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**REGULAR MEETING OF THE
EXTRA-TERRITORIAL ZONING COMMISSION
FOR THE CITY OF LAS CRUCES
DONA ANA COUNTY GOVERNMENT OFFICES
November 7, 2013
6:00 p.m.**

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BOARD MEMBERS PRESENT:

John Villescas, Chairman
Kenneth Allin, Vice Chairman
Janet Acosta, Secretary
Robert Hearn, Member
John S. Townsend, Member
Doug Hoffman, Member

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BOARD MEMBERS ABSENT:

Tim Sanders, Member

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STAFF PRESENT:

Katherine Harrison-Rogers, Senior Planner, CLC
Susana Montana, Planner, CLC
Ezekiel Guza, Associate Planner, CLC
Bonnie Ennis, Recording Secretary, CLC

I. CALL TO ORDER (6:03 pm)

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Villescas: We're calling tonight's ETZC meeting to order. The time is 6:03. It's Thursday, November 7, 2013. Commission members shall not privately discuss with any interested persons the merit of any case which is pending before this Commission. If there has been any such discussion it should be disclosed at this time. Because this Commission acts in a quasi-judicial capacity, this hearing tonight follows the procedures mandated by the New Mexico Court of Appeals. Anyone wishing to give testimony on a case must be recognized by the chair, go to the podium, state his or her name, address, and be sworn in. An applicant's presentation may be limited to four minutes. Neighborhood representatives or representatives of other groups may be limited to three minutes each. A neighborhood spokesperson may be limited to 10 minutes. You may speak more than once on a case but the chair reserves the right to further limit the time allocated to speak. This meeting will be conducted by a modified form of Robert's Rules of Order. It takes four affirmative votes for passage of a case. Please note that a Commissioner may vote yes on an amendment to a main motion yet vote no on the main motion. Any affected party may appeal the decision made by this Commission to the ETA. Ms. Acosta, would you call roll?

44
45

Acosta: Yes, sir. Commissioner Allin?

46

Allin: Here.

1
2 Acosta: Commissioner Hoffman?

3
4 Hoffman: Here.

5
6 Acosta: Commissioner Townsend?

7
8 Townsend: Here.

9
10 Acosta: Commissioner Hearn?

11
12 Hearn: Here.

13
14 Acosta: Commissioner Sanders? Absent. Commissioner Acosta's present; and Chairman
15 Villescas?

16
17 Villescas: I'm here. Thank you.

18
19 **II. ANNOUNCEMENTS**

20
21 Villescas: Item number two: do we have any announcements? By Commission? Or by
22 staff?

23
24 Harrison-Rogers: Good evening, Mr. Chairman, Members of the Commission. Katherine
25 Harrison-Rogers for City staff. Just wanted to introduce a new employee, Ezekiel
26 Guza. He's replacing Todd, if you remember Todd Taylor, and so primarily he'll
27 probably be the staff that you see most often aside from the administrative staff
28 and myself.

29
30 Villescas: Okay. Thank you. I have a small announcement that I just found out a few
31 minutes ago. Tonight is Bonnie's last meeting. Bonnie's retiring after eight years
32 with the City and, on behalf of myself and I'm sure the entire Commission, we'd
33 like to thank you very much, Bonnie, for your service and for all the time you've
34 put in to help us and to keep us in communication with, not only with the City but
35 with each other. So thank you very much. *(Applause from Commissioners)* Any
36 other announcements?

37
38 **III. APPROVAL OF MINUTES**

39
40 **1. August 1, 2013**

41
42 Villescas: Item number three: approval of the minutes of August 1, 2013?

43
44 Allin: So moved.

45
46 Townsend: Second.

1
2 Villescas: We have a first and a second for approval of the minutes of August 1, 2012. Do
3 we have any discussion?
4

5 Acosta: Mr. Chairman, who seconded it, please?
6

7 Townsend: I did.
8

9 Acosta: Commissioner Townsend?
10

11 Villescas: Commissioner Townsend.
12

13 Acosta: Thank you.
14

15 Villescas: Any other discussion? If not, Ms. Acosta, would you call the roll?
16

17 Acosta: Commissioner Allin?
18

19 Allin: Aye.
20

21 Acosta: Commissioner Hoffman.
22

23 Hoffman: I'm abstaining as I wasn't present.
24

25 Acosta: Commissioner Townsend?
26

27 Townsend: Aye.
28

29 Acosta: Commissioner Hearn?
30

31 Hearn: Aye.
32

33 Acosta: Commissioner Acosta votes aye; and Chairman Villescas?
34

35 Villescas: I vote aye and just FYI, because you did not attend the meeting does not mean
36 that you have to abstain. You can if that's in your conscience but if you read the
37 minutes and don't have any problem with it you can vote. In a case where we
38 would only have four and we would need a vote of four we would ask you for a
39 vote just for future information.
40

41 **IV. OLD BUSINESS – NONE** 42

43 Villescas: Okay, approval of the minutes... Item 4, old business... I have none here. Staff,
44 has that changed?
45

46 Harrison-Rogers: No, sir.

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V. NEW BUSINESS

1. Case ETZS-13-019W: A waiver request for required right-of-way (ROW) dedication and road improvements associated with a subdivision proposal known as Desert Wind Subdivision. The Applicants are requesting a waiver to reduce the required road right-of-way dedication from 35 feet to 27 feet, from making the required improvements to Desert Wind Way, a proposed principal arterial roadway, and from providing improvements to Ricochet Street, a minor local road. The subject two-lot subdivision is located at 2320 Desert Wind Way. Submitted by Donohue Land Surveys on behalf of Mr. Juan Lucero and Mrs. Elvia Lucero, property owners.

