

**EXTRA-TERRITORIAL ZONING COMMISSION
REGULAR MEETING**

February 16, 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
Kellen Tarkington, Fire Marshall
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 6:06 p.m., Thursday, February 16, 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	Here
Commissioner Terry	Present
Commissioner Townsend	Here
Commissioner Hearn	Here
Commissioner Pacheco	Here
Commissioner Acosta	Here
Chairman Villescascas	Here

3. ANNOUNCEMENTS: None

4. APPROVAL OF MINUTES: Regular Meeting of January 19, 2011.

Commissioner Allin moved to approve the minutes.
Commissioner Terry 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: None.

**OLD BUSINESS
REVIEW / DISCUSSION / ACTION**

6. CASE #Z11-004/Chavez:

- **Property Owner:** Christina Chávez Kelley
- **Request:** A Zone Change from ER2 to ER3/4 to pursue an ETZ subdivision.
- **Location:** SE corner of the intersection of Alvillar Rd. and Barela Dr.
- **Lot Size:** 6.11-acres
- **Legal Information:** Deed recorded in the Doña Ana County Clerk's Office on Feb. 6, 1998, in Book 118, Page 627-628. Map Code #4-004-129-230-035.
- **Recommendation:** Denial
- **Case Manager:** Steve Meadows
- *This case was postponed from the January 19, 2012 ETZ Meeting.*

Steve Meadows, DAC Planner, sworn in. He presented the case and based on Staff analysis and proposed findings, Staff recommended DENIAL.

Commissioner Acosta noted that it was her opinion that there were changes in the conditions of the area since 1976 when the Miller criteria were decided. She further commented that she did not understand why the Miller criteria would be an issue because the area has grown, people have built, and have septic tanks so there is infrastructure in the area. She suggested looking at the area in general.

Commissioner Hearn pointed out that if zone changes occurred after the zoning of the subject parcel, it would be a major change in the area which addresses the Miller criteria directly.

John Montoya, Las Cruces, NM, sworn in. He stated that he would supplement the petition to show the changes in the area. He provided a presentation showing more density, the zoning, lots were less than 2 acres, parcels less than 1 acre, and mixes in the area. He also presented the traffic numbers on Barela Road being 480 on a daily basis. The capacity being 8500, and concluded that there would be no impact on Barela by creating the 4 additional parcels.

Christian Chávez Kelley, P.O. Box 3464, Las Cruces, NM 88003, sworn in. She thanked the Commission and Staff's support for delaying the hearing till today. She reiterated that they were submitting the conceptual plan of 4 lots. She related that they spoke with the DAC attorneys and found that the order was not sufficient, and asked her attorney to move the petition to District Court. However, before proceeding, they would try to convince the Commission that there has been a change in conditions to get the approval. She stated she had made a mistake in filing of the deed, it has been withdrawn and corrected, and she took responsibility for the mistake. She stated that she mentioned to the DAC attorney and would go on the record about asking for ER3 zoning instead of ER3/4 which would meet the 1 acre requirement and would require no new application. She stated that at the time when the Miller criteria was established in 1976, there was only one home in the area and it belonged to her aunt, Angelina Lucero. Since then, there had been 55 homes that have been built. Based on this information, they believed there had been a change in condition and the current zoning of ER2 no longer fits. She also mentioned finding out that the ER3/4 was approved after the ETZ ER2 zoning. She also pointed out that there were 3 homes built on ¾ lots in the pecan orchard. She clarified that if zoning approved, they would comply with all requirements that the City imposes for the subdivision. She stated that they had applied for the ¾ as part of future planning. She stated that she stood corrected and the zoning requested was ER3/4C.

Daniel Diaz, 471 Alvillar, sworn in. He stated that he lived right across the street from the property and was opposed to the change. He stated that there is a canal under Barela and is very narrow and two vehicles have a hard time passing through. He also stated that Alvillar Road is a

not a county maintained road. He stated that he was the one responsible for the maintenance of the road to keep it in working condition. He mentioned that there were lots of tractors and equipment, and various neighbors had pecan trees in the areas. He felt it would be a problem for the new subdivision due to the spraying of the area. He further stated that he was against smaller parcels which could have a domino effect. He mentioned applying to dividing his land into 1 acre parcels and was denied due to lack of infrastructure.

Vivian Frieze, 3824 Willow Glen Drive, Las Cruces, NM 88005, sworn in. She stated that at this time, they were not planning to build a subdivision, but just allocate the property as her mother wanted. She said only one of them has the intent to build now. Their desire is to follow their mother's wishes and they don't plan on selling it. She also mentioned that she and her brother would not mind having the land sit for farming.

Angeline Diaz, 471 Al Villar, sworn in. She wanted to know that if the case was approved and the Applicant was allowed to have one acres parcel, can they also do it. She also mentioned that they want to keep it the way it is – farming area.

