

**EXTRA-TERRITORIAL ZONING COMMISSION  
REGULAR MEETING**

**January 19, 2012**

**THESE ARE NOT VERBATIM MINUTES, THESE ARE SUMMARY MINUTES**

**MEMBERS PRESENT:**

Kenneth Allin, Vice-Chairman  
Cliff Terry, Member  
John Townsend, Member  
Stephen Pacheco, Member  
Bob Hearn, Member  
Janet Acosta, Secretary  
John Villescascas, Chairman

**OTHERS PRESENT:**

Janine Divyak, Chief Planner  
Steve Meadows, Planner  
Jonathan Kesler, Planner  
Isabel De La Rosa, Recording Secretary

**1. CALL TO ORDER:**

**Chairman Villescascas** called the Regular Meeting of the Extra-Territorial Zoning Commission to order at 6:02 p.m., Thursday, January 19, 2012 in the Commission Chambers in the Doña Ana County Government Center, 845 N. Motel Boulevard, Las Cruces, N.M.

**2. ROLL CALL:**

Commissioner Allin	Present
Commissioner Terry	Here
Commissioner Townsend	Present
Commissioner Hearn	Here
Commissioner Pacheco	Here
Commissioner Acosta	Here
Chairman Villescascas	Here

**3. ANNOUNCEMENTS: None**

**4. APPROVAL OF MINUTES: Regular Meeting of December 15, 2011.**

Commissioner Allin moved to approve the minutes.  
Commissioner Acosta seconded the motion.

**Roll Call**

Commissioner Allin	Yes
Commissioner Terry	Yes
Commissioner Townsend	Yes
Commissioner Hearn	Yes
Commissioner Pacheco	Yes
Commissioner Acosta	Yes
Chairman Villescascas	Yes

By a vote of 7-0-0, the minutes were **APPROVED**.

**5. CHANGES TO THE AGENDA:**

**Commissioner Acosta** moved to switch agenda item #5 and #6 to address Changes to the Agenda first.

**Commissioner Townsend** seconded the motion.

**Roll Call**

Commissioner Allin	Yes
Commissioner Terry	Yes
Commissioner Townsend	Yes
Commissioner Hearn	Yes
Commissioner Pacheco	Yes
Commissioner Acosta	Yes
Chairman Villescás	Yes

By a vote of 7-0-0, the motion was **APPROVED**.

**Commissioner Hearn** moved that Case Z11-004/Chavez be moved to agenda item #6 to be heard before case SU11-017/Cisneros and move current item #5 Election of Officers after the cases.

**Commissioner Acosta** seconded the motion.

**Roll Call**

Commissioner Allin	Yes
Commissioner Terry	Yes
Commissioner Townsend	Yes
Commissioner Hearn	Yes
Commissioner Pacheco	Yes
Commissioner Acosta	Yes
Chairman Villescás	Yes

By a vote of 7-0-0, the motion was **APPROVED**.

**OLD BUSINESS  
REVIEW / DISCUSSION / ACTION**

- 6. **CASE #Z11-004/Chavez:** The applicant, Christina Chávez Kelley, is requesting a Zone Change from ER2 (Residential, 2-acre minimum new lot size, single family site-built homes) to ER 3/4 (Residential, ¾ acre minimum new lot size, single family site-built homes) to facilitate the subdivision and distribution of property to the heirs of Ms. Emma Chávez. The 6.11-acre parcel is located north of the Village of Doña Ana and east of Doña Rd. at the SE corner of the intersection of Alvillar Rd. and Barela Dr. The property is described as a tract situated north of Las Cruces, NM, in Sections 10 and 15, Township 22 South, and Range 1 East, NMPN of the USRS Surveys Tract 4-18A, as recorded in Book 118, Page 627-628 in the Office of the Doña Ana County Clerk on February 6, 1998. It can be further identified by Map Code #4-004-129-230-035. **This case was postponed from the December 15, 2011 ETZ Meeting.**

**Steve Meadows** stated that a letter was received from the Applicant and due to health issues, Applicant was not able to obtain the information requested by the Commission; and Staff had not received the legal opinion from the legal department. He asked for a postponement of the case until next Commission meeting on February 16, 2012 at 6:00 p.m. He also stated that they would have the legal opinion at that time and the Applicant’s information from the court order.