Villescas: And the new business... number one, Case ETZS-13-019W: A waiver request for required right-of-way (ROW) dedication and road improvements associated with a subdivision proposal known as Desert Wind Subdivision. The Applicants are requesting a waiver to reduce the required road right-of-way dedication from 35 feet to 27 feet, from making the required improvements to Desert Wind Way, a proposed Principal Arterial roadway, and from providing improvements to Ricochet Street, a Minor Local road. The subject two-lot subdivision is located at 2320 Desert Wind Way. Submitted by Donohue Land Surveys on behalf of Mr. Juan Lucero and Mrs. Elvia Lucero, property owners. Staff?

Montana: Thank you, sir. For the record my name is Susana Montana, staff with the City of Las Cruces Community Development Department. Chairman Villascas read a very lengthy introduction which my slide copies so I'll go through some slides quickly for you.

Acosta: Ma'am, I need to swear you in, please. You have stated your name and address for the record. Do you swear and affirm that the testimony that you are about to give is the truth and nothing but the truth under penalty of law?

Montana: Yes, I do.

Acosta: Thank you.

Montana: So I'll go through these slides quickly. As I said, the property lies on Desert Wind Way, which is accessed from Del Rey and then La Reina to Desert Wind Way at Ricochet right here. This is an aerial slide that shows Desert Wind Way. This is the subject property. This is Ricochet Street. There are about eight properties here and three properties here that use Ricochet Street as their sole access. Another site map that shows an existing manufactured home on the property in the northeast corner of the property. The lot would be split down length-wise and a second unit, if approved, would be located here.

Desert Wind Way is designated on the MPO Major Thoroughfare Plan as a Principal Arterial and it would connect Sonoma Ranch Boulevard through

1 Desert Wind Way to El Camino Real.

2 The proposed subdivision, as I said, would split the lot length-wise, Lot 1
3 and 2. Lot 1 would have frontage along Ricochet Street, although access would
4 be solely from Desert Wind. It's a two-lot split for family use. One of the family
5 members would install another home or manufactured home on this second lot.

6 Now, Section 4.2D of the ETZ Design Standards requires that
7 subdivisions dedicate to the public a minimum of 50% of the right-of-way for the
8 adjacent roads. The applicant is providing their share of the right-of-way for
9 Ricochet Street. Where for Desert Wind Way they're asking for a waiver to
10 reduce the right-of-way from their share, which would be an additional 35 feet to
11 27 feet. The reason for the 27 feet would be that they need the 8 feet to satisfy
12 the front setback requirement for their property. This would be for Lot 1, which
13 has the existing home and if the entire 35 feet were dedicated to the right-of-way
14 it would not satisfy that setback.

15 Now, for the road improvements Desert Wind Way, and I have a later slide
16 that shows images of the road, it's got one paved lane in each direction with a
17 gravel shoulder. But because it is classified as a proposed Principal Arterial they
18 would have to improve that with street lights, sidewalks, parkway, median, with a
19 left-turn lane on their half of the road. They're asking for a waiver from those road
20 improvements.

21 Ricochet Street is a dirt road, unimproved dirt road and it's classified as a
22 Minor Local road and it would have to be improved. It would have to be paved up to
23 County Design Standards. These are images of Desert Wind Way facing in each
24 direction. As you can see, two lanes paved with gravel shoulder. This red line in
25 the middle of the slide shows the half that the applicants would have to develop
26 at the time the subdivision is approved if the waiver is not granted. This is
27 Ricochet Street, a dirt road, and this is the County Development Standards that it
28 need to be improved to.

29 I just want to show you, if you're interested, a notification map. It's
30 included in your staff report.

31 Now, because the ETZ Subdivision Code requires these road
32 improvements in order to allow the subdivision, it's a small subdivision, two-lot
33 split, it could be approved administratively if the applicant were able to make the
34 improvements or pay for the improvements. The County does not have an
35 escrow account to which they could pay an in lieu fee so really they would be
36 required to build this half-road today. The Code does provide waiver provisions if
37 they meet certain criteria and that criteria is if there's a substantial hardship due
38 to exceptional topographic conditions or soil conditions.

39 The EDRC, the ETZ Development Review Committee, met on September
40 12th to discuss the waiver and they voted to recommend denial of the waiver
41 request based on their determination that the request does not meet the criteria
42 of substantial hardship due to topographic conditions.

43 We bring this to you for your consideration tonight. You may want to act
44 on each of the three waiver requests separately or you may want to act on them
45 together. Now these are your options. I won't repeat them for the record. That
46 concludes my presentation. The applicants are here to answer any questions you

1 may have. Their representative engineer is here as well to answer any questions
2 you may have.

3
4 Villescascas: I have a question for yourself: the part of this that is of most interest to myself
5 personally is the ... going back to the very beginning of your presentation, is the
6 right-of-way on Desert Wind Way only because there is so much... well, up until
7 our recession, I believe it will pick up again someday, so much growth up there
8 and that was labeled a Major Arterial. Is it not, to connect Sonoma to ... what is
9 it, North Star?

10
11 Montana: El Camino Real.

12
13 Villescascas: El Camino Real. Is the 8 feet is a problem for the existing property but not for the
14 yet-to-be-developed property half?

15
16 Montana: No. The current lot and home does meet the setback requirement.

17
18 Villescascas: Then why do they ... okay, to go to 35 feet.

19
20 Montana: But if they're required to dedicate 35 additional feet for the right-of-way for the...

21
22 Villescascas: Additional feet?

23
24 Montana: Yes. For the Principal Arterial, 120 feet. So if they dedicate the full 35 feet to the
25 right-of-way, which is needed so the road doesn't have a "jag" or a "jog" then they
26 are deficient in their front setback. They would have the opportunity to see and
27 justify a variance from the County Planning Commission but they are hoping that
28 you will grant the waiver so that they wouldn't have to go through a variance
29 process. We could not approve the subdivision until that variance was granted so
30 that would be an extra step.

