTY			
MAP PANEL - 435015 C 1045 D			

COMMISSION TO "FOUNTAIN HILLS"
KENNETH R. THURSTON, MANAGING MEMBER
OF CARLSBAD "C" MOUNTAIN LLC
OFFICIALS STATEMENT AND AFFIDAVIT

STATE OF _____
COUNTY OF _____
THE ABOVE SIGNED BEING FIRST DAY SWORN ON OATH,
STATE:
AS THE OWNERS AND PROPRIETORS, WE HAVE OF OUR OWN FREE WILL AND CONSENT CAUSED THIS PLAT WITH ITS LOTS AND EASEMENTS TO BE PLATTED, THE PROPERTY DESCRIBED ON THIS PLAT LIES WITHIN THE PLATING JURISDICTION OF:
CITY OF CARLSBAD
SUBSCRIBED, SWORN TO AND ACKNOWLEDGED BEFORE ME
THIS _____ DAY OF _____, 20____

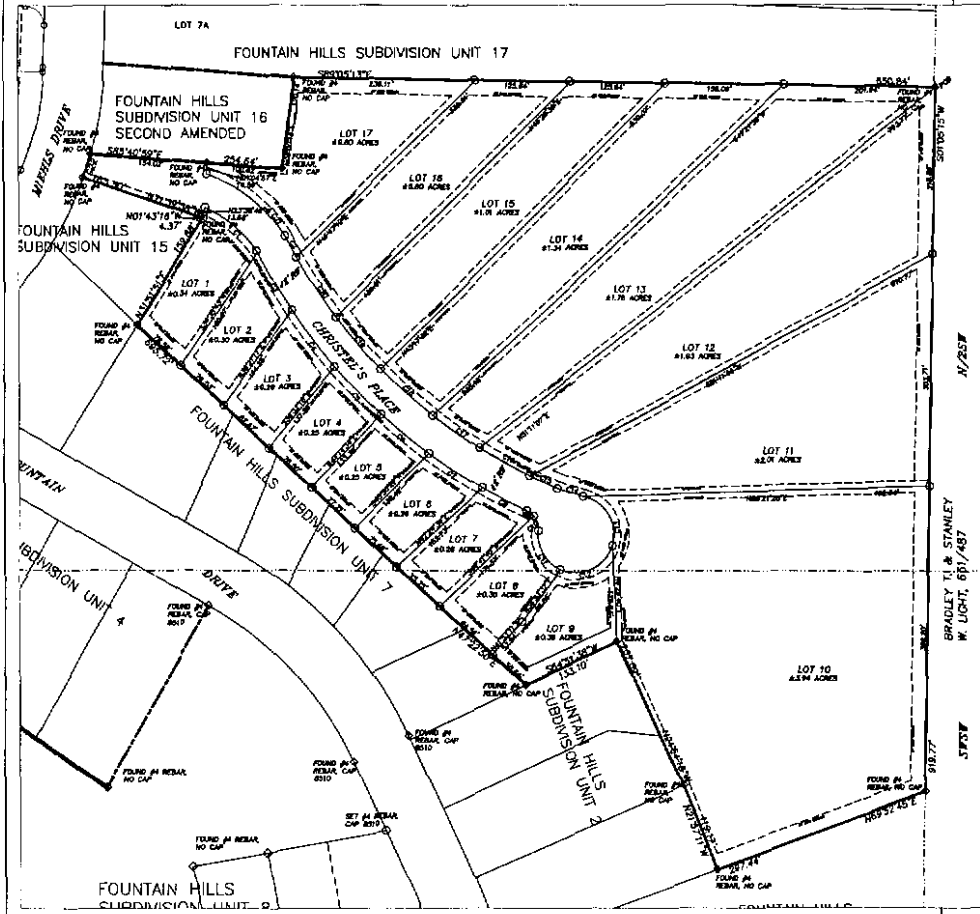
NOTARY PUBLIC
I, MELVIN R. PYLEATT, JR., A NEW MEXICO REGISTERED PROFESSIONAL LAND SURVEYOR, CERTIFY THAT I CONDUCTED, AND AM RESPONSIBLE FOR THIS SURVEY, AND THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY AND PLAT MEET THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO.