**Commissioner Townsend** moved to postpone case #Z11-004/Chavez to February 16, 2012 meeting at 6:00 p.m.

**Commissioner Allin** seconded the motion.

**Roll Call**

Commissioner Allin	Yes
Commissioner Terry	Yes

Commissioner Townsend	Yes
Commissioner Hearn	Yes
Commissioner Pacheco	Yes
Commissioner Acosta	Yes
Chairman Villescas	Yes

By a vote of 7-0-0, the motion to move Case #Z11-004 to February 16, 2012 was **APPROVED**.

7. **CASE #SU11-017/Cisneros:** The applicant, Miguel Cisneros, is requesting a Special Use Permit for a rodeo practice facility that also houses ten (10) head of cattle, ten (10) horses, and one donkey on a 1.37-acre parcel located within the ER3 (Residential, 1-acre minimum new lot size, single-family site built homes) Zoning District. The subject parcel contains a 2356 sq. ft. home and is addressed as 5603 Giron Rd., Las Cruces, NM 88005. It is located north of the City of Las Cruces within Section 22, Township 22 South, Range 1 East. The property is described as Lot 1, Block 5 of the Dona Villa Subdivision, as recorded in the Doña Ana County Clerk's office on Apr 21, 1977 in Book 12, Pg 96, and can be further identified by Map Code #4-004-130-285-118. **This case was postponed from the December 15, 2011 ETZ meeting.**

**Jonathan Kesler, DAC Planner, sworn in.** He presented the case and noted that a new site plan was being handed out.

**Commissioner Hearn** stated that he did not understand why Staff recommended approval when it was complaint driven and they have 21 animals on the property. He stated that he did not understand the law or ordinance being used to support it and where it was going.

**Jonathan Kesler** stated that the recommendation was based only on the 4-H activities although it does not conform under the 4-H exemption of the Ordinance. He stated that they used 4-H as a benchmark partially based on information received from the 4-H agent which would be 7 animals.

**Janine Divyak** stated that the Applicant did not provide the necessary 4-H paperwork to comply with the 4-H exemption. She further stated that the Applicant did not have proof to be grandfathered before the ETZ was established. He would have to provide proof that that number of animals existed from 1984 to 2012 and the number has never been decreased. The number of animals had to be kept year after year after year – no break in the number of animals. The Applicant was not able to provide that information to be grandfathered.

**Miguel Cisneros, 5603 Giron Lane, Applicant, sworn in.** He stated that he could supply any records from his veterinarian for the last 20 years showing that he had always had animals on his property. He believed his property had been grandfathered and claimed that he was told that by Edward Ybarra, previous Code Enforcement office that was the case. He also mentioned that Animal Control had been there and had seen the housing of the animals and told him that the upkeep was okay. He stated that his daughter was involved in the 4-H club, the Las Cruces Horseman Association, and NM Rodeo Association in which she competes for in the high school Program. He stated that as far as the fence was concerned, the neighbor was the one encroaching on his property and the fence is in disrepair. He stated that if a fence was to be put up, then the fence would have to be repaired by the neighbor. He stated that manure was donated to the neighbors, and it does not accumulate in the property as it is removed regularly. He again stated that area was well kept and clean, and the stalls were cleaned regularly, but not on a daily basis; but he doesn't let manure stand.

**Kelly Kuenstler, 5607 Giron, sworn in.** She stated that she purchased property west of Applicant's property and were aware that they were living in the middle of farm fields, which meant dust, horses, and cows in the area. She mentioned discussing with previous owner Virginia Shelton about the Applicant having so many animals and having the place immaculate. She stated that they did not have a fly issue. She stated that she was offended by hearing about dust. She complimented the Applicant because they are involved with his kids and their activities, and

asked the Commission to consider the grandfathering issue.

**Abe Martinez, 5607 Giron Rd, sworn in.** He stated that Applicant's kids are ranked nationally. He stated that he has witnessed when the manure has been picked up by others, and the stalls were very clean. He stated that he was stressed by the dust complaint since Giron Road is an unpaved road and there is dust all the time and he does not see merit in the dust complaint. He stated that this is a way of life – dust, flies and horses. He also mentioned that the Applicant works a lot with his kids and doctors his own horses.