31
32 Villescascas: The problem is... See, I was under the understanding that it was an extra 8 feet,
33 you know, from 25 to 33 or whatever. I didn't know it was the entire or an
34 additional 35 feet; because the problem there is if that is developed there's
35 (*Inaudible*) is developed the way the Long Range Planning has it, you're gonna
36 have one heck of a "jag" in there on that road the way it stands if we were to
37 grant the waiver. That's why I personally am not big on that. You said it's a
38 manufactured home... hmmm. Well, let me think about this and defer to the rest
39 of the Commission. Any other Commissioners have questions for staff?

40
41 Townsend: Yes, sir.

42
43 Villescascas: Please go ahead, Mr. Townsend.

44
45 Townsend: Just so that I understand for sure what you are saying: you're talking about these
46 people developing half the road. Is that correct?

1
2 Montana: That is correct. They would be required to build out half a Principal Arterial road
3 along their frontage.
4

5 Townsend: Yeah. So you would have a section of road that started at one side of their
6 property and ended at the other side and is only a half a road wide?
7

8 Montana: That is correct.
9

10 Townsend: And that other one... Ricochet. It's just a dirt trail at the moment. You would have
11 them improve that one the same way, just half of it?
12

13 Montana: No. A Minor road they would build the full section.
14

15 Townsend: So they'd bear the cost of building the full section and whoever owns the other
16 side of it gets a free ride.
17

18 Montana: That is correct.
19

20 Hearn: Mr. Chair, may I?
21

22 Villegas: Oh, yes. Please. Go Ahead.
23

24 Hearn: Thank you. So the history of this is that when they bought this property, when
25 they put that home on the site that was not a Principal Arterial?
26

27 Montana: Commissioner, I'm not sure when they installed the manufactured home but the
28 MPO Thoroughfare Plan has been adopted for, I believe, since 2010. So I don't
29 know the sequence of....
30

31 Hearn: Okay, but I understand, I believe you said that that present home was fully in
32 compliance. Was I wrong?
33

34 Montana: It is in compliance with the setback, the zoning setback.
35

36 Hearn Okay.
37

38 Montana: And they didn't split the lot. They have every right to install a manufactured
39 home, one home on one lot, according to the zoning they met the setback. But it
40 they want to split, divide it, then they have to dedicate land for the right-of-way.
41 So it's the subdivision action that requires the dedication of the right-of-way.
42

43 Hearn: But wasn't that right-of-way dedicated when this was all platted?
44

45 Montana: Not for Principal Arterial standards.
46

1 Hearn: So when they purchased this property, regardless of when that happened, it was
2 under the assumption, the correct assumption, that that was as much land as
3 they needed to dedicate to the right-of-way; that everything was legal at the time.
4
5 Montana: When you purchase a property, if you're simply going to install a house, you're
6 not obligated to dedicate right-of-way. If they purchased the land and installed
7 the house after 2010 they're still not obligated to provide right-of-way. The act of
8 splitting it requires the dedication.
9
10 Hearn: When this was originally subdivided and platted was there not a right-of-way
11 dedicated there?
12
13 Montana: I can't tell you that. I do not have the answer to that.
14
15 Hearn: How can they possibly put houses there without any access?
16
17 Montana: There's a right-of-way. There's a Minor Local road. It is physically a Minor Local
18 road... not to County Standards...
19
20 Hearn: Okay.
21
22 Montana: ... and they have a right, so to speak, to install a home on that zoning property.
23
24 Hearn: So the rules got changed on these people.
25
26 Montana: They did not seek a subdivision when...
27
28 Hearn: I understand your point and my point is simply that the "whatever defect" there is
29 here is in the original subdivision failing to dedicate sufficient right-of-way for this
30 future plan and now we're saying that these individuals somehow have to make
31 that up. I actually see this more as a taking. They had a right which, through no
32 fault of their own, was extinguished. Thank you.
33
34 Allin: Mr. Chair?
35
36 Villescas: Mr. Allin.
37
38 Allin: In the past what they did was substantially correct. A subdivision was laid out
39 based on the rules that were in effect at that time. As things developed the rules
40 changed because as the population density of specific areas changes the traffic
41 requirements change. So rules are written by the powers that be to divide up the
42 costs of those developments. If you bought a road, it was 10 feet wide, and it
43 developed on both sided and they needed to have a paved road through there.
44 We're here to support both sides of the street to see that the owners get a fair
45 shake but so does the rest of the population in the county gets a fair shake. So if
46 we don't provide for roads or right-of-way and it becomes something that is

1 petitioned by the rest of the proponents in that area or in the county then it goes
2 onto taxes of the whole county. So what they're trying to is get this property up to
3 speed when there is a change in the usage of the property. So the rules were
4 changed. They're caught in a change of usage of the property. So the rules are
5 written so that those thing happen.
6

7 Villescas: That is correct. That's the way I understand it. What's propagating this is that
8 they're making a change. They're making a split which is a subdivision. So now,
9 because they're making a split, they have to abide by the new rules. There's two
10 problems here on Desert Wind. I'm not talking about the other issue. On Desert
11 Wind there's two problems: one is if they don't grant the right-of-way they're
12 going to have a heck of a "bootleg" there when that road is built, which I believe
13 one day that one will be built, because there's a lot of places where I see that a
14 road is never going to be built; but that one, I believe, will be. It already is it's just
15 not to the standards that it will be one day. So that's one problem.

