

**CITY OF RUIDOSO DOWNS  
GOVERNING BODY, REGULAR MEETING  
123 DOWNS DRIVE, RUIDOSO DOWNS, NEW MEXICO 88346  
FEBRUARY 26, 2024**

The City of Ruidoso Downs Council met in a regular session on Monday, February 26, 2024. Mayor Holman called the regular meeting to order at 2:00 p.m. and asked Councilor Baber to lead in the Pledge of Allegiance.

**ROLL CALL**

**Present:** Councilor Proctor, Councilor Baber, Councilor Miller, Councilor Lacewell

**Meeting Participants:**

John Underwood, City Attorney  
Alejandra L. Giron, City Clerk/Treasurer  
Joe Commander, Police Chief  
Robert Knight, Deputy Police Chief  
Joey Jarvis, Public Works Director  
Jennet Recendez, Planning Services Director  
Blythe Gilmore, Court Administrator

**Meeting Presenters via Zoom:**

Melissa Martin, Sorensens' Attorney  
Sara Sorenson, zoning appellant

**Meeting Presenters:**

Alexandra Bobbit, Ontiveros' Attorney  
Edgar Ontiveros, zoning applicant  
Luther Light  
Brian Roberts  
Cassidy Meeks  
Thomas John Lewicki

**APPROVAL OF AGENDA**

Councilor Miller moved to approve the agenda with the postponement of Item F, under New Business. There being no second, the motion died.

**APPROVAL OF CONSENT AGENDA**

(All matters listed under Item 5 will be enacted by one motion.)

**A. \*APPROVAL OF GOVERNING BODY MINUTES**

- \*December 11, 2023, Regular Meeting Minutes
- \*January 8, 2024, Regular Meeting Minutes
- \*January 22, 2024, Regular Meeting Minutes
- \*February 12, 2024, Regular Meeting Minutes

No motion was made for the Approval of Consent Agenda.

**PUBLIC INPUT**

No Public Input was given.



### **COUNCILORS COMMENTS**

Councilor Lacewell moved to have her statement be listed verbatim in the minutes. Councilor Proctor seconded and upon a roll call vote of all voting “aye” the motion passed.

Councilor Lacewell stated, “Good afternoon to the citizens of Ruidoso Downs. New Mexico state statute 3-11-5 states, ‘If the governing body fails to confirm any person as an appointive official or employee of the municipality, the mayor, at the next regular meeting of the governing body shall submit the name of another person to fill the appointed office or to be employed by the municipality.’ At the first city council meeting of this governing body, during our organizational meeting, under the above stated statute, we did not confirm two appointed officials and two employees of the municipality. Essentially that means that two (2) weeks later, on January 22<sup>nd</sup>, those four (4) individuals should have been replaced, and they should no longer be working for our city. I researched the word statute and found that it clearly stated that, ‘A statute is essentially a written law that is enacted by a legislative body, such as Congress or a state legislature. It is a formal rule or regulation that is codified and recorded in the book. Once a statute is enacted, it becomes part of the legal framework of the jurisdiction in which it was passed. Mr. Underwood told me that ‘shall’ is a mandatory word for a discretionary act. He kindly said that the mayor doesn’t have to do it. I maintain that putting the mandatory word ‘shall’ in front of a statutory requirement makes it mandatory. This mayor has had three (3) opportunities in two (2) months to obey the law, but he has willingly and knowingly disobeyed the law. And I’m thinking three (3) strikes and you’re out. As a governing body, what we are trying to do is what we were elected to do for the good of the city, and we have heard what the citizens of the City of Ruidoso Downs want. This mayor is intentionally breaking the law, and is continuing to be negligent in fulfilling his oath of office by acting contrary to state statutes. We must take the next step, a legal step, to see that he is accountable for his lack of action, and refusal to obey the law.”

Councilor Proctor stated, “Last Friday, I guess they were supposed to have turned in our list to get on the agenda and it didn’t get out to everybody. So, I came in. I think it was that Monday or that Tuesday, I’m sorry, and spoke to the City Clerk. And we agreed to that if a holiday falls on a Monday, they can’t get it turned in on Tuesday at 10 o’clock and then it will let her have an extra day just like the Council meeting moving on. And she agreed to that. I don’t see the need to put it on any kind of Resolution or anything. I just wanted to let the rest of the governing body know and the audience know. When the holiday falls on the Monday we’re supposed to turn in it on it. It will go to Tuesday and she’ll have Tuesday from 10 o’clock, Wednesday, and Thursday, and put them out sometime Thursday afternoon. And that’s still earlier than what we were getting them.”

Councilor Miller made comments.



### **MAYORS COMMENTS**

Mayor Holman had no comments.

The Public Works Director presented on the operations of the Public Works Department for the month of January.

The Planning Services Director presented on the operations of the Planning & Zoning Department for the month of January.

The Deputy Police Chief presented on the operations of the Police Department for the month of January.

The Fire Chief presented on the operations of the Fire Department for the month of January.

The Finance Director presented on the operations of the Finance Department for the month of January.

The Court Administrator presented on the operations of the Court for the month of January.

### **PUBLIC HEARING:**

A. Sara Sorenson, on behalf of herself, Will Sorenson, Charlie Sorenson, and Mike Sorenson Appeal of The Planning Commission Approval of P & Z Case 2023-11, Approving Conditional Use to allow for a Recreational Vehicle Park at the Property located in a C-2 Zoning District.

The City Attorney stated, "So it's the first one of these that we've had in quite some time, and certainly with this new council. So, I thought I might give some ground rules of where we are. Appeals are handled in Section 155.021 of the Land Usage Code of the Ruidoso Downs. So, a person has a right to appeal a decision that was made in the Planning Commission and this commission. And the person who has agreed to this decision has the right to appeal it to district court. For that reason, I will be swearing in all witnesses today, because today's testimony has to be taken verbatim because it's a court record. So, with that, the way that this works and the way we'll have it is that the appellant will present their case first, ok. I will ask Jenet to introduce the subject, on behalf of the city, and then the appellant will have the opportunity to state their reasons for their appeal and the appellee, the person who was granted the conditional use permit will then have the opportunity to state the reasons for not granting the appeal. Each party will have the right to cross examine witnesses of the other party. But what I want you to understand, council, is that I'm not going to follow specifically the rules of evidence. If you become argumentative with the witness. I'll ask that you not be argumentative. I'll ask that you try any leaning questions to a minimum. But in order to move the matter a long, so that we are not here till ten o'clock at night. I'd ask that we move the matter a long expeditiously. But I know it's an



important issue for the parties that are involved in it and it deserves a full hearing. At the close of that, I will present the city's case of why the Planning & Zoning sided the way that they did and under what theory or quality they found that there was conditional use to be granted. And after all that is heard, the public will have an opportunity, at that point in time, those who haven't been witnesses prior to. If the public has any reason that they want to state, one way or the other, for what they believe before the council takes it under consideration, they may do so. After that point in time, it turns into a council matter. The council can then discuss whether or not to uphold the appeal or to deny the appeal. Questions?"

Councilor Lacewell stated, "Yes, does that mean we're literally voting on that today?"

The City Attorney stated, "Mhmm."

Councilor Lacewell stated, "Oh, wow."

Councilor Miller stated, "I didn't understand that either, I thought it was just."

The City Attorney stated, "You may delay your decision for a period of time, but it is a matter that is being appealed and to be voted on at the time of the appeal. If you want to put it off for any reason for putting it off for, what is it, fifteen (15) days."

Mayor Holman stated, "And as I stated, a while ago, when you rose that, you'll be getting that information, correct John? From both sides."

The City Attorney stated, "If the City will hear the appeal and render a decision within forty-five (45) days, so."

Councilor Miller stated, "We could put it off then because I haven't had a chance to go look at it or anything yet, so."

Mayor Holman stated, "Ok so."

The City Attorney stated, "Ok but the witnesses and the attorneys are not required to come back. You will just simply rework it out on what you've written down. And you are permitted to take notes on it."

Councilor Miller stated, "Ok, thank you."

Mayor Holman stated, "Ok so, I guess the next move then is to ask for a motion to postpone this item?"



The City Attorney stated, "No."

Mayor Holman stated, "This item, no?"

The City Attorney stated, "What we'll do is we'll go ahead and have it carried today. And then the council, if it doesn't want to make a decision today, they postpone that decision."

Mayor Holman stated, "Ok, yeah. Well, that makes sense. Ok."

The Planning Services Director stated, "Hi, it's me again, council. I (inaudible)."

Mayor Holman stated, "This will be the city's position."

The City Attorney stated, "Basically, she's going to present what happened at the Planning & Zoning meeting. And we have minutes of that Planning & Zoning meeting which we'd be happy to hand out, where the decision was made but the decision was itself is in your notebook."

The Planning Services Director stated, "So, Mr. Edgar Ontiveros came to apply for a conditional use to allow recreational vehicle use parked at the property located at 26557 US Highway 70, but there was some issues with how the Ordinance was written on how the Planning & Zoning Commission took it and interpreted it themselves. They decided to grant the conditional use required because it is in a C-2 commercial property, and I also have Mr. Luther Light here, the chairman of the Planning & Zoning Commission. So, he can explain that a little bit better than I can."

Luther Light stated, "(inaudible) now."

The City Attorney stated, "Yes, please."

Luther Light stated, "During the, I guess the neighbors challenge to this is that the property in question has an easement running through it, an egress easement of the property is down by the river and there's a thirty (30) foot wide egress easement, egress and utility easement running through another piece of property up to Highway 70. The people whose property runs through, I guess are opposed to the using of the piece of property down by the river as a RV park. There case with that, our Ordinance says specifically that recreational vehicle park shall abut and have access to major arterial streets and shall be a minimum of two (2) acres. So, this meets. The property down by the river meets the minimum of two (2) acres there. Their argument was that, it doesn't technically abut the Highway 70. The Planning & Zoning Commission, along with Mr. Underwood read abut and have access as they have that easement out to the highway and it's a thirty (30) foot wide easement which is what the width of what our streets, all of our streets except Highway 70 as a right of way. So, it's certainly big enough for two (2) RVs to pass you



know side by side in each direction on the property and on the easement. I guess in the meeting, the Planning & Zoning Commission decided that the intent of this access requirement in general, requirements is that we don't want two (2) acre RV park to exit out into a small residential street. Like you wouldn't want a two (2) acre RV park to (inaudible) back on to River Lane and then all of the RVs would have to go down River Lane and then up Parker Road to get to Highway 70. The intent is that they have essentially a driveway to major arterial or a major arterial such as Highway 70. So, we interpreted about and have access as being there egress easement across this other piece of land. We did offer, the neighbors were also concerned about having children on this. You know, maybe being endangered on this easement and we offered to have, as a condition, to put up a fence along the easement, to keep people from running in front of RVs. And I think, they declined that?"

The City Attorney stated, "Never heard back."

Luther Light stated, "Never heard back. Ok, so, we offered that as a minimum and we also set a five (5) mile per hour speed limit, as a condition of granting this conditional use. I, it's probably one of the highest and best uses of this property and I think it would bring in, you know gross receipts tax for the city and the people who bought it intended to turn it into an RV park from the time that they bought it. So, from the Planning & Zoning Commission's point of view, this is, seems like a good use of this piece of property. And we certainly see that we have a need to have RV parks in the area. So, any questions?"

Councilor Baber stated, "So the lawyers are reading it one way and you're reading it another?"

Luther Light stated, "Some of the lawyers are reading it one way and some of the lawyers are reading it another. The Planning & Zoning Commission is reading it, I guess, in the way that I think it was probably written in for the way that we design our RV parks in this town. There are other RV parks that have the same amount of access on to Highway 70 across other pieces of property. So, and we tend to not have RV parks that dump out into other smaller small little streets."

Mayor Holman stated, "Councilor Proctor, did you have something?"

Councilor Proctor stated, "Yes. So, what you're saying is the property down there by them all should've had a piece of their land that went all the way up."

Luther Light stated, "No, not necessarily, I mean like when they subdivided it they, because you can't land block a piece of land. So, when they subdivided it, a few years ago they specifically asked for and have a surveyor draw in an easement and that provides access to the piece of land. It doesn't have to be a property. I live on a road on the North side of the river and the city maintains the road, but it's on my property. The city has an easement for Parker Road through



my property. It's the way many roads are done. So, it's not, I don't think there was an oversight to not have a piece of property run up to the highway. The way this has always been taken care of is. Usually, you put the easement along an existing road which is, I believe what they did. They just ran the center line an offset fifty (50) feet on each end. It can be approved and it would probably have to be approved but it, it, there's no oversight on the part of the surveyors or the previous owners to maintain an actual physical piece of property. This is, having an easement is very common for this type of situation."