MELVIN R. PYLEATT, JR., 423 W. GRENDE ST., CARLSBAD, N.M., 86220
CERTIFICATE NO. 20251 TELE. 865-8967 FAX 865-8967

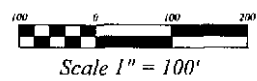


R&R SURVEYING LLC
A LAND SURVEYING COMPANY
INDICATING INFO. FOR CO. CLERK
BOOK: 34 PAGE: 8931 FILE: 1045 D
SUBDIVISION: FOUNTAIN HILLS
SUBDIVISION UNIT: 11
OWNER: CARLSBAD "C" MOUNTAIN LLC
CITY: CARLSBAD
COUNTY: EDDY
STATE: NEW MEXICO
DATE: APRIL 5, 2014
ADDRESS: YES
AREA: ±17.09 ACRES

STATE OF NEW MEXICO, COUNTY OF EDDY, I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD ON
THE _____ DAY OF _____, 20____ A.D.
AT _____ O'CLOCK _____ M.
CABINET _____ SLIDE _____
CARLENE HOSPIRAN-COUNTY CLERK
BY _____ DEPUTY



LEGEND
SECTION CORNER
CORNER POINT
PRIMER LINE
LAND LINE
NEW & EASEMENTS
SETBACK LINES
HUB & RADIUS
SUBDIVISION LINES



NOTES OF BEARINGS BASED ON GPS OBSERVATIONS
DATE: 04/05/2014
BEARINGS: SPC-NAME TO GRID
DISTANCES: SPC-NAME

T21S
34N
26E
T22S

CURVE #	CHORD BEARING	CHORD DISTANCE	ARC LENGTH	RADIUS
01	S89°32'45"W	287.44	119.17	167.69
02	N21°37'11"W	119.17	119.17	167.69
03	N24°54'18"W	207.09	89.72	282.29
04	S84°51'38"W	133.10	89.72	282.29
05	N47°22'50"E	89.72	89.72	282.29
06	S85°40'59"E	254.64	120.14	282.29
07	N08°00'19"E	120.14	120.14	282.29
08	S89°05'11"E	850.84	850.84	282.29
09	N01°43'16"W	4.37	4.37	282.29
10	N71°59'34"W	163.50	163.50	282.29
11	S01°15'15"W	119.77	119.77	282.29
12	N47°22'50"E	89.72	89.72	282.29
13	S84°51'38"W	133.10	89.72	282.29
14	N24°54'18"W	207.09	89.72	282.29
15	N21°37'11"W	119.17	119.17	282.29
16	S89°32'45"W	287.44	119.17	282.29
17	N01°43'16"W	4.37	4.37	282.29

Zoning Ordinance

Criteria for Appeals - Sec. 56-150(c)(4):

The purpose of the appeal procedure is to determine if the decision being appealed meets the requirements of this Zoning Ordinance. The City Council or the Planning and Zoning Commission, when hearing an appeal, is limited to the following determinations:

- (a) The decision-maker made an error in reviewing whether a standard was met, by a misreading of the facts, plans, regulations or an error in judgment.
- (b) Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility.
- (c) The decision-maker made the decision on standards not contained in this or other City ordinances, regulations or state law; or a standard was applied more strictly or broadly than is appropriate to implement the City's Comprehensive Plan and this Zoning Ordinance.

Subdivision Regulations

Criteria for Appeals – Sec. 47-7

Whenever, in the opinion of the board of appeals, the strict application of the requirements contained in this chapter would result in extreme practical difficulties or undue misuse of property, the board may modify such requirements as are necessary so that the subdivider is allowed to develop his/her property in a reasonable manner providing that the public interests of the community and its citizens are protected and the general intent and spirit of these regulations are preserved. **The board shall grant such a variance or modification only upon determination that:**

1. The variance will not be detrimental to the public health, safety and general welfare of the community;
2. The variance will not adversely affect the reasonable development of adjacent property;
3. The variance is justified because of topographic or other special conditions unique to the property involved in contradistinction to mere inconvenience or financial disadvantage;
4. The variance is consistent with the objectives of this chapter and will not have the effect of nullifying the intent or purpose of this chapter or the comprehensive plan.

FOR OFFICIAL USE ONLY:

Required prior to P & Z:

Complete Application Including:

- | | | | |
|---|---|---------------------------------------|--|
| <input type="checkbox"/> Site Plan | <input type="checkbox"/> Fee | <input type="checkbox"/> Notification | <input type="checkbox"/> Letter of Explanation |
| <input type="checkbox"/> Sign Posting Agreement | | | <input type="checkbox"/> Sign Posted |
| <input type="checkbox"/> ABM | <input type="checkbox"/> Staff Comments | | <input type="checkbox"/> Application Packet |

P & Z Action: ☐ Approved ☐ Denied ☐ Other Date: _____

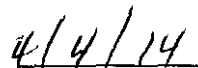
NOTIFICATION SIGN POSTING AGREEMENT

Notification of Public Hearings before the City of Carlsbad Planning and Zoning Commission is required pursuant to Sec. 56-140(i).

- Signs shall be posted a minimum of 5 days prior to and shall be removed a maximum of 5 days after the public hearing.
- If the sign is not posted as required, the application will be delayed and will not be considered at the public hearing as scheduled.
- The sign shall be posted at the street side property line with a secure stake provided by the applicant.