16 The other problem is that if we grant the waiver then they don't have to
17 pay for it but we have to pay for it as taxpayers because somebody has to pay to
18 get that road up to standards and if it's not the people making the change then
19 it's us. Anyone else have any comments?
20

21 Hoffman: Mr. Chairman?

22 Villescas: Please go ahead.

23 Hoffman: Ms. Montana, you'd noted that these folks will be required to give the extra right-
24 of-way and develop Desert Wind Way because they're doing a lot split, a
25 subdivision. How about the ones that aren't ever going to do a subdivision? How
26 will those pieces of road get built?
27
28
29

30 Montana: Typically when the county or the city, depending on if it's annexed, is ready to
31 build it they would have to acquire, purchase, right-of-way from the...
32

33 Hoffman: And build the road.
34

35 Montana: Yeah. And build the road.
36

37 Hoffman: Okay. So the fact that... and the property adjacent, what is it... the
38 northeast...that's already been subdivided several times they must have done
39 that before this was in the MPO Plan as a "big deal" road.
40

41 Montana: Yes, they may have... Katherine Harrison-Rogers informed me that this land was
42 originally subdivided in 1911.
43

44 Hoffman: Sounds about right.
45

46 Villescas: I think a little before the ETZ.

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Hearn: So if somebody else or if anybody else who doesn't subdivide that road will get built by the County or whoever has jurisdiction at that time. And the land on the other side it looks like we don't quite know about that. Maybe it'll be subdivided sometime.

Montana: Yes, the land to the north may be subdivided sometime and if so they would have to dedicate the right-of-way as well.

Hearn: Okay. Thank you.

Villescas: Mr. Hearn, if you look at page 8 in our packet and take a careful look at where the subject property is located and Desert Wind Way; if you look to the left of the subject property you'll see a "boot heel."

Hearn: Um-hmm.

Villescas: So it's very possible that that was a subdivision that was done after the rules and they gave up the right-of-there and the property next to it hasn't and the effect is a "boot heel." At least that's the way it appears to me. I can't see any other reason for that not to be a straight line.

Hearn: Is there half of a four-lane highway with a median right there as well?

Montana: No, there is not. Desert Wind Way is paved, a two lane one in each direction the entire length currently.

Villescas: Yeah. I think those are the two slides you showed us. Right?

Montana: Yes.

Villescas: Yeah. Anyone else have any comments before we bring up the applicants? Thank you very much. We will probably be calling you back.

Montana: Yes.

Villescas: Would the applicant or representative like to come up and state on this matter? If you could state your name and address and raise your right hand Ms. Acosta will swear you in.

Donahue: My name is Gerry Donahue, Donahue Land Surveys.

Acosta: Can you state an address for me, please, for the record?

Donahue: 100 Wyatt Drive, Las Cruces.

1 Acosta: Okay. Do you swear and affirm that the testimony that you are about to give is
2 the truth and nothing but the truth under penalty of law?
3

4 Donahue: I do.
5

6 Acosta: Thank you.
7

8 Villescascas: Mr. Donahue, go ahead.
9

10 Donahue: Mr. Chairman, Commissioners, it's true that Elephant Butte Land and Trust
11 Subdivision "C" was filed in 1911 prior to Statehood. There was no review
12 process. There were no requirements. The issue, I suppose, of whether it
13 actually constitutes a subdivision is an interesting one but the dedication of roads
14 for that subdivision that was done by the developer was for 15 foot wide roads in
15 that subdivision. I was County Surveyor here for 10 years and my dad was City
16 Engineer and City Surveyor. I have seen a number of lot splits in subdivision "C"
17 without benefit of subdivision.

18 I think there are a couple of things that are important for you to be aware
19 of. One of them is: Desert Wind Way is not a 50 foot right-of-way. It's not a 40
20 foot right-of-way. The subdivision that you were referring to they were required to
21 provide a 50 foot right-of-way. There are places where it is 40 feet wide and
22 there's places where there is no dedication of additional right-of-way for Desert
23 Wind Way. So in terms of creating a situation where there would be a significant
24 deficit in right-of-way width what you would be acquiring by getting this
25 subdivision is more than anyone else from one end of Desert Wind Way to the
26 other. No one else has dedicated that. No one's anywhere near that. The widest
27 that Desert Wind Way exists as an easement is 50 feet, 25 feet at centerline, and
28 we've already provided that. When I talked to staff I said we could give the full
29 requirement for the right-of-way but then we'd only be 17 feet from their front
30 door and so we'd either be asking for a variance to the building setback or a
31 variance to the road right-of-way width. Staff was the one that said that they
32 would prefer that we proceeded along the line of needing the 25 foot setback and
33 reducing the right-of-way width by 8 feet.

34 The second issue is: Ricochet actually does constitute a topographic
35 difficulty to develop. At the intersection of Ricochet and Desert Wind it's virtually
36 the same elevation as the adjoining land. But at the south or Ricochet at our
37 southeast corner, at the edge of the road the land immediately jumps up 4 feet.
38 I'm sorry that I didn't provide something in the application to defend that or to
39 explain that. I did bring one copy if the Commissioners would like to see this.
40 Basically it's at the edge of the road. It's a sheer drop or a sheer climb of about 4
41 feet to the existing ground and so there is indeed a topographic difficulty in
42 developing Ricochet. The price that was presented by City staff to develop these
43 two roads was \$150,000. That would be based upon Ricochet not requiring
44 additional topographic work, but it would, and my estimate is that it would be
45 closer to \$200,000 to do everything that would be required to bring these up to
46 code and no one in their right mind would develop Desert Wind Way to that level

1 of development for a 300 foot strip and half of the width of the road.