Councilor Proctor stated, "So these that I look at them on the map, Luther stipulated that it was for utilities underground?"

Luther Light stated, "Utilities and egress."

Councilor Proctor stated, "I don't see the word egress on there."

Luther Light stated, "It's, it's on the plot, the main plot that we were given. It said utilities and egress."

(inaudible)

Luther Light stated, "A utility easement is typically it wasn't a very big utility easement but for an overhead power line, a large overhead power line they're usually only two hundred fifty (250) feet. So, thirty (30) feet is usually the standard for a road."

Councilor Miller stated, "I just feel like that's what's in that are quite a bit, is RV parks. And I think it would be a great thing for people. There's not enough houses for people. A lot of people can't get workers because they don't have anywhere to live. And you see how these other parks fill up in the summer, not so much in the winter. But it is a good business, it sounds like."

Luther Light stated, "That's kind of beyond the scope of Planning & Zoning. I mean if you asked my personal opinion would I like for them to put in a bunch of affordable home, absolutely. Would they be profitable, probably not? So, I understand why they're doing RVs. You know, Planning & Zoning, they just said we want to do this and its conditional use, we heard it and this is how we pose our position on it. This is why."

Councilor Miller stated, "Well, I feel like it would be a great business for Ruidoso Downs because we don't have that many, you know, places for people to live. We get people here that want to come and work but they can't find a house a lot of times, so."

Luther Light stated, "I will say, it states in our ordinance that the only place in the City of Ruidoso Downs, where you can currently live in an RV, is in an RV park."



Councilor Miller stated, "Yes."

Luther Light stated, "You want people to live in, like be able to live in an RV park they are."

Councilor Miller stated, "They're small homes."

Luther Light stated, "Affordable, you could live in an RV park. So, in that respect that those provide, I guess you could (inaudible)."

Councilor Miller stated, "I haven't had a chance to go out and look at it. Seems like every time I want to something comes up. I think, I hear from everybody. I want to hear what all of the neighbors say."

Councilor Lacewell stated, "So I've looked at this. I've printed it out. I've colored it. That RV Park is a great idea on the little land lot. Did I perceive you to say that the easement is fifteen (15) feet on the Sorenson property?"

Luther Light stated, "You know, it's all on one piece of property. I'm saying its fifteen (15) feet. The way surveyors typically lay these out is they just run the center line of the road. And then offset that center line on each side of the center line. So there, they put the easement on top of an existing road, they put a road on the easement."

Councilor Lacewell stated, "I see, so I did see that the driveway easement. To me a driveway easement is typically (inaudible). Whereas, a commercial easement is something that is more designed for a whole lot of traffic. I'm not following here, but it seems like the easiest way to fix this is to make a new easement that goes across the Lewicki property and straight up there without getting into the Sorenson property. Is that a possibility?"

Luther Light stated, "I have no idea. I'm not, I don't know any of the neighbors (inaudible). They could, if you could find somebody else who would give them access and would allow them to set up an easement that would certainly be allowed, they would have to replat it."

Councilor Lacewell stated, "Ok and will the, I know the Sorensens are up on the screen there. Will the Lewicki's be given an opportunity to speak as well?"

Luther Light stated, "I don't have the foggiest idea."

Councilor Lacewell stated, "Oh, you're not in charge of this meeting?"

Luther Light stated, "I am not in charge of this meeting."





Councilor Lacewell stated, "Well, thank you for the information."

Mayor Holman stated, "I would like to state because I think this might be an appropriate time, Councilors, we are really fortunate to have the P&Z committee members that we do. Especially, Luther Light, he's been there a long time. I attended that meeting that, concerning the topic that we're talking about. City Attorney is always there. That was an interesting meeting, but this chairperson is very intelligent and we need that type of decisions there because it's a very touchy situation. He does a tremendous job. Actually, I think we should double his salary. (inaudible). What is two (2) times nothing, anyway?"

Luther Light stated, "It's always zero (0) so."

Mayor Holman stated, "But he's been doing this for years, and not only smart, but he has so much experience now on planning. At one time, politically, I can recall, he may not even know this, but I was (inaudible) of him too much. But my how things can change. Thank you for your service to this city. You really have hung in there."

Luther Light stated, "You're right, I was not aware that you (inaudible). I appreciate the sentiments."

Mayor Holman stated, "Ok."

Luther Light stated, "You need me for anything else, Mr. Underwood?"

The City Attorney stated, "No, sir. Thank you for (inaudible)."

Luther Light stated, "You're welcome."

The City Attorney stated, "Luther also serves on the local school board. He's a man of many talents."

Mayor Holman stated, "Ahh, yes."

Luther Light stated, "I get paid nothing for that too."

The City Attorney stated, "He has a night job. So, since we kind of jumped ahead there with the city's presentation. Let me go ahead and say some things that you need as a basic knowledge as we walk through this. The first thing is, is that the property is on a C-2. C-2 is the commercial zoning, ok. That commercial was zoned as C-2 in 2004 when the city acquired that property. So, the document that I just handed out to you will show you that the appellant got a deed, a special



limited warranty deed in 2014. So, that special limited warranty deed contained no warrants as to what was being given as far as that it wasn't subject to restricted covenants."

Mayor Holman stated, "Hold on just a second John. We need to have it quiet. The council could miss something that might be really important."

The City Attorney stated, "He received it by a special limited warranty deed. That means there was no covenants with this deed, there were no guarantees with this deed and it was subject to the zoning that was upon the property at that time. The state requires (inaudible) to become a C-2 zoning. And so, I think that's important that the property is zoned for conditional use for RV park and the, and if you looked at the easements that are on record, those easements are dated prior to the date that they acquired this property. So, any of you who have bought real property, know that whenever you acquire real property, you acquire real property subject to all easements and reservations of record. So, that property was acquired with easements of record. As to whether or not that would be something that would be used as a driveway to a residential home, it would be. But for the fact that the property was zoned C-2, which would mean that there would be a driveway which is thirty (30) feet wide, which is almost wide as the city streets is meant to be used for access to a commercial piece of property. Which there could not be any doubt. The last thing I want to let you know is that the easement of use, personably has the right to use that easement. It's called a dominant easement, it's the dominant estate, ok. The person, on whose property that the easement exists is serving it. So, whenever Lewicki, or the folks that bought Tract 2, whoever buys that piece of property, that easement, although it's a non-possessory easement is a right. That right to that easement. The right to use that easement for the purposes of the accessing ingress into a commercial piece of property transfers with that easement. And that's according to New Mexico Supreme Court. That easement is a (inaudible) to that piece of property. And so, Luther, in the legal way, what Luther was saying in the layman's way of why the Planning & Zoning Committee, feels that that piece of property, does in fact abut an arterial road, which would be US-70. So, with that, does the appellant want to talk about, do you want to say something."

The Planning Services Director stated, "Yes."

The City Attorney stated, "Go ahead Jenet."

The Planning Services Director stated, "And I do know, we just talked about it, the property was annexed to the city in 2004. So, when they were annexed to the city, they were annexed as commercial zone. So, the zone was never changed when we acquired it through the annex."

Councilor Baber stated, "All three (3) properties?"



The Planning Services Director stated, "Not just those three (3) properties it was all of Agua Fria. I did provide you with a little map of what the whole map that was annexed back in 2004."

The City Attorney stated, "But the answer to your question is yes, all the tracts involved on that plat."

The Planning Services Director stated, "Yes, but it was not just them."

The City Attorney stated, "You can't just (inaudible) zone to the whole thing. All that was acquired (inaudible)."

The Planning Services Director stated, "Yes, all that land on that side of the highway is commercial."

Councilor Miller stated, "Is it on both sides (inaudible) both sides."

The Planning Services Director stated, "Yes, I think the other side of the highway I think is that, that part is in the county."

Councilor Baber stated, "Can't quit (inaudible)."

Councilor Miller stated, "I think it's on both sides because I've got friends that own property there and now, they're in the city."

The Planning Services Director stated, "Oh ok but I did provide you with a copy of the commercial of the zoning that it is right now and how it was when we, they got annexed as well. That's all I wanted to say."

Mayor Holman stated, "Ok, thank you Jenet."

The City Attorney stated, "Is the appellant present?"

Melissa Martin stated, "Good afternoon, mayor and council members, my name is Melissa Martin and I am an attorney representing the Sorenson family."

Mayor Holman stated, "Ok, we can hear you thank you."

Melissa Martin stated, "Ok."

The City Attorney stated, "Do you have some witnesses, you'd like to call?"



Melissa Martin stated, "You know, I had some things to go over with the council, if I may. I don't necessarily have a line of witnesses but I did have a statement to make."

The City Attorney stated, "That's fine."

Melissa Martin stated, "Ok, well council members, as I said, I am an attorney, I'm barred in the state of New Mexico. I practice with Scotthulse's law firm. I am with offices in Las Cruces and El Paso. And, I'm representing the Sorenson's in this matter. And as your zoning commissioner correctly stated, this issue really boils down to the word usage in the City of Ruidoso Downs ordinances that a recreational vehicle park shall abut and have access from major arterial streets. We see this as really having two (2) issues. The first of which, as the commissioner as well as the attorney did touch on, which is the, the question of abutting a major arterial roadway. Now, the code of ordinances, does not define the term 'abut' and in such a case the code of ordinance does state that will default to the customary definition of the word. So, Merriam Webster's defines abut, 'as to border on or to touch on an edge.' Cambridge dictionary is, 'next to or touches on one side.' And Britannica dictionary says, 'to touch along an edge.' You know there is, it seems like the zoning commission has determined that because there is an easement present, that that means that the property also abuts a major arterial roadway. Now that's contradicted by the plain language of your city ordinances, and I'll go over that first. If this ordinance were just meant to say if there is some access to a major arterial roadway, there's absolutely no need to include the term 'abut and have access to.' You know words have meaning, especially when it comes to city ordinances. And you can't simply ignore the term 'abuts and' and simply say because there is access that you have some border of your property abutting the major arterial roadway. Now there's a, there's an argument that is my second point that's been presented today that because there is an easement present, that, that automatically qualifies as the property abutting the major arterial roadway. If you follow that line of reasoning commissioners, then I would ask you to consider the fact that there are public easements, every street, public rights of way throughout the city of Ruidoso. And I would argue that any two (2) acre piece of commercial properties, zoned C-2, could find an argument. If you interpret this 'abut and have access to' in the way that the city attorney the zoning commission request. Any two (2) acre C-2 property can say, well I have and to abut to a major arterial roadway because I have a public access easement to it. I would, I would argue that ninety-five (95) percent of the C-2 land in Ruidoso could use that argument. If the, you know and frankly it seems that there's a desire to interpret the statute in a way to allow what's best for business, as the city sees it but that doesn't give you know anyone the right to ignore the terms of the city ordinances that say, 'abut and have access to.' If it's true, what are what you're zoning commissioner stated that the intent of this language was really to keep commercial recreational parks away from residential, you know multiple residential neighborhoods, that could be written into your city ordinances, but we have to interpret the ordinances as they're written. That carve out is not in there. And to treat one property owner differently based on, you know what you think the intent of this statute was really, is not the purpose, I would argue, of city ordinances. So, that's the question of abuts. And the second issue,



which I think the zoning commissioner and the city attorney didn't touch upon but that was discussed at the zoning hearing, that is really quintessential to this discussion. And which I have elaborated on in the appeal that you all maybe have reviewed or will review after this hearing, is that every easement is not created equal. Just because there's an easement across the Sorenson property to this land lot parcel and its zoned C-2, that does not give the C, the land lot party ability to use that however he sees fit. Under New Mexico law, an easement should be construed to its express and specific terms and when expressed terms of an easement are ambiguous, as they are in this case, the intent of the parties should be determined from the granting instrument in conjunction with surrounding circumstances. Now, it's been almost twenty (20) years since this easement was put into place. An easement use, easement scope, the scope of use is not determined by zoning in the state of New Mexico. Again, it's determined by the prior use in surrounding circumstances. For twenty (20) years this easement has been exactly what the zoning commissioner stated in the introduction to this discussion. Which is that, this was a land locked parcel. It was subdivided and because it was land locked, an easement was granted to permit the property owner access to and from that land locked parcel. That does not mean that that land locked parcel can then use that easement for any use it sees fit. It is a very different circumstance to allow a commercial property owner and egress and ingress to their estate and then to open it up to unilaterally change the scope to ingress and egress to thousands of recreational vehicles per year. That is simply a change in the scope of the use of the easement. New Mexico law prohibits that. New Mexico states that easements should be construed very narrowly and you cannot just unilaterally to change the scope. And so, I encourage you to review the appeal that we submitted to you in writing and this will state the cases from the New Mexico Supreme Court supporting this argument, but. This property does not abut a major arterial roadway and rights to cross the Sorenson property does not mean that they have any title or interest to the Sorenson property. It is not the, the Excalibur oils property that abuts to the major arterial roadway, it's the Sorenson property and as well, the scope of the easement simply does not permit the use by thousands of recreational vehicles per year, across, to and from, across a residential piece of property. So, that's my statement, and I'm happy to take any questions if you have them."