**Lonnie Moore, 2512 Mayfield Lane, sworn in.** He stated that he worked 39 years with the youth through Las Cruces Public Schools. He said that thanks to the cowboys and cowgirls, they raised \$800,000 dollars for cancer research which was voted by the Bulletin as one of the best things that has happened in NM. They were the number one private group in the nation. He stated that money was needed to train horses and put big time money into buying horses and breeding. He stated that has been acquainted with Applicant and selling him horses for the last 20 years. He stated that the Applicant not only trains his kids but other kids too. He stated that setting up a fence around the arena would be devastating. He stated that part of our heritage was cowboys, roping, and rodeos. He said that if Applicant was to get in trouble, then there would be problems because some of the biggest and richest people in the area support these activities. He said that this would not be good for the County.

**Ben Maese, 5619 Giron Road, sworn in.** He stated that he lives north of the Applicant and was the one who filed the dust complaint. He stated that the dust was not an issue originally, but about 5 or 6 years ago, the Applicant took out his orchard, and the dust was worse. He spoke with the Applicant several times about the issue and noted that the Applicant gets water to irrigate every 6 weeks. He stated that Applicant purchased a water tank about a year and a half ago because Codes made him do it. This is when Applicant started watering the chute. Codes stated that they could not police the watering. He stated that Applicant had animals before, but not as many as he has now. When the roping arena was put in, Applicant brought steers and more horses. Applicant breaks horses and breaks horses for other people. The problem was that he was not watering the arena and no one could police it. He said that he and the Applicant were good friends and spoke with Applicant about the dust problem. He stated about a month or two ago the Applicant came to him about resolving the issue after 5 years of trying to work it out. He stated that he had no choice but to ask the Commission to curtail the number of animals per the ordinance. He said he and his family were farmers and has been there since 1980/1981 and dust is not the problem. He stated that he lived 70 feet from the chute – he breath dust every day. Applicant ropes in the summer for hours. He stated that Applicant's water tank is 500 gallon water tank and Applicant fills it up with a hose. He explained how the dust does not settle because Applicant does not water thoroughly and how the dust hangs in the air. He does have problems with the animals, because Applicant now was roping where he wasn't before. He stated that when Applicant took out the orchard and put the chute in, then it got bad with the roping activities. He stated that he does have a well on his property and offered it to the Applicant and the well is about 120 feet from Applicant's property. He demonstrated the Commission a video of the proximity of his home to the chute, the dust, how the arena looks when it has been watered, and the manure and mold. He said that he has to take care of his daughter and granddaughter and has the nuisance of having dust and not being able to keep things clean. He stated that he had spoken with the county and was told the Ordinance provision was for showmanship not for rodeos. He stated that his carport is filled with flies and his ceiling fans and screens are black with flies.

**April Maese, 5619 Giron Road, sworn in.** She stated that they do not have anything against the kids because she is a college student herself. She also mentioned running for breast cancer. She stated she has a 4 year old girl who loves looking at the animals and likes to play outside. She stated that the dust is harming them because of the allergies. The little girl has had treatments

for asthma and the dust was not helping. She has to clean the kitchen 3 or 4 times a day and her little girl is not getting better because of the dust coming in the house. The road is packed down and is not as bad as the Applicant's arena. They used to be friends and her father used to help the Applicant with his animals when they would get out.

**Commissioner Hearn** stated that the situation clearly showed that Applicant's situation was illegal. He stated that the Applicant has no legal basis to have more than 2 animals on the lot, and that the Applicant had the option of using the 4-H exemption or having the property grandfathered to correct the illegality. He stated that he was very much opposed to using the 4-H exemption because he believe it to be a misuse of what was originally written and intended. He also noted that it was very vague and allowed anyone to do anything under the 4-H exemption. He stated that the only option he saw for what the Applicant was after was to have the property grandfathered based on the prior use of the land.

**Eva Madrid, 530 N. Church St. Cooperative Extension sworn in.** She stated that the 4-H program has over 200 projects, and projects vary and ownership would be different for each project. She stated that horses are kept longer when compared to the swine which get slaughtered at the conclusion of the fair. She further stated that the enrollment year was from October 1 to September 30. The letter that was submitted verified the membership of the Applicant's kids in the 4-H club. She stated that she was not sure how the ordinance would be affected in the future with the new projects. She explained that the rodeo project, depending on events, could have a horse for different things, and then have a backup horse. She stated that they follow the ordinances and were grateful to counties and cities that provide the opportunities for kids to learn life skills and responsibility. She stated that 4-H does provide scholarships for their active members, but member have to take the initiative to apply for the scholarships. She became aware of the zoning issue when she received the call from Staff. She stated that it would not be a problem to write a letter to verify that the Applicant's kids are members as long as they continue to enroll.