2 It is true that they bought the property prior to the MPO classifying it as a
3 Major Collector 120 foot right-of-way. The MPO simply recommends what they
4 believe the future will require and so people who own property along there,
5 whether they have 50 feet or 40 feet or 25 feet of easement or right-of-way
6 dedicated, they are only being presented with what the planners believe will be
7 required in the future. It's not something that's binding on anyone at this point but
8 it is binding if you come in and do a subdivision then you have to meet the
9 Planning Organization requirements.

10 So that's our three variance requests. The improvement of Ricochet does
11 constitute a topographic hardship for the property owners. I guarantee it. The
12 width of the right-of-way is mitigated by the fact that we only have 17 feet of
13 distance from the front of the house to 120 feet of right-of-way. The road is
14 paved. Mr. Lujan and his sister bought this in good faith. They financed it with the
15 owner. They thought that once they'd paid for it they'd be able to divide it and
16 that each would be able to retire on that property and when they paid off the
17 property then they found out that it would cost them, in my opinion, about
18 \$200,000 to do it given the guidelines that we are operating under today. If you
19 have any questions I'll be glad to answer them.

20
21 Villescascas: Mr. Donahue, we did have that you've already answered. This is a family.

22
23 Donahue: Yes.

24
25 Villescascas: The existing zoning is ER3M, Residential District. Does the ER3M, the current
26 zoning, allow for only one house?
27

28 Donahue: The zoning is not the criteria there. It's by County regulations and State Statute, I
29 suppose, you can only have one dwelling per property.
30

31 Villescascas: Okay.
32

33 Donahue: Splitting this property does conform to the existing zoning.
34

35 Villescascas: My thought process there in the question was instead of going through all this
36 variance for a second home on the same piece of property and then one day
37 when that road is developed, after it's developed then split the property.
38

39 Donahue: Mr. Chairman, it's true that they could go for a Medium-Intensity permit to permit
40 two homes on the property I which case the City and County would not get
41 anything in the way of right-of-way. There would be no benefit to you.
42

43 Villescascas: Correct. They'd have to... Actually, the owners could potentially make money
44 when, if, that road is developed because the County has to buy the right-of-way
45 from the owners.
46

1 Donahue: Yes, sir. That's true.
2
3 Villescas: Any other questions from the Commission?
4
5 Acosta: Excuse me, Mr. Chairman. I would just like to see the handout that he said he
6 had one copy of, please.
7
8 Donahue: Yes. *(Inaudible discussion away from microphones)*
9
10 Villescas: Any other questions from the Commissioners?
11
12 Donahue: Do you want me to say what I said to her?
13
14 Villescas: Yes.
15
16 Donahue: I was addressing one of the Commissioners and stated that on the drawing that I
17 just provided there's a 4-foot difference between centerline of road and the edge
18 of the road, if you will, just off the edge of the road based on field work that I did.
19
20 Villescas: How is that handled right now? Is it just a dirt pile-up that goes up there or is
21 there just no traffic there?
22
23 Donahue: Well, there's a cut that is two car-widths wide and then on one side of the road,
24 on the east side of the road, it's virtually flat. On our side of the road there's a 4
25 foot embankment. It's natural but the road has been cut down 4 feet at the edge
26 of the road.
27
28 Villescas: Any other questions from the Commission? If not, Mr. Donahue, would you mind
29 if I hang on to this for a few minutes and pass it on down the line?
30
31 Donahue: No, it's yours. Keep it.
32
33 Villescas: Well, thank you very much. We may be calling you back up.
34
35 Donahue: Thank you.
36
37 Villescas: Is there anyone else that would like to make a statement on this issue? Is there
38 anyone from the public that would like to make a statement on this issue? If not,
39 I'm gonna close it off for discussion from the public and open it up for discussion
40 from the Commission. Is there anyone from the Commission that would like to
41 make a statement? Yes, ma'am, you have something? Oh, okay.
42 Commissioners? You know, I can't make a motion but I personally would like if
43 somebody could make a motion that we take up the three different issues one at
44 a time for the sake of a vote. Am I the only one that feels that way?
45
46 Allin: Mr. Chair, I'd like to make a motion that we divide up the vote into three parts

1 based on the three waivers.

2
3 Acosta: I'll second that.

4
5 Villescascas: We have a motion to do as one of the options that staff gave us which is to divide
6 this into three different motions, basically, or three different discussions and vote
7 on them one at a time and we have a second. Do we have any discussion? If
8 there's no discussion, Ms. Acosta, will you please take roll?
9

10 Acosta: Commissioner Allin?

11
12 Allin: Aye.

13
14 Acosta: Commissioner Hoffman.

15
16 Hoffman: Yes.

17
18 Acosta: Commissioner Townsend.

19
20 Townsend: Aye.

21
22 Acosta: Commissioner Hearn.

23
24 Hearn: Yes.

25
26 Acosta: Commissioner Acosta says aye, and Chairman Villescascas.

27
28 Villescascas: I vote aye. So we can take them... and what page was that on... the
29 recommendations.

30
31 Allin: Seven.

32
33 Villescascas: Seven? Okay. We can take them in any order we'd like. Let's see... the three
34 requests are for a waiver to allow a reduction in the right-of-way dedication for
35 Desert Wind Way from the required 35 feet to 27 feet, a reduction of 8 feet; and
36 number 2, a request for a waiver from 100 percent of required road
37 improvements for Desert Wind Way; and number 3, a request for a waiver from
38 10 percent of required road improvements for Ricochet Street. Is there any
39 specific order the Commission would like to take them in?
40

41 Hoffman: Mr. Chair.

42
43 Villescascas: Please, go ahead.

44
45 Hoffman: I would suggest that we act on request number 3, which is a requested waiver to
46 requirements on Ricochet Street first.