Mayor Holman stated, "John, is that appropriate at this time?"

The City Attorney stated, "Sure."

Mayor Holman stated, "Councilors, questions?"

Councilor Proctor stated, "This is Terry Proctor, Council. Ma'am do you have the New Mexico state ordinance or the law that stipulates they can't use that as they proceed to use it for the purpose you just explained?"

Melissa Martin stated, "Was that a question for me council?"



Councilor Proctor stated, "Yes."

Melissa Martin stated, "You know what, I do. I'm happy to send it to you again. I sent it to Jennet. It's part of the appellants appeal petition."

Councilor Lacewell stated, "Mayor."

Mayor Holman stated, "I just have one question for Ms. Martin. This is Jody Lacewell I'm a city councilor. I noticed this property on the west part of the Sorenson is the (inaudible) and on the other side is the original Lewicki property and luckily for the Sorenson family, they purchased that little peninsula that hangs down for access to their own property."

Melissa Martin stated, "Right."

Councilor Lacewell stated, "It seems it could've been just as easy. I don't know who owned. I guess the Lewicki family own that before. It seems to me that a more direct access that goes straight to the park and down to the highway would be a more logical way to do this than to expect the Sorensens to allow, like you said, hundreds of RVs in and out every day. I know the RV parks I've been to they don't just go there and stay. They go in and out, they go to the track, they go to the grocery store, they go in and they go out and I don't know, it seems like a lot to ask the Sorenson's to absorb to haggle with that."

Melissa Martin stated, "Yes, that's. I'm sorry go ahead,"

Councilor Lacewell stated, "That wasn't even a question, that was a statement."

Melissa Martin stated, "But yes, Council member, I would agree with you, you know but staying true to my interpretation of the city ordinances. I would argue that even if the access easement was relocated to the Lewicki property, again, an easement does not give you the claim to abut a major arterial road. However, I did make that point in my presentation at the zoning commission. I know that the Lewicki's, for whatever reason, are very adamant that they want this RV Park to go in despite, to my knowledge, not being associated with the party that purchased the land lot parcel that we're discussing. However, I do agree that if the Lewicki's are so eager to have it be placed there, that you know. Short of interpreting the statute or the city ordinance, as I believe it should be. The second-best option would be that the Lewicki's grant their own easement across their own property. Rather than, as you said, as I said, having hundreds of campers, RV's, whatever it is crossing through my client's residential property. I would agree with that statement."

Mayor Holman stated, "Any other questions, councilors?"



The City Attorney stated, "I want to clarify one thing. I think Councilor Proctor asked the attorney, Ms. Martin, if she could provide. Did you state that you have a state statute stating that an easement if it is unlimited in its terms, leading to a C-2 property, that that would be an ambiguous easement? Do you have a state statute to that effect?"

Melissa Martin stated, "That a, I'm not sure I, and I apologize if I stated it differently. I wouldn't state that I provided you all as statute that specific. Would I provided you all is rather case law on this matter stating that when an easement use is not specifically set out, that yes. That ambiguous use would be. I'm sorry, you know if the scope of an easement is not ambiguous based on the document that grants the easement, then, yes, the surrounding use is what would interpret the scope of that easement. And yes, I should, you should have case law providing for that language in the appeal that I sent to you."

The City Attorney stated, "The surrounding use is commercial, that's what should define the scope of that easement, is it not?"

Melissa Martin stated, "No, it would be surrounding circumstances, and again I would argue that, you know, nowhere in the case law have, I seen that. Well, its zoned a C-2, so anything flies. I mean, you know that would essentially, be some sort of a public right of way. But no, and I, to the extent you would like me to provide a more pointed case law, I'm more than happy to do so, but no I've seen nothing in the case law in my time practicing in New Mexico states that just because something is zoned commercial, therefore, it's free game. You know, it's still, it goes back to the surrounding circumstances, the past use. If it's been used for twenty (20) years, as an old dirt road to haul cattle down, its not suddenly going to be a commercial highway and that's not a problem. You know, I mean, that's what I mean, by the prior surrounding circumstances."

The City Attorney stated, "So, Ms. Martin, there has been no testimony that there's going to be hundreds of RVs daily crossing this piece of property is there?"

Melissa Martin stated, "Well, I don't know that we've had anyone testify to as to how many recreational vehicles a day that will pass, but I, you know, I grew up camping as kid. I'm sure you all did to and my understanding is there has been testimony that I believe there will be forty-two (42) camping spots available at any given time. Forty-two (42) RV spots, so, you know, you interpret that as you will, but I would say it would equal thousands of in and out per year as I stated."

The City Attorney stated, "And so, let me ask you one other question. You're saying that the easement would be ambiguous because it had no limiting terms, if the easement, if you don't deny that your people who acquired the property prior to 2014."

Melissa Martin stated, "No, I don't deny that."



The City Attorney stated, "So if they acquired that property by Special Warranty Deed, which means they got no special warranty covenants with that deed, and if that property was zoned a C-2 at that time. And if that property had that easement across it, leading to a C-2 piece of property and if that easement has no limit in the language, then this easement may be used for personal use only. That means that, that easement is not ambiguous what so ever but rather leading to a C-2 piece of land that was a C-2 when your client acquired it."

Melissa Martin stated, "Well again, I don't think that you can. Again, it goes back to the surrounding circumstances, the prior use of the past twenty (20) years since the easement was established. And for the past twenty (20) years, you know. I know that the appellees have stated that, at that time this wasn't intended to be an RV park way back when they subdivided the land. So again, the ambiguity is resolved by determining, how has this easement been utilized for the past twenty (20) years. And if its now, if the City Council now is stating that it can be utilized for a completely different purpose, be it commercial, residential, industrial, you still have to look at the surrounding circumstances. It doesn't, being zoned as a certain way certainly does not give you. You know, I'll give you (inaudible) circumstance. A residential, you know, a private easement in residential land. You know, utilizing a residential easement just for any way you see fit is just simply inadequate. Again, the easement should be used for the purpose in which it was granted and if those terms are ambiguous, it goes back to the prior use. And the prior use for the past twenty (20) years has been far from hauling RVs, campers, what not, in and out of that property. It's completely different."

Councilor Lacewell stated, "Mayor, may I address Ms. Martin again?"

Mayor Holman stated, "Yes."

Councilor Lacewell stated, "Ms. Martin, this is Jody Lacewell again. So, I think as a council, we are excited that there would be a RV park back there. I don't know that the Sorensens are unhappy about the RV park or just about the easement, but. If the Lewicki family is willing to move the easement over to their own property, would that make your client happy?"

Melissa Martin stated, "Well, you know Council, I would have to. I don't want to speak to much for the Sorenson family. I, I certainly. I am very certain that would be far superior to placing this easement to an RV park, right across their property. I am certain that, that is the case. I would imagine that relocating that easement to the Lewicki property would a more appropriate resolution to this matter, in the Sorensens eyes. You know, I can't say they'd be jumping up and down about it, but you know. And as I said, I think that the ordinance still speaks for itself. That this really isn't an appropriate use of the term 'abut.' You know, but it would certainly be a better resolution than we've reached at this point."





The City Attorney stated, "Let me remind the Council, that that's not the issue before the council today. This is the appeal of the use of the easement leading to the C-2 property. Whether or not there can be another resolution is not the issue before you today."

Councilor Lacewell stated, "So, this is all about an easement and not about a RV park?"

The City Attorney stated, "No, this is about an easement that exits to an RV park, to a C-2 piece of property. This is an appeal from a conditional use application in Planning & Zoning for the placement of an RV park in a C-2 piece of property."

Councilor Miller stated, "Mayor, I have one (inaudible) to ask."

Mayor Holman stated, "Yes, councilor."

Councilor Miller stated, "I was on the council when this was annexed and this property. And I think whoever owned it at that time should have probably come to the public hearing if they didn't like it being C-2 because it was annexed in to the City of Ruidoso Downs in 2004. And that was because we were giving them services already. Police service and we bought the water from Agua Fria, the well and that's why we annexed in all this property. And I think that was probably the time they should've. That if they didn't want it to be C-2, they wanted agriculture or whatever."

Mayor Holman stated, "Yes, mam."

Councilor Miller stated, "In 2004, the source engine owned the property. The Lewicki's (inaudible)."

The City Attorney stated, "Can we wait till we get to that part."

Councilor Miller stated, "Yeah, ok. It was just the thought that came to me."

Melissa Martin stated, "And councilors that's correct the Lew. The Sorensons did not own the property at that time. Otherwise, I'm sure they would've been mindful, you know, as they have been in this situation. But also, the easement itself still hadn't been created. So, even if our client had owned it at that time, they likely wouldn't of had an objection, but for this thirty (30) foot easement now crossing their land and bringing, you know, RVs into the, into their property."

Councilor Miller stated, "I understand."

(inaudible)



The City Attorney stated, "I'm asking for the applicant for the conditional use."

(inaudible)

Alexandra Bobbit stated, "Hi, I'm Alexandra Bobbit and I will be representing Edgar Ontiveros today."

Edgar Ontiveros stated, "Hi, my name is Edgar Ontiveros."

Alexandra Bobbit stated, "And, John basically took the majority of my job from me. I had all this stuff ready. Then he started on. So, I unfortunately will be reiterating a couple of things that was stated. However, one of the key points and one of the key issues that we had is the fact that when the Sorensens purchased the property in 2014. It was very clearly, and I think we can all agree, that it was very clearly zoned C-2 at that time. And so, there was a very, and if they were not aware that their property was zoned C-2 that was a responsibility that they had as property owners to know that there was the ability, there was the possibility that there was going to be some form of commercial access. And so, to kind of now all of a sudden go back into this thing about how the easement is being used for something different. And, you know, and this changes everything. It doesn't really because there has always been the ability for either the sellers or whoever is going to purchase the property around them for there to be some sort of business that would go in. Now, if anything, I would actually say that having an RV park go into that area would almost be more beneficial than having some type of property where, or some type of business that goes in that has constant in and out access. Like for instance, I think, like I'll take Harvey Feed store. So, that one is straight off of the highway. That one has customers that come in and out, are continuously going, coming, leaving, so on and so forth. That is a very different type of traffic than you would have in a RV park. A RV park, while yes there can be RV's moving in and out but typically for the most part, people are going in. There's the river back there. The idea that this is kind of going to be an oasis for travelers. Should people decide to live back there, that's going to be the same as if you are in a residential area. As if you are coming and going without this constant access of like a turn around. Again, where like Harvey's Feed Store or the Lotzastuff place. And so, if anything, the idea that this is changing the scope of an easement that exists, we can kind of have it go both ways. So, for instance, if we're looking at the RV park and if we're going to argue that the area has this residential nature to it, then, if anything, an RV park is going to be one of the things that is going to lend to that residential nature. It's going to be something that isn't going to have this constant, continuous flow for whatever hours a place is open, but it's going to be more of a leisurely pace. However, again, the easement doesn't actually have any specifications. It doesn't have any limitations or terms that it can't be specified commercial traffic or it can't be large vehicles. It doesn't have any of that and actually we have walked and this has been supplied in your documents. And when you have a chance, I'm just going to be asking that you really review the Lewicki land division and grant easements. It now on looks like this is the one that basically kind of sets up where our easement