I have read and understand these requirements. I understand where the sign is to be located and my obligation to post the sign prior to the public hearing and remove it afterwards.


APPLICANT SIGNATURE


DATE

Sign issued by: 
Staff Member

Date: _____

Dear Property Owner,

This letter serves as legal notification of a pending action before the City of Carlsbad Planning and Zoning Commission in accordance with Code of Ordinances Sec. 56-140(i). You are being notified because you are a property owner within one-hundred feet (100') of the subject site.

Applicant: DON MIEHLS 916 FOUTAIN DRIVE (575) 887-6132
Name Address Phone

Subject Site Location: CHRISTEL'S PLACE OFF MIEHLS DRIVE

The proposed action is a:

☐ Zoning Change from _____ to _____ in accordance with Sec. 56-150(b).

☒ Variance/Appeal from Sec. SEC 47-62 PART D in accordance with Sec. 56-150(c).

The purpose of the variance/appeal is:

ROAD COMPOSITION CHANGE IS NEEDED TO BETTER SUIT THE SITES NATURAL CHARACTER AND ALLOW DRAINAGE TO FLOW MORE EFFICIENT

☐ Conditional Use Permit in accordance with Sec. 56-150(f). The purpose of the permit is for a:

☐ Home Occupation: _____

☐ Other Use: _____

The Planning and Zoning Commission will consider this request at a Public Hearing on:

Date: 5/5/14

Time: 5:00pm

Place: City Hall Planning Room, 2nd Floor

101 N. Halagueno St.


Carlsbad, NM 88220

The Code of Ordinances can be found on the City's website www.cityofcarlsbadnm.com.

For details about this request contact the applicant OR contact the City Planner at

575-234-7923 or via email at sshumsky@cityofcarlsbadnm.com.

Sincerely,



Applicant/Agent

Sent To Jensen Revocable Family Trust
 Street Apt. No. 1106 Nichols Dr
 or PO Box No.
 City, State, Zip Carlsbad NM 88220

7013 2630 0000 3103 3178

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 11.77
Certified Fee	3.00
Return Receipt Fee (Endorsement Required)	0.00
Restricted Delivery Fee (Endorsement Required)	0.00
Total Postage & Fees	\$ 14.77

Sent To: Tawater Family trust
Street, Apt. No., or PO Box No. 908 Fountain Dr
City, State, ZIP+4 Lakeland NM 88220

U.S. Form 3800, August 2005 See Reverse for Instructions

7013 2630 0000 3103 3192

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 11.77
Certified Fee	3.00
Return Receipt Fee (Endorsement Required)	0.00
Restricted Delivery Fee (Endorsement Required)	0.00
Total Postage & Fees	\$ 14.77

Sent To: Alto, James + Lorella
Street, Apt. No., or PO Box No. 908 Fountain Dr
City, State, ZIP+4 Lakeland NM 88220

U.S. Form 3800, August 2005 See Reverse for Instructions

7013 2630 0000 3103 3208

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 11.77
Certified Fee	3.00
Return Receipt Fee (Endorsement Required)	0.00
Restricted Delivery Fee (Endorsement Required)	0.00
Total Postage & Fees	\$ 14.77

Sent To: Sferneck, Brandon + Suzanne
Street, Apt. No., or PO Box No. 511 S Tidwell RD
City, State, ZIP+4 Lakeland NM 88220

U.S. Form 3800, August 2005 See Reverse for Instructions

U.S. PRIORITY MAIL SERVICE
CERTIFIED MAIL RECEIPT

For delivery information visit our website at www.usps.com

Postage	\$ 43.79	0817
Certified Fee	\$ 3.00	
Return Receipt Fee (Endorsement Required)	\$ 0.00	
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 46.79	04/09/2014

Sent To: Miehls, Dennis & Janet
Street, Apt. No., or PO Box No.: 1202 Miehls Drive
City, State, ZIP+4: Carlsbad NM 88220
PS Form 3800, August 2005 See Reverse for Instructions

U.S. PRIORITY MAIL SERVICE
CERTIFIED MAIL RECEIPT

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Certified Fee	\$ 3.00	
Return Receipt Fee (Endorsement Required)	\$ 0.00	
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 46.79	04/09/2014

Sent To: Blenden, James Phillip
Street, Apt. No., or PO Box No.: 902 Fountain Drive
City, State, ZIP+4: Carlsbad NM 88220
PS Form 3800, August 2005 See Reverse for Instructions

U.S. PRIORITY MAIL SERVICE
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Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 46.79	04/09/2014