1
2 Villescas: Does anyone have any objections to that? Then let's go with that. The request
3 is for a waiver from 100 percent of required road improvements for Ricochet
4 Street, which is the... I think it's gotten all the way down the line. Maybe Mr. Allin
5 has it. Do we have any discussion on the request for that waiver? Mr.
6 Townsend, please go ahead.
7

8 Townsend: I'm just curious what that represents (*referring to something on the drawing*) that
9 little hill there or whatever that is.
10

11 Villescas: Mr. Donahue?

12
13 Donahue: Yes.
14

15 Villescas: This crooked line here is what he is asking for an explanation on.
16

17 (Mr. Donahue at dais with no microphone)
18

19 Acosta: Can you get him near a microphone, please?
20

21 Hoffman: You would do best to do that at the microphone.
22

23 Villescas: And get it on the record. You have already been sworn in so you don't have to
24 be sworn in again. This is Mr. Donahue explaining the elevation.
25

26 Donahue: Commissioner Townsend, there's a bold black line that is the property line, the
27 current property line, and then there's a lighter line that runs more or less parallel
28 with it that jogs in and out and that's the line of the high ground as it drops down
29 from there to the edge of the road.
30

31 Townsend: Okay.
32

33 Villescas: Mr. Donahue, one request. Could you make a copy of that for staff so it goes in
34 the permanent record? Okay. Thank you.
35

36 Townsend: Thank you.
37

38 Villescas: Any other questions, discussion? Go ahead.
39

40 Hoffman: If it is a time for it I would like to make a motion.
41

42 Villescas: It is the time for it.
43

44 Hoffman: In the case ETZS-13-019W I move that we approve the request to waive the
45 required improvements to Ricochet Street, a Rural Local road, because of
46 topographical conditions that would make it unfeasible to meet those

1 requirements.

2
3 Townsend: Second.

4
5 Villescas: We have a motion and we have a second from Mr. Townsend. Is there any
6 discussion on the matter?

7
8 Acosta: So just for clarification they would not have to do anything to that road. Correct?

9
10 Villescas: That is correct. It would be a request for a waiver from 100 percent of the
11 required road improvements for Ricochet Street. Nothing at all. If there's no
12 discussion then I call for the question. Would you please take roll, Ms. Acosta?

13
14 Acosta: Commissioner Allin?

15
16 Allin: Aye.

17
18 Acosta: Commissioner Hoffman.

19
20 Hoffman: Yes.

21
22 Acosta: Commissioner Townsend.

23
24 Townsend: Aye.

25
26 Acosta: Commissioner Hearn.

27
28 Hearn: Aye.

29
30 Acosta: Commissioner Acosta says aye, and Chairman Villescas.

31
32 Villescas: I vote aye. Since we started with number 3 and number 1 is probably the most
33 divided, let's go up to... well, they're both related. Let's go up to number 2. Item
34 2 is a request for a waiver from 100 percent of required road improvements for
35 Desert Wind Way. Now remember, this is road improvements. This is not the
36 right-of-way itself. This is just the road improvements. Do we have any
37 discussion?

38
39 Hearn: Mr. Chairman?

40
41 Villescas: Mr. Hearn.

42
43 Hearn: I'm trying to get my head around this and the way it looks to me right now is if we
44 require that they do all the improvements they can't possibly afford it so it won't
45 be done and they won't split their lot and the County gets nothing and the City
46 gets nothing. Everybody gets nothing. It just sits where it is. If we say they don't

1 have to get their improvements it ends up just that way except they get to split
2 their lot and that seems kind of like a fair deal to me. In any case, the road is
3 probably only going to have this one piece of half of a four-lane highway build for
4 100 feet and that's going to sit there for who knows how many years and may or
5 may not ever be included into a full road. So this is another one of those things
6 that just doesn't work for me and I think it's fair to waive the improvements and
7 let the lot-split go ahead and everybody ends up about the same anyway.

8
9 Villescas: Okay. So if I'm listening correctly, which my wife often says I don't, you are in
10 favor of the request for a waiver from 100 percent of the required road
11 improvements for Desert Wind Way.

12
13 Hearn: I am. Yes.

14
15 Villescas: Okay. Thank you.

16
17 Hoffman: And Mr. Chair?

18
19 Villescas: Yes, please.

20
21 Hoffman: I think we could easily roll into that the right-of-way issue because if we don't
22 require the extra right-of-way they wouldn't be able to build the improvements
23 anyway. If we're going to keep it all the same then we could vote on 1 and 2
24 together and I'm sure Commissioner Hearn is ready.

25
26 *(Sound system shut down and had to be rebooted)*

27
28 Villescas: And I think we just got the voice back on. Oh, great. Well, we'll continue. The
29 point that I was going to say was that we took a vote on dividing all three issues
30 which passed. We would have to entertain a motion to combine now 1 and 2 or
31 we can simply proceed the way we are going now and do 2 and then 1. Just
32 keep it the way it is? Any objections? Okay, then we're gonna stay with just
33 number 2. Mr. Hearn has brought up some good issues there. Are there any
34 other comments on Item 1?

35
36 Hearn: If I may then, on case ETZS-13-019W, I would like to move that we waive the
37 required improvements to Desert Wind Way, a proposed Principal Arterial
38 roadway, as this would be an undue hardship to the applicants.

39
40 Townsend: Second the motion.

41
42 Villescas: Okay. We have a motion and a second and Ms. Acosta, I would read into that as
43 it was stated that that is equal to 100 percent.

44
45 Acosta: Okay. Who made the second motion, please?