is, and. It's actually this really long road here and then it shows this kind of this short section here, and. This short section is really where we're really going to be addressing, because at that point that's where the easement is going to come all the way up and come into here. So, the idea that it's really taking over their property, really isn't true because this easement over here. That's probably your biggest, longest easement is the one that's not going to be in use. It's going to be this shorter section in here that then takes you straight onto my client's property. The next one that I'm going to be asking that you really review is going to be the, a replat of the Lewicki land Division Tract 2 and this one actually has the definition that we mentioned. And so, where it says 'Easement B' it's pretty clear at the fact that its states, and it's very small writing. I almost had to get a magnifying glass to stare at it, but it states the thirty (30) foot wide easement for access and utilities. So, for access and utilities. It is not specifying that it is utility only. It's not specifying that we are changing anything in the easement. We are still maintaining the access part of the access and utilities. And then, and so then going to, you know, the case law that was laid out. So, one of the things that when I was reviewing this case law was, yes, when it comes to the change. Like there was one of the cases that it was taking, I believe it was taking the case from being a utility type easement, and a water type easement, a drainage type easement and then someone was unilaterally changing that easement to become more than just water drainage but here we don't have that. We still have the same access. We still have the same definition of access. Access of course being, coming, going, egress, ingress. So, the scope of this easement is not being changed at all. It's still being maintained. And so, I really come back to the fact that when this property was purchased, it was purchased with this easement already there, and it was purchased as a C-2. And so, the Sorensens knew exactly what they were getting into. They knew exactly what type of purposes could go back to. They knew that those easements ran across their property. So, none of this is new. No one is trying to change anything. No one is trying to reinvent anything that has been here. We're not asking for anything additional. It's simply, they have asked to put in an RV, only to truly believe, that it is not necessarily the easement that is the issue here. We do truly believe that the Sorensens do have concerns over the fact that it's an RV park and what does that mean. What does that sound like, so on and so forth. And so, I just want to make sure that we have that clear when it comes to this idea that my client is unilaterally changing the scope of this easement. That is not what is happening here. When he bought the property, he bought the property with the easement and that it was all C-2. It was an idea that it was going to be C-2. And so, therefore, he is just following a long with what has been recorded, what has been deeded. And so, he has been acting accordingly and he has not been asking, or wishing to change the scope of any of that or to make any large unilateral changes. And that is just that he is continuing to follow the easement as recorded where it states access and utilities. And so, then it brings us to the idea of does this constitute abutment. And there was, you know, the idea given that if you have a, if you are up against a public roadway that then goes to the highway then that is. You know that then everyone can kind of think that they abut to a highway. And that's not what we're saying here because the large difference in this, is that this easement is not a road or any type of driveway, roadway anything that is actually, to my understanding, that's actually maintained by the City of Ruidoso Downs. This is an easement that is actually



made part of Mr. Ontiveros's property and what that means is that he is, as being the dominant servient in this easement is that it does create the point where he is the one that is maintaining the roadway. It is his roadway. It has been given to him. So, in being the dominant, that is still his land that takes you to the highway. And so, since it is his land, that takes you to the highway, as it has been granted to him in the grant of easement, that we've supplied for you, that he does in fact abut up to the highway. This isn't something where you know, you come out of here, and you come onto the public road and then you come down. That would not be abutment. Right, so that would not be something the he would then be able to claim, but by actually having the easement be part of his property. It's been deeded as being part of his property. He again, is the dominant servient of that. So, since he is the dominant servient, that is the one that has basically created a continuity between the large tracts of land down to. Which therefore makes that easement part of his property, therefore abutting to the highway. And so, so if anything, we go back to, let me make sure I am stating this correctly, from what was stated earlier, but that takes us back to the 'abut and.' And so, with the 'abut and have access' my client does meet that requirement. He does have that abutment and the access. He is following through with how the easement is stated, and so we are. You know, I know there's been this idea of the whole, well what if we move the easement and all that. And you know, while we do appreciate that. That is not something we have considered or looked at because as we know it's not considered to be part of the appeal process. And you know, and the one thing that (inaudible) on that is the fact that this is something that is recorded. And so, we, you know, the recording is very clear and so we are asking that council follow through on the recordings that have been provided to you and that council maintain what Planning & Zoning put in that Mr. Ontiveros be allowed to have his RV Park and be able to go ahead and operate that. Any questions?"

The City Attorney stated, "Questions?"

Mayor Holman stated, "Yes, I would like for the Council to be able to ask questions of this attorney if procedurally its ok."

The City Attorney stated, "I just thought we've done all a long so far and if I might just say if it appears that you're going to have any witnesses either, is that correct? The public will be allowed to testify, if they want. If the Lewicki's want to be part of that to testify, they may do so, but so far, we've just had arguments between Council and myself. Ms. Martin and Ms. Bobbit. And so, the reason I didn't swear any of the three of us in, so that you know, is that we're considered to be officers of the court and officers of the court aren't required to be sworn in. (inaudible) because we are (inaudible)."

Mayor Holman stated, "So, Councilors, councilor?"

Councilor Lacewell stated, "Thank you, Ms. Bobbit. On the replat, there's this funny little triangle that abuts up against the easement in letter B, its circled in letter B."



Alexandra Bobbit stated, "Yes."

Councilor Lacewell stated, "What is that?"

Alexandra Bobbit stated, "Do you need to put him under oath if he's going to answer that?"

The City Attorney stated, "Are you going to answer that?"

Alexandra Bobbit stated, "Yes."

The City Attorney stated, "Can you raise your right hand, please. State your name."

Edgar Ontiveros stated, "Edgar Ontiveros."

The City Attorney stated, "Do you Edgar Ontiveros, solemnly swear to tell the truth, the whole truth, nothing but the truth under penalty of perjury?"

Edgar Ontiveros stated, "I do."

The City Attorney stated, "You may answer the question."

Edgar Ontiveros stated, "That's just, that gives you the radius of the curve for the road, that's it. It's just a point."

Councilor Lacewell stated, "Oh it's just a measurement."

Edgar Ontiveros stated, "Yes, mam."

Councilor Lacewell stated, "Ok, thanks, thank you."

Mayor Holman stated, "Any other councilors want to ask questions of the attorney?"

Councilor Proctor stated, "(inaudible) I'll hold my questions off a little bit later. I've got a couple of good ones I'd like to ask."

Mayor Holman stated, "Ok, sir."

The City Attorney stated, "So with that, do you have any. I'll allow any public comment and then I think probably allow the attorney to do a closing before we close and go to public comment (inaudible)."



Alexandra Bobbit stated, "And then, Mr. Underwood, if I may."

The City Attorney stated, "Sure."

Alexandra Bobbit stated, "Again, just to reiterate. Again, looking at the replat, how it kind of makes this 'y' shape and there's a longer part of that 'y' over here, this is not to be used at all. And that is the one that takes up the majority of the Sorensens property. It is solely just this small section over here that would be the portion that would be used for the RV park. As the easement, as you can see, after that does extend onto my client's property, ok"

The City Attorney stated, "So are you saying, as I'm looking at this, and its pointing North, the easement that goes off to the right."

Alexandra Bobbit stated, "Is the one that would be used, yes."

The City Attorney stated, "And are you wanting to put that (inaudible) language into granted business, what's granted (inaudible)."

Alexandra Bobbit stated, "Yes, sir, your honor. Oh my God. Yes, John. It's been a day. Do you want us to stay here or do you want us to move?"

The City Attorney stated, "I think you can move."

Alexandra Bobbit stated, "Ok."

Mayor Holman stated, "So, this part is still open to public."

The City Attorney stated, "You can open it to the public now. And as I stated, anybody who comes up I will have you sworn in. And what I would like for you to limit your comments to, and I know it gets confusing sometimes, but really all we're doing is discussing the right to use this easement for access to a C-2 and that's what was granted by the Planning & Zoning Committee. And whether or not, the issue is whether or not that easement, which is a pertinent to this property purchased by the (inaudible) RV park can be considered to be an abutment. I think that's more so that it's more of a legal question, but it is an evidentiary question but if you want to address that, that's fine. So, anybody want to."

Melissa Martin stated, "Council, if I may, I just wanted to mention, and I apologize for not really, you know, I don't do these everyday so I didn't know quite the procedure but Ms. Sorenson did hope, at one point, to provide a short statement, if that might be possible at some point."



The City Attorney stated, "Is it, who is it?"

Melissa Martin stated, "Ms. Sorenson. Miss Sara Sorenson."

The City Attorney stated, "Would you raise your right hand, please?"

Sara Sorenson stated, "Yes."

The City Attorney stated, "Do you solemnly swear to tell the truth, the whole truth, nothing but the truth under penalty of perjury?"

Sara Sorenson stated, "I do."

The City Attorney stated, "Would you state your name please?"

Sara Sorenson stated, "Sara Sorenson."

The City Attorney stated, "And, Sara Sorenson, where do you reside?"

Sara Sorenson stated, "I reside in North Dakota."

The City Attorney stated, "And are you one of the owners of the property located, are you one of the appellants protesting the granting of this conditional use?"

Sara Sorenson stated, "I am."

The City Attorney stated, "Go ahead."

Sara Sorenson stated, "Well, so I wanted to say that we, my brothers and I grew up in North Dakota, but my dad moved to New Mexico, probably about fifteen (15) years ago. And he died last July. And so, but he lived predominantly in New Mexico. And this is kind of, this home that he has is kind of all that we have left of him, I guess. That and I have two (2) young kids. I have one here (inaudible) can you come? This is one. This is one of my children and this is the other one. And so, I have a big concern about the RV park because when we go to visit, New Mexico. There's essentially, you're turning this easement, essentially into a big highway through his property. Which is very dangerous for my children to go visit their grandpa, their grandpas place. It was never used as a commercial highway when my dad used it. I didn't feel unsafe at all when we went to visit. There was, basically, my dad used it and the neighbors, the Lewicki's, used this driveway. There wasn't many, many RV's going through this property. The second thing that I'd like to say is that, it would be acceptable, for me at least, that the Lewicki's who sold Mr. Olivera's the property, if they simply, they own the land next door. And if they said they were



willing to sell their land. At least at the last hearing for the right price, and if they do that, that's acceptable and that would provide. That would abut, provide land that abuts a major arterial roadway. So, the Lewicki's are certainly, free to do that. And that would be acceptable. They could sell their land and that provides, that meets the requirement of this statute or the ordinance that you have provided. We don't have, we're not contesting that it's a C-2. We contest that it doesn't meet the requirements of the ordinance. So that would be an acceptable solution for the Lewicki's to sell to Mr. Oliveras."

The City Attorney stated, "May I ask you a question?"

Sara Sorenson stated, "For the safety of our family and our property."

The City Attorney stated, "So, how often or how often have you resided in this home with your children, since your father's death."

Sara Sorenson stated, "Well, let's see, I've been to New Mexico several times since he died, but right now they are currently in school. So that makes it difficult to do that. So, are you asking, since he died?"

The City Attorney stated, "I was just wondering how often you use the home."

Sara Sorenson stated, "Well, my brothers use. I have three (3) other brothers and they are there occasionally to use the home with their children."

The City Attorney stated, "Does the condition of having the speed limit on that one (1). You understand it's just for that one (1) of the two (2) easements, having a speed limit of five (5) miles per hour. Does that calm any of your fears?"

Sara Sorenson stated, "No, there's. No, it does not. I mean there's going to be several large vehicles going in and out of there if there's forty-two (42) pieces. And that's not how the easement was used. The easement was never used with several large commercial vehicles. It would be my dad's vehicle going to his place, his residence. Or the Lewicki's using their vehicle to go to their residence. It was never used as a commercial. It was never used as a essentially a commercial highway going through his property, but certainly, if the Lewicki's want to sell their piece of land and turn that into a, you know, and turn that into a highway to the RV park, that's acceptable to us. That falls within the rules, from what we understand. But it does not, it is not within the rules to put a major arterial highway essentially through our private property."

The City Attorney stated, "And were you aware at the fact that the property, that the RV park is asking to be put into, was in fact on commercial, when you acquired the property?"





Sara Sorenson stated, "Well I didn't acquire, my father acquired the property. So, are you asking what he knew?"

The City Attorney stated, "No, I'm asking you what you know."

Sara Sorenson stated, "Well, my acquiring of the property was after he died."

Melissa Martin stated, "And I wouldn't ask my client to speak to what a deceased, you know, party did or did not know. I mean that's, that's not my client's purview."

The City Attorney stated, "I wasn't. I was asking her what she knew."

Melissa Martin stated, "Well, she didn't acquire the property. She inherited it so to be clear."

The City Attorney stated, "So, when you inherited the property, were you aware of the fact that the property was C-2?"