Sent To: M Bonde-Kange - Grace
Street, Apt. No., or PO Box No.: 1206 Miehls Dr
City, State, ZIP+4: Carlsbad NM 88220
PS Form 3800, August 2005 See Reverse for Instructions

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Return Receipt Fee (Endorsement Required)	\$ 0.00	
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 46.79	04/09/2014

Sent To: Light, Bradley T & Stanley W
Street, Apt. No., or PO Box No.: P.O. Box 1359
City, State, ZIP+4: Carlsbad NM 88221
PS Form 3800, August 2005 See Reverse for Instructions

U.S. PRIORITY MAIL SERVICE
CERTIFIED MAIL RECEIPT

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Postage	\$ 43.79	0817
Certified Fee	\$ 3.00	
Return Receipt Fee (Endorsement Required)	\$ 0.00	
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 46.79	04/09/2014

Sent To: Parker, Joe Ed & Mary
Street, Apt. No., or PO Box No.: 914 Fountain Dr
City, State, ZIP+4: Carlsbad NM 88220
PS Form 3800, August 2005 See Reverse for Instructions

U.S. PRIORITY MAIL SERVICE
CERTIFIED MAIL RECEIPT

For delivery information visit our website at www.usps.com

Postage	\$ 43.79	0817
Certified Fee	\$ 3.00	
Return Receipt Fee (Endorsement Required)	\$ 0.00	
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
Total Postage & Fees	\$ 46.79	04/09/2014

Sent To: COONRADT, Dean & Alice
Street, Apt. No., or PO Box No.: 910 Fountain Dr
City, State, ZIP+4: Carlsbad NM 88220
PS Form 3800, August 2005 See Reverse for Instructions

**No document for this
Agenda Item**

**No document for this
Agenda Item**

ECONOMIC INDICATORS
Planning, Engineering, & Regulation Department
MAY 2014

NEW BUSINESS REGISTRATIONS			
MONTH	12-13 FISCAL YEAR	13-14 FISCAL YEAR	% CHANGE
July	32	33	+3%
August	45	46	+2%
September	30	25	-17%
October	29	31	+7%
November	25	26	+4%
December	22	17	-23%
January	40	49	+23%
February	36	39	+8%
March	36	39	+8%
April	25	33	+32%
May	27	36	+33%
June	31		
Year to Date	378	374	

NUMBER OF BUILDING PERMITS			
MONTH	12-13 FISCAL YEAR	13-14 FISCAL YEAR	% CHANGE
July	173	191	+10%
August	129	191	+48%
September	136	202	+49%
October	158	212	+34%
November	143	157	+10%
December	137	137	No Change
January	155	204	+32%
February	156	220	+41%
March	162	198	+22%
April	195	217	+11%
May	229	247	+8%
June	216		
Year to Date	1,989	2176	

VALUATION OF BUILDING PERMITS			
MONTH	12-13 FISCAL YEAR	13-14 FISCAL YEAR	% CHANGE
July	1,393,541	3,808,836	+173%
August	1,836,653	1,072,981	-42%
September	2,543,903	8,681,365	+245%
October	2,519,087	8,050,190	+220%
November	1,185,256	5,942,651	+401%
December	6,597,783	1,443,944	-78%
January	2,583,982	1,887,858	-27%
February	2,685,850	13,289,120	+395%
March	2,371,817	9,646,191	+307%
April	3,586,824	5,652,945	+58%
May	3,296,087	13,402,901	+307%
June	2,772,296		
Year to Date	\$33,373,079	\$72,878,982	

Tourism Director/Convention Sales Report

Tourism/Convention Sales Report May 2014

Pecos River Village Conference Center

Total number of rentals for the month of May was 16

Meetings Attended

Governor's Conference on Tourism May 4th-8th Ruidoso NM

Advertising Placed

Ad placed in New Mexico Travel Guide-full page ad highlighting Guadalupe Mountains National Park

Ad placed in Albuquerque summer guide-1/2 page highlighting Carlsbad Caverns National Park

Items completed during the month May for Social Media

Facebook and twitter updates are posted daily with regards to local events in Carlsbad. Area attraction information is posted on facebook daily such as Carlsbad Caverns, Guadalupe Mountains, Living Desert Zoo and Gardens and the museum and art center.

Go-New Mexico updates-photos added to website for Carlsbad Visitor page-412 leads for the business month of May. Visitor guides are sent out to each one of these leads requesting additional information on Carlsbad.

Items currently working on

Grand reimbursement from Tourism Department for Co-Op grant program

Trade Shows Attended

None

Travel Writers/Tour Groups/Tourism Industry Professionals

Travel writer from USA today was in Carlsbad doing a story on Carlsbad Caverns National Park

Upcoming Tradeshow and meetings

Virgin Galactic (spaceport USA) service training-will be held at spaceport USA June 8th-10th