1 Villescas: Mr. Townsend did.
2
3 Acosta: Mr. Townsend. Thank you. Roll call. Commissioner Allin?
4
5 Allin: Aye.
6
7 Acosta: Commissioner Hoffman.
8
9 Hoffman: Yes.
10
11 Acosta: Commissioner Townsend.
12
13 Townsend: Aye.
14
15 Acosta: Commissioner Hearn.
16
17 Hearn: Yes.
18
19 Acosta: Commissioner Acosta says aye, and Chairman Villescas.
20
21 Villescas: I vote aye. We missed the discussion part but I don't think there was going to be
22 much. Okay. That brings us to the last item, Item number 1: a request for a
23 waiver to allow a reduction in the right-of-way dedication for Desert Wind Way
24 from the required 35 feet to 27 feet, a reduction of 8 feet. So we are talking just 8
25 feet. We're not talking an additional "x" amount of feet. Is that correct?
26
27 Montana: The reduction in the requirement would be 8 feet. They would dedicate 27 feet to
28 the right-of-way where the requirement is 35.
29
30 Villescas: Oh, I see. I see. Instead of giving 35 feet more they would give 27 feet more.
31 They're willing to do that.
32
33 Montana: That's correct.
34
35 Villescas: I see. Okay. So it doesn't create a huge (*Inaudible*) like I was envisioning.
36
37 Montana: No. A little one. A little bit.
38
39 Villescas: But not, you know, because there's a huge difference between 35 feet and 7 feet.
40
41 Montana: Correct.
42
43 Villescas: Yeah. And I like also the fact that they are willing to work with the rules as they
44 are stated today. Okay, I'm glad we came to an understanding on that. Thank
45 you. Does the Commission have any discussion? I, for one, just for the record
46 am glad to hear that the applicants are willing to do what they can, which is (*The*

1 *sound system stopped again and had to be rebooted*) For those that are
2 wondering, the minutes are taken from the recording so that's why it's important
3 that we had it on. Anyway, I am impressed that they are willing to do what they
4 can, which is most of it except for 8 feet, which really changes my opinion on the
5 matter. Does anyone else have any statements or questions or comments for the
6 record? If not, Ms. Acosta, would you please take roll? Oh, I'm sorry, we don't
7 have a current motion on this, right. We need a motion. Someone?
8

9 Townsend: Mr. Chairman.

10 Villescas: Mr. Townsend.

11
12
13 Townsend: In the case of ETZS-13-019W, I would move that we approve the waiver request
14 in the reduction of right-of-way 27 feet on the Desert Wind Way.
15

16 Villescas: It's easiest to just read it off page 7. The one at the very bottom.
17

18 Townsend: Yeah. I vote that we grant the request for a waiver to allow reduction of right-of-
19 way dedication to Desert Wind Way from the required 35 feet to 27 feet, a
20 reduction of 8 feet.
21

22 Villescas: Do we have second?
23

24 Hoffman: Second.

25
26 Villescas: We have a first and a second. Do we have any discussion on the matter? If
27 there's no further discussion, Ms. Acosta, would you please take the roll?
28

29 Acosta: Commissioner Allin?
30

31 Allin: Aye.
32

33 Acosta: Commissioner Hoffman.
34

35 Hoffman: Yes.
36

37 Acosta: Commissioner Townsend.
38

39 Townsend: Yes.
40

41 Acosta: Commissioner Hearn.
42

43 Hearn: Yes.
44

45 Acosta: Commissioner Acosta says yes, and Chairman Villescas.
46

1 Villescas: I vote aye. Thank you, Mr. Donahue, and thank you for coming and
2 congratulations.

3
4 Donahue: Thank you.

5
6 **VI. STAFF INPUT**

7
8 **1. Monthly Subdivision Report**

9
10 Villescas: Okay. Item 6 is staff input, Monthly Subdivision Report. I hope it's a good one.

11
12 Harrison-Rogers: Good evening, this evening, Chairman and Members of the Commission.
13 My report is there were no subdivisions that were submitted last month.

14
15 Villescas: That's not good news.

16
17 Harrison-Rogers: It's a brief as I can be. So there were no Large Land Area applications or
18 Major Subdivisions or Minor Subdivisions, a slow month. We've had a number of
19 them the last couple of months. This is just a slow one.

20
21 Villescas: Okay.

22
23 Harrison-Rogers: Okay.

24
25 Villescas: May I ask you a question while we're on this and this is strictly unofficial but there
26 is an article as recently as yesterday on La Mancha, which was a huge issue
27 before us years ago for those of us... Mr. Allen was here, I was here. Were you
28 here Ms. Acosta? Oh, yeah. We're all familiar with it and what happened. Is that
29 something, the changes that I read about, is that something that's going to have
30 to come back before us?

31
32 Harrison-Rogers: I did not read the article so I am not aware of exactly what changes were
33 specified. However, I do know that we have some items in process, specifically
34 an amendment to the Concept Plan

35
36 Villescas: Right. That's what I read.

37
38 Harrison-Rogers: Okay. And also a replat, 'cause some for the farmland, essentially there's a
39 farmer who's been farming pecans who is trying to obtain the land and they're
40 shifting things around.

41
42 Villescas: Is that handled internally?

43
44 Harrison-Rogers: The replat would be because it's not increasing any sort or numbers of lots
45 at this point. The Concept Plan would have to go back through the process.

1 Villescas: Okay.

2
3 Harrison-Rogers: Additionally, of course, the City and the County are working with the
4 developer, the primary landholder out there right now, to come up with some
5 solutions to rectify the issues that the previous developer had left.

6
7 Villescas: Okay.

8
9 Hearn: Mr. Chair, they've also worked out a way to get some septic tanks on some of
10 those lots. I have some friends who are just building a house in there right now
11 that couldn't have happened earlier.

12
13 Villescas: Yeah, that was a disaster. Ms. Acosta, do you have any insight comments? So
14 there is a possibility that at least a portion of it could come back before the
15 Commission?