Sara Sorenson stated, "The technical definition of C-2. No, I mean my dad died in July. So, are you wondering when I learned the technical zoning of it being C-2? Is that your question? I'm not sure."

(inaudible)

Sara Sorenson stated, "I know that when my dad was alive, there was not. There was not many, many vehicles going through that driveway. It was just his vehicle and I don't even remember seeing any other vehicle besides his vehicle use that."

The City Attorney stated, "Right."

Sara Sorenson stated, "I never felt. I didn't feel unsafe. (inaudible). I'm sorry?"

The City Attorney stated, "I was just asking of how to your knowledge how it was zoned."

Sara Sorenson stated, "How it was zoned, ok."

The City Attorney stated, "Ok, I'll move on. Public testimony, yes mam.:

Cassidy Meeks stated, "Hello everyone, I'm Cassidy Meeks. And I actually wasn't going to speak today."



The City Attorney stated, “Cassidy, can you raise your right hand, please? Do you solemnly swear to tell the truth, the whole truth, nothing but the truth under penalty of perjury?”

Cassidy Meeks stated, “I do.”

The City Attorney stated, “And, where do you reside?”

Cassidy Meeks stated, “I live here in Ruidoso Downs, at Slowplay RV Park. And that’s kind of the only reason I’m be speaking today. I’m actually, aside from being on the Fire Department here, I’m also a regional property manager for Cabin RV Resorts. So, I think my knowledge might help. Hopefully, clear up some fears that may be going on today. I have five (5) children of my own. We live in an RV park with one hundred forty (140) spaces. I also oversee another property in Ruidoso. As well as on occasion, different ones throughout the country. We have a fenced in property. We keep our speed limits at five (5) miles per hour. Again, I have five (5) of my own children who live on the property where RVs are coming in and out of and I’ve never had a fear of anything happening. I think, as long as the right rules are put into place, I think it can absolutely be very safe, even with children involved to live in an RV park. Or, (inaudible) where there is a traffic is light, but as long as its managed well. I do have park hosts that take the RVs to their spaces to make it a little bit safer. Make sure their maintaining that five (5) miles per hour speed limit. As well as there was a point brought up earlier on. I can’t recall exactly, the wording that was mentioned but about the amount of RVs that are going to be coming in and out. So, as I stated, I have over one hundred forty (140) spaces in my RV park alone. That being said, I have never, even on our busiest day, which is typically on Labor Day, I’ve never exceeded forty (40) RVs in a day and that is with one hundred forty (140) spaces. With the RV park in question, with them having forty (40) some odd spaces, I would not, in my estimation being in this business for well over five (5) years now, I wouldn’t assume that there would be a huge level of in and out traffic for an RV park of that size. Again, I just hope that it kind of helps with some of the fears. I think as long as the park is well managed, and well looked after and there’s certain rules put in place, I think it is very safe. We live in a stucco house on the actual RV park in the middle of it. There are RVs in and out and as long as its managed well, I think it can be very safe for children. So, I don’t really see that being a huge concern. As parents are watching their children and RV hosts are paying attention and making sure that they’re doing what they need to be.”

The City Attorney stated, “Questions?”

Mayor Holman stated, “Questions? Yes.”

Councilor Lacewell stated, “Cassidy, thank you for your service.”

Melissa Martin stated, “I have a question.”



Cassidy Meeks stated, "Sure."

Mayor Holman stated, "Just a minute, we have a City Councilor that has a question now."

Melissa Martin stated, "I apologize."

Councilor Lacewell stated, "Can I yield to Ms. Martin and come back to my question?"

Mayor Holman stated, "Ok, Ms. Martin, go ahead."

Melissa Martin stated, "Thank you, council. I have a couple of questions. One, I would like to ask where your RV park is located and if it abuts a major arterial roadway?"

Cassidy Meeks stated, "It does. It is, the address is actually is 26514 US highway 70."

Melissa Martin stated, "Ok, so it does meet the requirements that the RV park abuts the highway, unlike this situation, ok."

Cassidy Meeks stated, "Yes, mam, that is correct."

Melissa Martin stated, "Ok, and would you agree, I hear that you have a larger RV park and therefore a larger capacity, but would you agree with my calculations that even if ten (10) RVs were to go in and out a day, for three hundred sixty-five (365) days, that would result in about three thousand six hundred (3,600) entries and exits per year?"

Cassidy Meeks stated, "I do agree to that."

Melissa Martin stated, "Ok, alright thank you mam. Nothing further."

Mayor Holman stated, "Councilor Lacewell."

Councilor Lacewell stated, "Thank you. So, I just live on a street without an easement and if I just look at the traffic that goes by my house every day and there's only, how many people on our street, not even a dozen, and yet cars, cars, cars. So, I'm also thinking of how many times I leave my home and drive down the street, go to Walmart, come back and oh (inaudible) come back and so I'm in and out a lot. And I would think that the people in the RV park are not going to go down there. Although, it does look like utopia down there, I probably would go down there and stay, but some are going to have to stay. They probably have to come out get groceries, go to the restaurants or whatever, which would result in traffic. And your driveway on your RV park, do these (inaudible). What are these RVs? Do they drive past your driveway or your home with your children around, to get to their (inaudible)?"



Cassidy Meeks stated, "So, they do. My, I actually live right in the center of the RV park. My home is a stucco home, right on the corner, so people pass this direction as well as this direction. Across the street from me are RV spaces, behind me are RV spaces, and all around there are RV spaces. Right next."

(inaudible)

Mayor Holman called for a brief recess and reconvened the meeting.

The City Attorney stated, "Ok, we're resuming. Ms. Martin and Ms. Sorenson back, so."

Brian Roberts stated, "I'll salute back around, I'm Brian Roberts and I'm on the zoning commission (inaudible) and resident here. My point is that, in looking at the, I'm very familiar with the zoning ordinance. I'm somewhat familiar with the rest of our ordinances and it has been mentioned that it says 'shall abut and have access to' but 10.06 (A) of the overall ordinances states the word 'and' implies the word 'or' and vice versa. I'm paraphrasing, but John is that essentially what is says. So that means by that clause in the beginning of our ordinances for the City of Ruidoso Downs, that that phrase can be read, shall abut or have access to. So, my point is, is that an awful lot of the argument has been based on the word 'and' but substituting the word 'or' it informs why our decision went the way it was. It wasn't for deliberately, or at least my decision, I can't speak to anyone else's but my decision on this vote was informed by 10.06 (A). And the other point that I would make, is that as a C-2, there are a number of businesses that would not require a zoning to make an approval. For instance, you could have a marijuana grow, you could have a shooting range, there are a lot of businesses allowed under C-2 that would be full commercial businesses that might be much more objectionable than an RV park. Now that is my opinion and everybody has got an opinion. But I want to make the point that, that ordinance can be read, 'shall abut or have access to' that's all I had to say."

The City Attorney stated, "Questions? Well, look at you."

Brian Roberts stated, "Ok."

Councilor Lacewell stated, "I have (inaudible). The question isn't to you, Mr. Roberts, thank you. But John, legally, if it said 'or' would it, well then it would automatically be implied 'and'?"

The City Attorney stated, "It's and/or is what it does. So, if you say 'or' its and/or. If it says 'and' it says and/or. So, the use of either one of those two (2) means and/or."

Melissa Martin stated, "Council, may I comment and read the entirety of that statement?"



The City Attorney stated, "Of the ordinance?"

Melissa Martin stated, "Of the definition."

The City Attorney stated, "Yes, mam."

Melissa Martin stated, "It says 'and' or 'or' is the title. Either, conjunction shall include the other as an 'and/or' if the sense requires it. So that's, that's not a blanket, that every 'and' or 'or' used in the entirety of the Ruidoso Downs Code of Ordinances means and/or that, you know, simply defies the logic of legal reasoning. If you can't have an exclusive or an inclusive term in your entire laws on the record. So, I would just like to point that out"

The City Attorney stated, "And I think what Mr. Roberts is testifying to, that as a member of the Commission, that's the way that he interpreted that particular provision."

Brian Roberts stated, "Yes."

The City Attorney stated, "Any other comments?"

Mayor Holman stated, "Yes."

The City Attorney stated, "Will you come forward? Raise your right hand and state your name, please?"

Thomas John Lewicki stated, "Thomas John Lewicki."

The City Attorney stated, "Do you, Thomas John Lewicki, promise to tell the truth, the whole truth, nothing but the truth under penalty of perjury?"

Thomas John Lewicki stated, "Yes."

The City Attorney stated, "You may be seated."

Thomas John Lewicki stated, "Ok, I'm the builder and developer of this property. Ok and I had applied all of the subdivision rules, of course. I at one time was sole owner of all of it, ok. Back in 2004 it was going to be a bunch of (inaudible) ok. This is 2004. This is when it was approved as a subdivision, back then. Ok. It will always be whoever owns the property, on that property, whether it be two (2) people, or three (3) people, or one (1) person. It's going to have the same access the thirty (30) foot easement. Utility and obtain road to that property. Ok, that is end of story, ok. That's the way it was built. It's the way it was designed. The only way it was designed was the drainage and everything else on the property. I think everybody needs to visit the



property. Get a visual and see what it's all about. It's the most beautiful oasis there is down there. It could only be a beautiful RV park. And I'm here at Omar and Edgar's behalf because I wouldn't have the money or the youth to do anymore developing. I have two (2) acres, is all I can do right now and that's all I wanted. Now I think it's fair to this man, he paid good money for that property. It's a very beautiful piece of property. I think he deserves to have that property down the way that he wants because it's all dreams. We all have a dream in life and we have to pursue those dreams. Fred Sorenson was a very good friend of mine. When that man purchased that property, I gave him water. He did not have any water or any access to electricity to anything. I gave him all of that because I own the property. I developed that water and electricity to him. I give him the water until he put his own well in. Fred was well aware the subdivision requirements and the subdivision rule. Ok, that easement that thirty (30) foot easement is for the three (3) property owners that own it. Myself, Sorensens, and Edgar and Omar, ok, they own it. It's the same thing, ok, and it wouldn't be a smart thing. You got a thirty (30) foot easement for that. The Harveys got their thirty (30) foot easement for their trucks to come in and you want me to give up more property of my two (2) acres and put another thirty (30) foot. That's ninety (90) foot of road. Does that make any sense to anybody here? Those roads were built together. I think the thirty (30) foot is plenty. Ok, for everybody to enjoy it. Another thing is the time that Fred bought that property was I believe for 2008 maybe. I don't exactly remember ok. I've never seen his kids there until he passed. Fred passed, it's the only time I seen anybody from that side of the family and you know we went and introduced ourselves. It was like, we were like taboo to them. I have no idea what I ever did to my neighbors that."

The City Attorney stated, "Tom, I don't want to get in to personnel."

Thomas John Lewicki stated, "Ok, but what I'm saying is Fred knew the subdivision requirements. He knew that easement was an easement. And he owned it properly, they only inherited the property. And so, as far as that goes I have every document you want and the dates of when all this was (inaudible) done, ok. It's all on record. And I don't understand, if there's one thing I can't stand, is lawlessness and corruption. And I feel there is a lot of lawlessness and corruption going on here and I hope everybody gets a handle on it."

(inaudible)

Thomas John Lewicki stated, "Thank you."

Mayor Holman stated, "Ok, lets have questions for this, ok."

Councilor Lacewell stated, "So Mr. Sorenson, to the best of your knowledge, purchased the property in 2008, 08?"

Thomas John Lewicki stated, "Well, I'm not sure. I know (inaudible)."



The City Attorney stated, "I think I told you the deed was in 2014."

Councilor Lacewell stated, "14, he bought it in 14?"

The City Attorney stated, "Right."

(inaudible)

Thomas John Lewicki stated, "Eight (8) years, eight (8) years, I'm sorry. Well you take eight (8) from fourteen (14) what do you got, 2007?"

The City Attorney stated, "Well, he purchased the property in 2014."

Councilor Lacewell stated, "So that's ten (10), ten (10) years."

(inaudible)

Thomas John Lewicki stated, "(inaudible) and I'm forgetting how many years."

The City Attorney stated, "The property was annexed in 2004."

Thomas John Lewicki stated, "It was annexed in 2004."

The City Attorney stated, "Yes."

Thomas John Lewicki stated, "As commercial."

The City Attorney stated, "Right."