**Commissioner Allin** moved to approve case #SU11-017 with Staff recommendations with the following conditions:

- 1) The number of large animals on the parcel shall be limited to the number of events the applicant's daughter is involved in, for instance, for three events; three horses, three steers, and one donkey, typically are needed per the 4-H Extension Agent.
- 2) The SUP shall be limited solely to 4-H activities and shall expire on October 20, 2015, or when none of the residents of the parcel are enrolled in either 4-H or Future Farmers of America (FFA) per Section 8.4 of the Ordinance.
- 3) The applicant should get a form from the 4-H Extension Agent for each year she or they are active in the 4-H maintaining active membership.
- 4) The applicant must comply with all other requirements of Section 8 with the exception of Section 8.1.C "Open Lot Area and Density", 8.1.H.1 "Corral Size", and 8.1.H.2 "Box Stall Size" per Section 8.4.A.1 of the Ordinance. Additionally, per Section 8.1.H.8 (Dust Control) the applicant must mitigate the impact of the dust generated by installing a wall or fence on the side abutting the residential property to the north.

**Commissioner Terry** seconded the motion.

**Commissioner Hearn** stated that the number of animals was not limited in the conditions and the number of animals would multiply if she enrolled in several events. He believed the limitation was not adequate and that a solid wall would be useful in mitigating the dust.

**Chairman Villescas** stated that two options existed – amend the main motion and make it a firm number or Commissioner Allin could revise the main motion.

**Commissioner Hearn** moved to amend condition number 1 to have it state the number of animals on the parcel should be limited to 3 horses, 3 steers, and 1 donkey and no other animals.

**Commissioner Terry** seconded the motion. He asked if the motion could be modified to state that the Applicant may provide documentation for the property to be grandfathered at which time

more animals could be used.

**Janine Divyak** stated no. She said that the 2005 aerial showed that the property had a pecan orchard and that in 2006 the trees were removed and an open arena was established. She stated that the Applicant could produce documents, but she did not believe that 21 animals could be housed on this property.

**Chairman Villescas** asked if Applicant provided documentation that proved the grandfather clause, does the Commission's action become moot. He also asked if the conditions stand or would they be replaced by the grandfather clause.

**Janine Divyak** stated that Applicant was asked for the documentation at the time the complaint was filed stating that he had these animals back in 1984. The Applicant could not substantiate it with documentation. This was the reason this was brought forward requesting an SUP to exceed the density. She stated that Staff determined that Applicant could not meet the requirements of the grandfather clause.

**Commissioner Terry** stated that the 2005 aerial showed stalls and that Applicant may not have had 21 animals at the time but at least more than 3.

**Commissioner Townsend** asked if the motion could be amended to include the removal of manure due to testimony of problems with flies.

**Jonathan Kesler** noted that this requirement was part of the motion.

**Chairman Villescas** read the entire motion –

- 1) The number of large animals on the parcel shall be limited to three horses, three steers, and one donkey, and no other animals.
- 2) The SUP shall be limited solely to 4-H activities and shall expire on October 20, 2015, or when none of the residents of the parcel are enrolled in either 4-H or Future Farmers of America (FFA) per Section 8.4 of the Ordinance.
- 3) The applicant shall submit a yearly letter by the 4-H Extension.
- 4) The applicant must comply with all other requirements of Section 8 with the exception of Section 8.1.C "Open Lot Area and Density", 8.1.H.1 "Corral Size", and 8.1.H.2 "Box Stall Size" per Section 8.4.A.1 of the Ordinance. Additionally, per Section 8.1.H.8 (Dust Control) the applicant must mitigate the impact of the dust generated by installing a wall or fence on the side abutting the residential property to the north.

#### **Roll Call**

Commissioner Allin	Yes
Commissioner Terry	Yes
Commissioner Townsend	No
Commissioner Hearn	No
Commissioner Pacheco	Yes
Commissioner Acosta	Yes
Chairman Villescas	Yes

By a vote of 5-2-0, the motion was **APPROVED**.