16
17 Harrison-Rogers: There's a possibility, yes.

18
19 Acosta: Are you at liberty to say who the developer is now of that property? I know that's
20 public records.

21
22 Harrison-Rogers: It's Las Cruces Equity Partners, I believe, is who the majority landholder is
23 in the area. They would be quick to state that they're not developers. They're
24 simply people who own land out there and they're willing to work with the City
25 and the County to rectify some of those issues.

26
27 Villescas: They sound local.

28
29 Harrison-Rogers: I'm sorry?

30
31 Villescas: They sound local.

32
33 Harrison-Rogers: They are local. Yes. That is correct. They are local.

34
35 Villescas: Great! Super! Any other questions or comments for staff while we have staff up
36 here?

37
38 Hearn: Oh, yeah. Maybe this would be a good time. I just had a question of procedure
39 that I've noticed. County Planning and Zoning you may not go look at a property
40 that's in one of these cases. That's considered *ex parte* communications. You
41 don't do that. City, by all means, get out there and visit it, look at it, talk to people
42 and find out what's going on. Where is it for us?

43
44 Harrison-Rogers: Although our Legal Counsel's not here this evening, they do caution how
45 site visits may work. There is some concern regarding people having information
46 or different impressions at different times when a site visit is held because, for

1 example, you could go to an area that normally has no traffic issues but for some
2 strange reason on that day that you visit there was a wreck and people were
3 cutting through a neighborhood and it looked like traffic was horrible, for
4 example. That's going to give you a different perception than, say, somebody
5 else who went on a day where the traffic was in a normal situation. So Legal
6 Counsel would state that they would be reticent to encourage Commission
7 Members to go out there and look. However, if you're going to do a drive-by, it is
8 your right to basically drive by the property.

9
10 Villescas: Or if you live close by or you go through there on your normal route home.

11
12 Harrison-Rogers: That's correct. I mean, it's hard for all of us, especially locals, to not know
13 a property or a situation. It's hard.

14
15 Villescas: Yeah, we're not a huge area.

16
17 Harrison-Rogers: In theory, we're supposed to look at basically what's presented before you
18 and then the testimony that you receive to base your decisions on.

19
20 Villescas: Yeah, and I can honestly say, at least in my opinion, that it's there. I mean, this
21 Board honestly does. I really think so. Could I ask of you to approach Legal and
22 get something like that in writing and get it to us? Mr. Hearn brings up a great
23 point because it is... we don't know exactly what we should or shouldn't do in
24 certain cases. I know we had one Commissioner would go to all. He's no longer
25 with us but he used to make a thorough inspection all them, City, County, didn't
26 matter.

27
28 Hearn: We need a joint ruling by the City and County Legal. Right?

29
30 Villescas: Actually, that would probably be best. Do they *(Inaudible)*

31
32 Harrison-Rogers: They do, Chairman, Members of the Commission. I'll work with both, Dave
33 Madeiros as well as Rusty Babington and one of our other Legal Counsel to
34 perhaps come up with a joint decision on that...

35
36 Villescas: A joint decision would be great!

37
38 Harrison-Rogers: ... and provide that to you because we are... we do share those opinions.

39
40 Villescas: Yeah. Now if you could get a joint statement out to us that would be terrific.
41 Thank you.

42
43 Hearn: Except if Dave Madeiros is involved, he will say that even if you live next door
44 you will have to blindfold yourself when you drive past. *(All laughing)*

45
46 Villescas: I drive with my eyes closed. As long as I don't have my cell phone on.

1
2 Acosta: Mr. Chair. I've got one more question: where are we at on ETZ? I know that you
3 guys are working on eliminating an ETZ Commission so where are we at on that?
4 I know that they were looking at maybe a projection in January. Is that still kind of
5 in the works?
6

7 Harrison-Rogers: Mr. Chairman, Members of the Commission, staffs of both County and
8 City did meet to discuss a plan to move forward with the discussions that took
9 place at a joint City-County meeting with the County Commissioners as well as
10 the City Council and basically, yes, there is a plan to move forward. As you know
11 the County's also working on a Unified Development Code and as part of that
12 process they want to wrap this in. So it may be delayed a bit longer than January,
13 as Commissioner Acosta was stating, because they would like to see that
14 wrapped into that Unified Development Code to be a more smooth transition, so
15 to speak. So it's still in the works. The discussions are still occurring and that has
16 been the direction from both Council and the Commission. We're moving that
17 way. It won't be January, however.
18

19 Hearn: And we can still get our Christmas paychecks. *(All laughing)*
20

21 Harrison-Rogers: Right. Maybe I'll bring some cookies for your Christmas paycheck.
22

23 Villescascas: I'm glad you said that. I'm going to order my Lexus. *(All laughing)* Any other
24 comments or questions from staff? Thank you very much.
25

26 Harrison-Rogers: Thank you.
27

28 **VII. PUBLIC INPUT**

29
30 Villescascas: Any questions from the public or comments from the public? I don't think we
31 have any public.
32

33 **VIII. COMMISSION INPUT**

34
35 Villescascas: Any Commission input?
36

37 Acosta: Bonnie, you will be missed. Thank you for everything that you have done for us.
38

39 Villescascas: Hear, hear.
40

41 **IX. ADJOURNMENT (7:08 pm)**

42
43 Villescascas: If I have no other Commission input do I have a motion for adjournment?
44

45 Townsend: So moved.
46

1 Villescas: A second?

2

3 Hearn: Second.

4

5 Villescas: You get that, Ms. Acosta? (*Sound system went down again – did not wait for it to*
6 *be rebooted*) All in favor please say aye.

7

8 ALL: Aye.

9

10 Villescas: We're adjourned.

11

12

13 _____
Chairperson