Thomas John Lewicki stated, "As it was here. You see, actually his house was supposed to be the office. Ok, and so all there is just like you said, there's a little peninsula there and a peninsula where his part is, everywhere else is easement. I gave that up when I owned it. Thirty (30) foot all through the whole thing, so I could do this subdivision back then, but the village couldn't produce me water. Ok, now we have the water. We got a six (6) inch line there. Ok, and Omar and Edgar, they have the water, they have the water rights. All they need is to pump that water and put that water down there and I just, you know. They got a beautiful design and even better than what I was going to do it. And, I'm just here for their support."

Mayor Holman stated, "Is there any other councilors that have questions at this time?"

Melissa Martin stated, "I do council."



Mayor Holman stated, "Just a moment, Councilor Lacewell.

Councilor Lacewell stated, "I'm waiting for Joey."

Mayor Holman stated, "Joey, Joey hadn't testified yet."

Councilor Lacewell stated, "Oh, I'm sorry Joey."

(inaudible)

The City Attorney stated, "I'll let him as soon as Tom finishes his testimony."

Councilor Lacewell stated, "I'll wait for my question then."

Mayor Holman stated, "Ok, and thank you sir."

Thomas John Lewicki stated, "Your welcome and thank you."

The City Clerk stated, "We have one more question."

Mayor Holman stated, "Yes."

Melissa Martin stated, "Council, and I apologize, when you say councilor, I think you're talking to me. So, I apologize for budding in on y'all, that we're all council here. So, I do apologize but Mr. Lewicki, now would you be. Would you enjoy having the RVs crossing across your property and is that something you would want on your personal property?"

Thomas John Lewicki stated, "Of course."

Melissa Martin stated, "Ok, and but yet you're not willing to grant an easement or sell your own property to grant the. Excuse me, I'm still talking. The, to, as you said, to fulfill the dreams of the owners of Excalibur."

Thomas John Lewicki stated, "I already did. I granted all easements. I was the sole property owner. I put these easements in."

Melissa Martin stated, "Right, but they don't have an access point to the highway through your property, correct?"

Thomas John Lewicki stated, "Yes, they do. They go right to the highway."





Melissa Martin stated, "Ok, they access the."

Thomas John Lewicki stated, "Have you been to the property, mam?"

Melissa Martin stated, "Council, you're not answering my question. You're being combative. If you don't mind, I'm just asking you a question. Whether there's access to the highway purely through your property."

Thomas John Lewicki stated, "Yes. To the highway, yes."

Melissa Martin stated, "Ok, so all RVs can avoid the Sorenson property and get to and from the highway from your property?"

Thomas John Lewicki stated, "Yes. Actually, well it all depends if they open up the other. They only wanted one (1) easement. They have two (2) easements."

Melissa Martin stated, "Sir, you're still not answering my question."

Thomas John Lewicki stated, "The Sorenson property is a peninsula. It's on the top of a hill and it's cut into the hill. So, the property anywhere else is nothing but an easement. It can't be used as anything else."

Melissa Martin stated, "I'm sorry you. Ok, we'll assume your not answering the question. So, and would you agree that the property that you sold to Excalibur, the title you granted to the buyers that no two portions of that land touches and abuts the highway. That they do not own title to any land abutting the highway. Is that right?"

Thomas John Lewicki stated, "They do own it. It's the easement. It goes to the highway."

Melissa Martin stated, "They hold title to the easement?"

Thomas John Lewicki stated, "Yes."

Melissa Martin stated, "They hold legal title to the easement."

Thomas John Lewicki stated, "I am, they are, and so are the Sorensens."

Melissa Martin stated, "Ok well I think that's where some of the confusion is."

Thomas John Lewicki stated, "(inaudible) subdivision."



Melissa Martin stated, "And I think that's where some of the confusion in this matter comes from because sir, I will tell you. They do not own title to the easement land. They do not own title to that land."

Thomas John Lewicki stated, "Yes they do."

Melissa Martin stated, "Nothing further. Thank you."

Thomas John Lewicki stated, "I'll let you guys argue it out but I'm not qualified."

(Inaudible)

The City Attorney stated, "You have a question for Mr. Lewicki?"

Alexandra Bobbit stated, "Yes. So, just to kind of clarify. So, I pulled out this, in the back of the replat of the Lewicki Land Division Tract 2. If anyone feels like following along. And so, just to clarify because I think there is just a little misunderstanding. Tract 1 here is the, the Tract 1 here and just to be aware, the large document he is looking at is the same document."

Thomas John Lewicki stated, "I can't see the small print."

The City Attorney stated, "Is that the one that says Replat of Lewicki Subdivision?"

Alexandra Bobbit stated, "Land Division Tract 2."

The City Attorney stated, "Ok."

Alexandra Bobbit stated, "And so, Tract 1, who owns Tract 1?"

Thomas John Lewicki stated, "The Sorensens."

Alexandra Bobbit stated, "Ok, and who owns Tract 2A?"

Thomas John Lewicki stated, "Stephanie and I."

Alexandra Bobbit stated, "Ok, and so the easement, as we see this one shows notations as to degrees and inches and stuff like that. And so, what we're looking at one. From Tract 1, that's where it says in large letters, it says 1.61', that section that's running between. Is that the easement that we're talking about?"

Thomas John Lewicki stated, "Yes."



Alexandra Bobbit stated, "And is that on your property?"

Thomas John Lewicki stated, "Yes, it is."

Alexandra Bobbit stated, "So, the RVs will be passing on your property as well in order to go onto Ontiveros?"

Thomas John Lewicki stated, "Yes."

Alexandra Bobbit stated, "Ok."

Thomas John Lewicki stated, "And they could use this one too because its recorded."

Alexandra Bobbit stated, "Well, yeah, but we, we've talked about that that would not be utilized. So, we have one small section here and then we have one small section that comes across."

Thomas John Lewicki stated, "Ok, can I ask you a question."

Alexandra Bobbit stated, "No."

Thomas John Lewicki stated, "Ok."

Alexandra Bobbit stated, "No questions to me. I only get to ask questions. And so, here the RVs will come through Sorenson and they will come through your property?"

Thomas John Lewicki stated, "Yes."

Alexandra Bobbit stated, "And, do you have an issue with the RV going through your property?"

Thomas John Lewicki stated, "No."

Alexandra Bobbit stated, "Ok, no further questions."

The City Attorney stated, "Are we done?"

Thomas John Lewicki stated, "Anybody wants any questions? Thank you all."

Mayor Holman stated, "Thank you for your input and."

The City Attorney stated, "Joey?"



The Public Works Director stated, "I'm good, unless you need something."

Melissa Martin stated, "Council will there be a time for closing arguments?"

The City Attorney stated, "Can you wait for just a second?"

Melissa Martin stated, "Yes, sir."

The City Attorney stated, "Councilor Lacewell has a question of the Director of the Parks."

The Public Works Director stated, "Parks and Rec.'s sure. That works too."

The City Attorney stated, "Parks and Rec.'s. I seen it on tv."

Mayor Holman stated, "Public Works Director."

The Public Works Director stated, "Whatever you want to call me, I'm fine."

The City Attorney stated, "I'll call you sir. Do you solemnly swear to tell the truth, the whole truth, nothing but the truth under penalty of perjury?"

The Public Works Director stated, "Yes, sir. I do."

The City Attorney stated, "State your name."

The Public Works Director stated, "Joe Jarvis, Public Works Director."

Councilor Lacewell stated, "Thank you Mr. Jarvis. I was wondering about the well. So, if Mr. Sorenson bought the property in 2014. How was he authorized to put in the well?"

The Public Works Director stated, "I don't know, because we have a city ordinance that states that's not allowed. That was before my time as a director. I don't know. Mr. Lewicki might be able to answer that. I'm not sure."

Councilor Lacewell stated, "Could that be something that Jennet could research about the, how they were able to get a permit for a well in 2014?"

The City Attorney stated, "It would probably be the OSE."

The Public Works Director stated, "The Office of the State Engineer. We don't issue those permits. You'd have to go to the state to draw a well permit."



Councilor Lacewell stated, "Well, but you can deny it because we tried to put in a well."

The Public Works Director stated, "We do not have a. Well, our ordinance says if there's water available or sewer within, I believe two hundred (200) feet, then you must connect and can't put a well and lalala. I've never seen anything that says we can deny it because the permit doesn't come to us. The well driller gets a permit, goes to the state, comes back does the work and doesn't give us the word until it's (inaudible)."

Councilor Lacewell stated, "I can testify that the (inaudible)."

The Public Works Director stated, "If it's (inaudible) yes."

Councilor Lacewell stated, "So, then the question would need to go back to Mr. Lewicki."

The Public Works Director stated, "Maybe. He might know about it because he was the one who has the original well that starts and has the water."

Councilor Lacewell stated, "Alright, thank you."

The City Attorney stated, "Any questions of Mr. sir. You're excused."

Mayor Holman stated, "Well, just a second. Councilor Proctor."

Councilor Proctor stated, "The water supply to the RV park."

The Public Works Director stated, "Yes sir. RVs use very little water."

Councilor Proctor stated, "Ok, but comes from the city."

The Public Works Director stated, "Yes sir."

Councilor Proctor stated, "Ok, thank you."

Mayor Holman stated, "Joey."

The Public Works Director stated, "Yes sir."

Mayor Holman stated, "I have never heard you say 'I don't know' before. You have always have an answer and its correct. I finally heard you say 'I don't know.'"



The Public Works Director stated, "Because I can speak a lot on this. I have walked Mr. Lewicki's property. There is no place to put an easement on the East side. It's impossible because there's property that have houses that are built to both fence lines. So, that isn't going to work. The easement is the easement and John you might look in to the easement situation over at where Riverbend was built because it's an easement just like this and that RV park was built in 2003 or 4."

Mayor Holman stated, "That was meant as a back door compliment."

The Public Works Director stated, "Well, you know, I always got something to say, just ask it."

The City Attorney stated, "A back door testimony."

Mayor Holman stated, "He is awfully good."

The City Attorney stated, "Do you have a question for Mr. Lewicki?"

Councilor Lacewell stated, "Oh, can he. (inaudible)."

Thomas John Lewicki stated, "I can come back up there."

Councilor Lacewell stated, "What's the story on the well in 2014?"

The City Attorney stated, "You're still under oath."

Thomas John Lewicki stated, "Yeah, Mr. Sorenson put a well in down there."

Councilor Lacewell stated, "In 2014?"

Thomas John Lewicki stated, "Yeah."

The Public Works Director stated, "You didn't have water in there (inaudible)."

Thomas John Lewicki stated, "We didn't have water for him there, but I mean, I would've gave him water. It was, you know, already piped into the house. But he wanted to do his own well and at the. Actually, the Sorenson's bought Drapers property also. So, they have one (1), two (2), three (3). They have three (3) homes on the East side of me. Plus, he owns a two hundred fifty (250) (inaudible) that I built him over in Arabella and plus has two (2) or three (3) ranches down in the valley. So, they have a lot of ranches for their kids to go to, if they're afraid of the RVs, I guess, I don't know. You know, they have other properties."



Mayor Holman stated, "Councilor Lacewell."

Councilor Lacewell stated, "Thank you, sir. So, is your personal home also on a well?"

Thomas John Lewicki stated, "Yes."

Councilor Lacewell stated, "Ok, thank you."

Thomas John Lewicki stated, "Yes that's been there since the '50's. It hasn't changed any level at all. And, it's been the same as it's always been."

Councilor Lacewell stated, "Thank you."

Thomas John Lewicki stated, "It's a running stream that runs through there and it's great water."

Councilor Lacewell stated, "Do you sell it?"

Thomas John Lewicki stated, "Thank you, any other questions?"

Mayor Holman stated, "Thank you again. It's still open to public."

The City Attorney stated, "Anybody else?"

Mayor Holman stated, "Ok, we'll close it."

The City Attorney stated, "Ms. Martin are you wanting to give a closing statement?"