**Commissioner Hearn** noted that no time line had been provided for Applicant to clear the rest of the animals and when the fence had to be built.

**Jonathan Kesler** stated that it would be 30 days for the animals and 30 days for acquiring the application for the wall.

**Miguel Cisneros, Applicant**, asked what was he supposed to do with the animals that were being asked to be removed within 30 days; and who was going to absorb the loss if he sold the animals. He stated that he was told by Mr. Ybarra that he was grandfathered and could keep his animals and now the County is saying no and he is willing to provide evidence that has had the animals since then. He stated that it would not be the large amount that he has now, but he has had animals, and would be grandfathered over and beyond the number that he was granted today. He also mentioned that he did not recall being asked to provide any kind of documentation for the grandfather clause.

**Chairman Villescas** told Applicant that he could appeal the decision to the ETA.

**NEW BUSINESS  
REVIEW / DISCUSSION / ACTION**

**8. ELECTION OF OFFICERS: CHAIRPERSON, VICE-CHAIRPERSON, AND SECRETARY**

**Commissioner Allin** moved to elect the existing officers for one more year – Chairperson Mr. Villescascas, Vice-Chairperson Mr. Allin and Secretary Ms. Acosta.

**Commissioner Hearn** seconded the motion.

**Roll Call**

Commissioner Allin	Yes
Commissioner Terry	Yes
Commissioner Townsend	Yes
Commissioner Hearn	Yes
Commissioner Pacheco	Yes
Commissioner Acosta	Yes
Chairman Villescascas	Yes

By a vote of 7-0-0, the motion was **APPROVED**.

**9. REVIEW OF THE BY-LAWS:**

**Commissioner Hearn** moved to accept the By-laws as presented.

**Commissioner Acosta** seconded the motion.

**Roll Call**

Commissioner Allin	Yes
Commissioner Terry	Yes
Commissioner Townsend	Yes
Commissioner Hearn	Yes
Commissioner Pacheco	Yes
Commissioner Acosta	Yes
Chairman Villescascas	Yes

By a vote of 7-0-0, the motion was **APPROVED**.

**10. REVIEW OF THE REASONABLE NOTICE OF MEETING REQUIREMENTS AND THE 2012 CALENDAR YEAR SCHEDULE OF MEETINGS:**

**Commissioner Townsend** moved to approve the Calendar Year Schedule of Meetings.

**Commissioner Allin** seconded the motion.

**Roll Call**

Commissioner Allin	Yes
Commissioner Terry	Yes
Commissioner Townsend	Yes
Commissioner Hearn	Yes
Commissioner Pacheco	Yes
Commissioner Acosta	Yes
Chairman Villescascas	Yes

By a vote of 7-0-0, the motion was **APPROVED**.

**Commissioner Hearn** moved to accept the Reasonable Notice of Meeting Requirements as presented.

**Commissioner Pacheco** seconded the motion.

**Roll Call**

Commissioner Allin	Yes
Commissioner Terry	Yes
Commissioner Townsend	Yes
Commissioner Hearn	Yes
Commissioner Pacheco	Yes
Commissioner Acosta	Yes
Chairman Villescascas	Yes

By a vote of 7-0-0, the motion was **APPROVED**.

**11. ADMINISTRATIVE APPROVALS:**

**Janine Divyak** stated there were no administrative approvals for the month of December.

**12. PUBLIC INPUT: None.**

**13. STAFF INPUT: None.**

**14. COMMISSION INPUT:**

**Chairman Villescascas** asked if any new progress had been made on the new ordinance for the cell phone towers.

**Janine Divyak** stated that a draft document was prepared and was being reviewed by the Ad Hoc Committee, and would meet in the next few weeks to further discuss it.

**Commission Hearn** stated that it would be a good idea to distribute it.

**15. ADJOURNMENT:**

**Commissioner Allin** moved to adjourn the meeting.

**Commissioner Terry** seconded the motion.

**All Ayes.**

**Chairman Villescascas** adjourned the meeting at 8:35 p.m.

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Officer: Extra-Territorial Zoning Commission

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Submitted by: Isabel De La Rosa, Recording Secretary