Melissa Martin stated, "Yes, council. I sure do. And, you know, I hate cheesy closing statements, but I think in this context its very applicable. That old phrase, the road to hell is paved with good intentions and the reason I say that is because your zoning commissioner came up here today and articulated that his assessment of the language of the code of ordinances. The meaning behind this limited, this limiting language was to prevent the placement of RV parks that cut through residential neighborhoods with multiple families using them. That sort of thing. And I would implore you to consider that by determining that abutting, or rather having an easement to a major arterial roadway is enough to qualify as abutting and having to a major arterial roadway. You're doing exactly what you're trying to prevent. The next party that comes is going to say 'no, I have a public easement. I go down. I go from my property down avenue a. I cut over to avenue b. I cut over to avenue c and there, I'm at the highway.' That a public easement is a right of access just as the easement we're looking at here. And so, I would truly implore you to consider the ramifications of considering any easement access to a highway to be sufficient to be an RV park. As an attorney, I would be all over that with my next client saying that absolutely,



you qualify for a recreational RV park on your two (2) acres parcel up the road. Through this residential neighborhood. We will now be the City Council who is rewriting the city ordinances and determining who abuts and who doesn't by using, you know. There's no fair way to interpret, giving one (1) party. Saying you abut because you have an easement but not giving it to the next party that has a public easement. That's the way it's going to play out, then I would make that legal argument all day long. This property does not abut a major arterial roadway. And as your zoning commissioner stated, this is exactly why this language is in there. Is so that you don't have, you know RV park access cutting through properties with children, or neighborhoods, or the like. And maybe it's unfortunate, as one of the zoning commissioners stated in their hearing, it may be unfortunate that theirs the term 'abuts and has access to' but that's the way the code is written. And it's not for me or you to simply rewrite it, as we see fit. So, I would implore you to look at that language and consider what it's going to mean for the community when you just disregard one of those two terms. And consider that fully before you make a decision to allow this because I think that you're opening pandora's box. Now considering the easement, I will close by giving you some language straight from the New Mexico's Supreme Court. That loves quoting to them because there's no higher authority to them in the state of New Mexico. And what they say is 'a preference exists in New Mexico to narrowly construe the rights created by an easement' that's in Walker v. United States from 1981. They continue that the New Mexico Supreme Court has noted that "the law is jealous of easement claims and the burden is on the party asserting such a claim to prove it clearly." Now I would consider whether Excalibur, in this case, has clearly proven simply because this property is zoned C-2, that you are permitted as the City of Ruidoso, to permit RVs, campers, trailers, what have you, in and out of this property. And that, that is sufficient and that is agreeable in scope to what has gone on that property for the past twenty (20) years. I like to listen to the Supreme Court in New Mexico. It say's to consider these easements narrowly and I would encourage you to do the same. Thank you so much."

The City Attorney stated, "Thank you. Ms. Bobbit."

Melissa Martin stated, "I'm sorry, was there a question for me in there?"

Mayor Holman stated, "No."

Melissa Martin stated, "Thank you."

Alexandra Bobbit stated, "I did enjoy, the road to hell is paved with good intentions, because we're not looking at intentions here. We're looking at fact and the idea that we are using public roadways to be something that we are then attacking you on it. Claiming that well, if you grant this deal with this easement but then any house, that is up against a public roadway, is up against an avenue or a road or, you know, a city owned property will give everyone the ability to put in RVs and RVs will be everywhere. How dare they. That's not what we have here. We don't, that





doesn't exist. And so, when someone is trying to make you feel like you are rewriting ordinances, or you're rewriting things. That's not what you're doing. In this situation, it is abundantly clear, that you are being asked to uphold the ordinance. And if whatever way it is that you decide to make that decision, obviously we want it to be made in ours, but we do want to make sure that the facts are very clear. And it's not, you know there's this claim, this legal argument that can be made all day. It's, again, it's not legal, it's a factual argument. When you are granted an easement, you own that property. When you live on a home that is on avenue a, that connects to avenue b, that connects to avenue c, you don't own those roadways. Avenue a is not yours. Avenue b is not yours. You pay taxes on them but they are not yours to maintain. They are not to be considered your property. You don't have deeds to those properties. You don't have deeds to those roads. I, you know, with my home, my home abuts up to a public roadway. I don't have any deed that tells me that I own my road way. This situation is one where there is ownership of a roadway. The City of Ruidoso Downs does not own it. It is owned by my client. He is the dominant. This is again where the dominant servient really comes into play because the property, the property of the Sorenson's and the property of the Lewicki's that has been granted to now my client's property. And so, he maintains. He is the one that takes care of that road. That's not going to be a responsibility of the City of Ruidoso Downs. And so, to kind of put this idea of fear in you that all of a sudden resident, all residential neighborhoods will have RVs in them because that's what you're setting up. You're not setting up that precedent. You are following through with the ordinance that you've been provided. And if you make the decision that a privately owned easement is considered to be abutting up against a highway and that someone owns that easement, so therefore, that is considered to be abutting and access. If you make that decision then that is what is upholding here. It's not that you're reworking or rewriting. And so, obviously we implore you to understand or to ask or to find that the privately owned easement, that is maintained by my client, that is deeded to my client, that is considered to be part of my client's property, that that is property of his abuts to a major highway, and therefore allows access. And again, when it comes to the RVs, and again this idea that their being thrown up everywhere. It's very clearly stated in the ordinances in Section 155.083 that, "in order for there to be recreational vehicle park development, they have to get a conditional use permit." So, all RVs have to come before the City of Ruidoso Downs. Either the Planning & Zoning Commission and then, if appealed, obviously to you, but it has to come before the city. And it has to be agreed to, voted on by the Planning & Zoning Commission that you all have in place. And if not agreed to, brought to you by appeal. So, the City of Ruidoso Downs, in their ordinances, has themselves that you have to approve every single RV park. You don't necessarily have to approve every business that goes in. I know you have to get business permits and whatnot but it's very. And then even with that recreational vehicle, it goes into a whole list of guidelines as to what has to happen here. That is has to be twenty-seven (27) foot road and you have a thirty (30) foot road situation. You know, where your setbacks are. And that again, this is only something that could happen in a C-2. This is not something that could happen in a residential. And so, I just want to make it very clear that the idea that now, all of a sudden, if you do pass this, you're looking at tons of lawsuits or tons of asks for RVs. And all of a sudden,



you'll have to grant them because of the precedents you set. It's not, it is not the same as the situation you have before you. And so, I just wanted to make sure we got that really, really clear. And so, again, we're just asking that you uphold the ordinance as written. Finding that the easement itself is owned by my client. Therefore, making his property, as deeded, and therefore does abut and have access. When we're talking about New Mexico state law and Supreme Court and all of that. Again, you know, here it's interesting because, you know. If you're in court, then we make arguments about well New Mexico Supreme Court said this and that. And then we'll have judges that will find other cases or finds mixes in terms of what is clear. You know, clearly stated, and then the judges will render their opinion. Here, we, and it does state, I have the case where it does state that there is a preference exists and narrowly construe it is the burden of the party to prove clearly. Now, interestingly enough, when I was looking at the cases that supplied that information, there are several of the cases that were listed in your case of appeal. That when you look them up have negative treatment. And what that means, is that a holding those cases that did say these things were actually found in other cases to not be followed because they were not considered to be. Well that they'd be that the Supreme Court. Bless you. That the Supreme Court wanted to follow or they thought there needed to be an exception to that. And so, when you, when you are reading your appeal packet, you see the listing of the cases and you see what referencing them. One, again, those cases are very different than the situation we have here. And I'm not expecting everyone. I got the cases if you want to read forty (40) plus pages of case law. I will more than happily give it you. However, I urge you to read that with caution just because again not all the cases are just fully accepted. New Mexico has found that the cases that are referenced are negatively treated later. So, not completely followed. And, and then, additionally that's not. That's not something that necessarily dictates the end all be all, right. And it's also something that, without knowing the extent of the cases. Like one of the cases, is a water drainage case, which is not applicable in this matter. Another one is about how a roadway was square and the court turned it into a non-square roadway. And so, it was an easement, they made it from being a box to being a curve, like a roadway does. And what I found actually interesting is the majority of these cases actually found in favor of the people that had the easement. And so, just something a grain of salt to kind of take with that when you are reading. But either way, even if we do follow those things, the preference that you narrowly construe is then that you have to narrowly construe. Which means, that where it states easement b on the replat, where it says access and utilities, you have to narrowly construe that. Which means, if the easement is allowing access in and out, then the easement is doing its job. That is the construction of the easement. That is the purpose of the easement. My client needs that as the easement is being used for access in and access out. So, if you're narrowly construing, he does meet that requirement. And then on the burden of the party to prove, the clear, a clear reference of the easement, we have C-2 property, we have an easement on C-2 property, the easement is allowing access. And so, my client today, has shown that burden of the fact that the easement is for access and it's for utilities. And so, even, even if you, you know, if you read it and your like, you know I do want to follow this rule, you know, the law the way that they have listed it. Then, my client does meet those two burdens. Those two pure burdens that they have set forth. And so, again, we



are asking, that you, that you are not rewriting. That you are taking the ordinance and applying it, as it is written. And that, in the fact that my client privately owns, and has title to, is deeded the easement that is considered to be part of his property. It's considered to be abutment. And you know, and actually you know. One of the really good points that I heard was, what other business would you want in there. It's not going to sit, right? It's a C-2 property. Someone is going to put a business on there. If it's not an RV park, like you're not ok with the RV park, in your mind, your worst-case scenario. Are you ok with your worst-case scenario business being in that area? Whether it be a marijuana shop, or it be a shooting range. Whether it be, whatever your mind can conjure, right. And so, is an RV park compared to your worst thought of business being on that property. Which one is sounding better? And so, you know, I can say my client, in the EPO packet has submitted what the structure, what the layout of the RV park will be. It has passed the conditional use permit as it was required to do. You know, my client, like we've heard of their business, Oasis. We're just trying to create something that can kind of you know, obviously make a profit for Oasis, but also to come to Ruidoso, Ruidoso Downs, Lincoln County in general and have somewhere beautiful that they can set up and relax. If they, you know, even if its long-term residence. Maybe as we've heard earlier, maybe have some families there. Maybe having, you know, families that stay for an extended summer, etc. So, while there could be the idea of having, you know, are hesitant to RV parks could think about the beauty they could bring as well. And so, my client did want to make sure that we thank everybody for letting us to be here today. For hearing us out. We know that you do not have an easy decision before you. You've been attacked with a lot of information. And so, we ask, obviously, that you find it in our favor and grant the RV park. Thank you."

Councilor Lacewell stated, "Before you go, Mayor (inaudible). I have a piece of property and we bought four (4) acres behind it and it came with an easement. And it would have been right, literally, just right on the property line. So, we moved the easement to the end of the property. And with the people that we bought it from. I don't remember a term like legal title to an easement that somebody has access across my property. So, in the future, we needed an easement and I know it's there. Where in the, we have seventy-seven (77) pages of documents. And I'm sure that theirs a title somewhere. A deed that say's their legal title to the easement. And I'm wondering if you could help me find it on the title?"

Alexandra Bobbit stated, "Sure. So that on is titled the grant of easement and let me see if I have. A giant stack of paperwork. Let me see if I have a page number on this."

Melissa Martin stated, "And council, if I may at some point comment on this as well, because I think it's critical to this discussion and frankly a misstatement of the law."

The City Attorney stated, "At a certain point, we're going to have to."



Melissa Martin stated, "Yes, I understand that sir and I really think this is a clear misstatement of the law, and it needs to be clarified. And I want that to be on the record please."

Alexandra Bobbit stated, "I would like to say it's on page sixteen (16) but can I? Is it ok if I approach?"

The City Attorney stated, "Go ahead."

Alexandra Bobbit stated, "And let me show you what it looks like. This will make."

Councilor Lacewell stated, "Ok."

Alexandra Bobbit stated, "So, it's the one that looks like this."

Councilor Lacewell stated, "Oh, its on one of those."

Alexandra Bobbit stated, "And then it says in grant easement, so."

Councilor Lacewell stated, "Ok, I'll look for that one. Ok, alright, sure."

The City Attorney stated, "Ms. Martin."

Melissa Martin stated, "Yes, council. I just like to clarify and I mean no disrespect to opposing counsel but this is a very fundamental concept in property law and I'm concerned that this hearing has gone so sideways that we are now alleging that there is ownership rights of associated with an easement. That he owns title to this property. And I would like to very clearly state pursuant to the laws of New Mexico, 'an easement is a right to use another person's property for specific, a specific purpose, but it does not equate to ownership of the land.' And it is a nonpossessory right. So, I want to be clear that, that is exactly what makes an easement, an easement rather than property owned by Excalibur. Yes, the easement right is conveyed under the deed, but that does not mean he has title to that land. He has a right. That is fundamental to this discussion that he owns no title to the property that abuts the highway. So, I want to make that very clear. That is a fundamental principal of property law and I would. I'm sure the city attorney would agree with me on that. But there is a difference between a right and title ownership of that land."

The City Attorney stated, "Ok, my turn. And I'll be quick. This is a nonpossessory right, but I would argue that, and this is under City of Rio Rancho versus Amrep southwest, 150 New Mexico 428, 'that an easement is a portent. It passes with the land to which it which it is a portent. And to which it is created to serve the dominant estate.' So, it's a nonpossessory right, but it's a right that passes with that piece of property. It's an indisputable right that goes with that



piece of property. So, the argument that there's, that this ambiguous, in my opinion, begs the question, because it's so non ambiguous as clear as the nose on your face. It says a thirty (30) foot wide easement for access and utilities. So often times, we run across easements that says for use by, for personal use only. Some of them say, for commercial use only. Some of them say, for no commercial use. Ok, but there is no such limiting language on this grant of easement. It's an easement that says its for access. So on, it's a, council, it's the city's argument that when one piece of land, with an easement on it, that is zoned for C-2, it's used for that piece of property. And I believe that it grants an abutment to the arterial road. I would, I guess, on the other side of the point say, the wonderful thing here is that it's a conditional use and it has to be granted because the unconditional uses that can go into this parcel next month. When the current owner sells it, if this doesn't go through, our automobile, boat, recreational vehicles and sales, automobile upholstery shops, churches, entertainment, essential utilities, hospitals, medical clinics, metal working and machine shops, hotels, motels, cabins, bed and breakfasts, and other such lodging establishments, radio and television studio, rental stores, restaurants, bars, package liquor sells, retail sales services, schools, structural services, (inaudible) small engine repair, (inaudible) shops, and pawn shops. None of those require a conditional use. It's one of the beautiful parts of the city code is that the conditional use gives this council the right to grant use of that property, with certain conditions. Now what the Planning Commission did was grant use of that piece of property, based upon abutting being the right of an easement that goes with that piece of property when it's transferred of record. Whenever he transfers it, that easement goes with it. It's a right. It's a nonpossessory right but it's a right. So, so this was limited to a five (5) mile per hour speed limit. And I don't know how far you can spit councilor, but if you can spit on it, that's fine. But it doesn't matter, it was bought with that easement. The easement was placed on there prior to the protestants, the absence of the appellants, acquirement of property to it. So, they acquire. Whenever you acquire property, you acquire it as it comes to you. And so, that property came to them as a C-2 with all the rights it inherits within our planning code. And the applicant has filed an application for conditional use, the Planning Commission heard that application and granted that application. And, and the appellant have the perfect right to appeal that to this commission and that is what they have done. But I would ask the Council uphold the decision of the Planning Commission and grant conditional use. I might say that you have been inundated with a lot of information today. And if the Council wants, I understand to withhold a certain period of time at which to render a decision. If you feel that's necessary. Or if you wish to go ahead and render a decision today, that's fine too."

Melissa Martin stated, "And council If I may respond. I'd just say that, you know."

The City Attorney stated, "You've responded over and over again. Time for an argument is over."

(inaudible)



Mayor Holman stated, "Councilor Proctor, you have the floor."

Councilor Proctor stated, "Thank you, mayor. Well, when did your client start seeking purchase of this property? When did you start looking at the property sir?"

The City Attorney stated, "If I may remind you, you're sworn in."

Edgar Ontiveros stated, "Last year. Sometime last year. Probably, July forward."

Councilor Proctor stated, "In 2023."

Edgar Ontiveros stated, "Yes, sir."

Councilor Proctor stated, "Ok, thank you."

Mayor Holman stated, "Ok, yes councilor."

Councilor Lacewell stated, "I'd like to address the other councilors. I know that Councilor Miller and I have seen this property. And I would also like to see it. I also want to study the ordinances that we have. The terminology to the words like, 'and' and 'or.' And so, personally, I'd like to postpone the vote on this until the next City Council meeting and I was just wondering what their input would be."

Mayor Holman stated, "Yes, sir."

Edgar Ontiveros stated, "One quick comment to your question of when I bought the property in the ads, and everywhere that it was posted. It was posted for RV use and so it was heavily, you know."

Councilor Proctor stated, "I understand. I was just curious sir. When your interest come for that property to put an RV park in there. That's all."

Edgar Ontiveros stated, "Ok, thank you."

Melissa Martin stated, "Council, for the record, I'd just like to say that there was more I'd like to address the city attorney's statements. And I was unable to do so, but I would like it, the record to reflect that request was denied."

The City Attorney stated, "Well, can, how long will it take?"

Melissa Martin stated, "Just one moment. Just one moment."



The City Attorney stated, "Go ahead."

Melissa Martin stated, "I just want to state that I'm looking at City of Rio Rancho v. Armrep southwest and I would state. In response to your claim, over and over again, that the zoning controls, the zoning controls. I have seen no case law presented to state that the zoning of a piece of property is the manifest intent of the parties. And the case that you, so up-ly cited, states 'it sets forth the principal that an easement should be construed according to its express and specific terms as a manifestation of the intent of the parties.' Now, again, I have seen. There's this rush to say that because the property is zoned a certain either residential or commercial, that apparently in Ruidoso that means that anything that falls under those zoning ordinances flies on an easement. And I would just strongly, you know, strongly oppose that notion. That's not, that's not how New Mexico interprets easements. It's not. I can tell you, from looking at the case law when you look at a residential easement. There's a lot that goes into determining the scope. Not just the zoning of that property. Thank you."

The City Attorney stated, "So, as long as you have a (inaudible). I think that manifesting is stated by the easement itself. It says it's a thirty (30) foot wide easement with access and utilities. I don't see any limiting language in that residential."

Melissa Martin stated, "Which is why it would go to the surrounding circumstances, thank you."

The City Attorney stated, "Which is C-2 zoning."

Councilor Lacewell stated, "Mayor, would it be ok for me to make a motion?"

Mayor Holman stated, "Yes, it sure would."

Councilor Lacewell stated, "I move that we postpone the vote on this issue until the next city council meeting."

Councilor Baber seconded and upon a roll call vote of all voting "aye" the motion passed.

The City Attorney stated, "I do want to say that if any of counsel want to present a written document to the Council, you're free to do so. You'll need to give the opposing counsel a copy of that and that needs to be done."

Councilor Proctor stated, "I thought it said forty-five (45) days."

The City Attorney stated, "That's the decision. So, March the eleventh. So, if you want to present something to Council by March the fourth for them to review, that's fine."



### **NEW BUSINESS**

Councilor Lacewell moved to address item D before all items under New Business. Councilor Proctor seconded and upon a roll call vote of all voting “aye” the motion passed.

#### **D. Discussion and Possible Action on Approval of the Law Enforcement Retention Fund Grant.**

Councilor Lacewell moved to discuss the Law Enforcement Retention Fund Grant. Councilor Proctor seconded and upon a roll call vote of all voting “aye” the motion passed.

The Deputy Police Chief presented and requested for approval of the grant.

Councilor Lacewell moved to approve Law Enforcement Retention Fund Grant. Councilor Proctor seconded and upon a roll call vote of all voting “aye” the motion passed.

#### **A. Discussion and Possible Action on Approval of Agreement for the All American Park Paving and Drainage Project.**

Councilor Lacewell moved to discuss the Approval of Agreement for the All American Park Paving and Drainage Project. Councilor Baber seconded and upon a roll call vote of all voting “aye” the motion passed.

The Public Works Director presented and requested for approval of the Agreement.

Councilor Baber moved to approve the Agreement for the All American Park Paving and Drainage Project. Councilor Proctor seconded and upon a roll call vote of all voting “aye” the motion passed.

#### **B. Discussion and Possible Action on Approval of Change Order No. 1 to La Luz Dirt and Paving LLC to correct quantity's of basecourse on the Colonias CiF 5789 project in the amount of \$30,548.44.**

Councilor Lacewell moved to discuss the Approval of Change Order No. 1 to La Luz Dirt and Paving LLC to correct quantity's of basecourse on the Colonias CiF 5789 project in the amount of \$30,548.44. Councilor Baber seconded and upon a roll call vote of all voting “aye” the motion passed.

The Public Works Director presented and requested for approval of Change Order No. 1.

Councilor Proctor moved to approve Change Order No. 1 to La Luz Dirt and Paving LLC to correct quantity's of basecourse on the Colonias CiF 5789 project in the amount of \$30,548.44. Councilor Miller seconded and upon a roll call vote of all voting “aye” the motion passed.





**C. Discussion and Possible Action on Approval of Resolution 2024-07, a Resolution Authorizing the Submittal of an Application for the 2024-2025 New Mexico Department of Transportation Municipal Arterial Program Funds for Street and Drainage Improvements within Ruidoso Downs, New Mexico.**

Councilor Baber moved to discuss the Approval of Change Order No. 1 to La Luz Dirt and Paving LLC to correct quantity's of basecourse on the Colonias CiF 5789 project in the amount of \$30,548.44. Councilor Lacewell seconded and upon a roll call vote of all voting "aye" the motion passed.

The Public Works Director presented and requested for approval of Resolution 2024-07.

Councilor Baber moved to approve Resolution 2024-07, a Resolution Authorizing the Submittal of an Application for the 2024-2025 New Mexico Department of Transportation Municipal Arterial Program Funds for Street and Drainage Improvements within Ruidoso Downs, New Mexico. Councilor Miller seconded and upon a roll call vote of all voting "aye" the motion passed.

**E. Discussion and Possible Action on Approval of the Creation of a Temporary Multi-Jurisdictional Hazard Mitigation Plan Advisory Committee.**

Councilor Lacewell moved to discuss the Creation of a Temporary Multi- Jurisdictional Hazard Mitigation Plan Advisory Committee. Councilor Miller seconded and upon a roll call vote of all voting "aye" the motion passed.

Councilor Baber presented on the findings of the Multi- Jurisdictional Hazard Mitigation Plan.

Councilor Baber moved to have a public hearing on the Multi- Jurisdictional Hazard Mitigation Plan at the next regular council meeting. Councilor Miller seconded and upon a roll call vote of all voting "aye" the motion passed.

**F. Discussion and Possible Action on Approval of Ruidoso Downs Beautification Committee Amended By-Laws.**

Councilor Miller requested additional time to produce the Amended By-Laws and requested this be postponed.

Councilor Lacewell moved to postpone the Ruidoso Downs Beautification Committee Amended By-Laws to the April 22<sup>nd</sup> Regular City Council Meeting. Councilor Baber seconded and upon a roll call vote of all voting "aye" the motion passed.



**G. Discussion and Possible Action on Approval of the City of Ruidoso Downs Certificate of Records Destruction 2024-001.**

Councilor Lacewell moved to discuss the Approval of the City of Ruidoso Downs Certificate of Records Destruction 2024-001. Councilor Baber seconded and upon a roll call vote of all voting “aye” the motion passed.

The City Clerk presented the Certificate of Records Destruction 2024-001.

Councilor Lacewell moved to approve the City of Ruidoso Downs Certificate of Records Destruction 2024-001 with the audio/video recordings to be destroyed 2 years after the meeting date. Councilor Miller seconded and upon a roll call vote of all voting “aye” the motion passed.

**H. Discussion and Possible Action on Approval of Resolution 2024-06, A Resolution Establishing the City of Ruidoso Downs Governing Regular Council Meetings and Workshop Meetings.**

Councilor Lacewell moved to discuss the Approval of Resolution 2024-06, A Resolution Establishing the City of Ruidoso Downs Governing Regular Council Meetings and Workshop Meetings. Councilor Miller seconded and upon a roll call vote of all voting “aye” the motion passed.

Mayor Holman presented Resolution 2024-06.

Councilor Lacewell moved to approve the Resolution 2024-06, A Resolution Establishing the City of Ruidoso Downs Governing Regular Council Meetings and Workshop Meetings. Councilor Miller seconded and upon a roll call vote of all voting “aye” the motion passed.

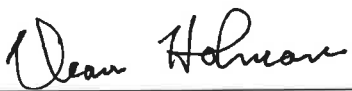
**ADJOURNMENT**

There being no further business to come before the Governing Body, Mayor Holman adjourned the regular meeting at 5:32 p.m.

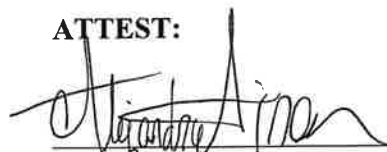
**MINUTES ARE DRAFT UNTIL APPROVED ON:**

Passed and Approved on this 22<sup>nd</sup> day of April 2024.

**APPROVED:**

  
\_\_\_\_\_  
Dean Holman, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Alejandra L. Giron, MMC  
City Clerk/Treasurer



FEBRUARY 26, 2024