Chairman Villescas stated that she had the right and ability to go through the process, but could not say what the outcome would be and reminded Ms. Diaz that the Applicant was only creating one additional lot.

Commissioner Townsend read the Miller criteria language and stated that the argument could be made that it would be an injustice to deny the case, and if corrected, it would meet the Miller criteria.

Commissioner Allin stated that as a Commissioner they are to review the other side and preserve the farming in the valley. He mentioned that the public stated that people would complain when spraying the pecan trees and it not the solution to just say “you decided to move out there.” He stated that they had to be part of the solution and or problem.

Commissioner Hearn asked if there was specific law that could be referenced as to “no the zone changed cannot be done because of preservation of farmland.”

Commissioner Allin stated that there was no specific reference, but as Commission it was something they would look toward, i.e. regulations.

Commissioner Townsend moved that the request from the heirs of Mrs. Chávez be approved Case #Z11-004/Chávez and that the zone change from ER2 to ER3/4 be approved on the basis of facts presented with the condition that the lots be no less than 1 acre and will be no more than 4 lots.

Commissioner Acosta seconded the motion.

Commissioner Terry stated that he would like to add to the 2 conditions: 1) one acre minimum and 2) there be a maximum of 4 lots; and 3) the remainder of 3 lots be continued to be used as farmland for some period in the future. He withdrew the amendment to the main motion for a lack of a second.

Roll Call

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

By a vote of 6-1-0, the motion was **APPROVED**.

**NEW BUSINESS
REVIEW / DISCUSSION / ACTION**

7. CASE #Z11-005: González

- **Property Owner:** Benito González
- **Request:** A Zone Change from EC1 to ER3/4M to convert the parcel to residential and place a 1,120 sq. ft. mobile home as a residence on it.
- **Location:** SW corner of the intersection of Holman Rd. and Blue Topaz Ave.
- **Lot Size:** 0.89-acre
- **Legal Information:** Deed recorded in the Doña Ana County Clerk's Office on Oct. 20, 1988, in Book 15, Pages 326-349. Map Code #4-012-127-513-274.
- **Recommendation:** Denial
- **Case Manager:** Steve Meadows

Steve Meadows, DAC Planner, presented case and based on Staff analysis and proposed findings, Staff recommended DENIAL.

Commissioner Hearn stated that he did not feel comfortable changing the zoning due to a well planned of the design for commercial purposes. He asked that they should consider it as part of a plan instead of a single lot.

Chairman Villescas stated that he too would feel uncomfortable granting the zone change and forcing someone else to provide the Applicant an easement.

Kellen Tarkington, Fire Marshal's Office, sworn in. He stated that the codes were different in the 1980s and it does not come even close to meeting today's code standards. He stated that there were some alternatives to meeting the fire flow and fire code if it was a commercial business, i.e. NFP11-42 which calculates how much water fills the tanker truck, travel distance to nearest hydrant and bring it back to the fire. The other are sprinkler systems, fire suppression systems, are certain construction types. He stated that there were options depending on building and occupancy.

Steve Meadows related that Applicant lives in Hobbs, was contacted and told of the meeting. Applicant stated he would be here, but did not show up.

Commissioner Pacheco commented that Applicant could trade current parcel for another parcel to set up as residential.

Commissioner Acosta moved to approve case #Z11-005/González based on the facts and findings.

Commissioner Hearn seconded the motion.

Roll Call

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

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

8. **CASE #Z11-06: Chávez**

- **Property Owner:** Rudy Chávez
- **Request:** A Zone Change from ER4M to E11 to permit an existing fencing business
- **Location:** 655 Taos Lane
- **Lot Size:** 0.49-acre
- **Legal Information:** Recorded in the office of the Doña Ana County Clerk on Nov. 17, 1994, in Book 387, Pages 199-201. Map Code #4-007-138-492-382.
- **Recommendation:** Denial
- **Case Manager:** Steve Meadows

Steve Meadows, DAC Planner, presented case and based on Staff analysis and proposed findings, Staff recommended DENIAL.

Rudy Chavez, Applicant, 655 Taos Lane, Mesilla Park, sworn in. He stated that the complaint originated because he had bumped into a pole around 6:00 p.m. one evening and woke up the neighbor who was sleeping. The neighbor appeared drunk and was upset at the noise. The neighbor told him he was going to bring him down and that was it. He also stated that the neighbors like having him there because they feel safe. He stated that he could do gates in a couple of hours and the rest of the work is done on the job site, and he does from 50 to 70 gates a year.

Norma Chavez, 3889 Calle de Las Margaritas, Sp. #1 sworn in. She stated that the Applicant was her brother and that neighbors were here to speak on his behalf. She stated that the neighbors have no complaints because he mainly uses the place for storing his materials and making gates. She stated his work is mainly offsite. She also stated that people call him and he goes to them and provides estimates. She further stated that he would hire people for big jobs because he only has one employee. She stated her brother was a hard working man and the reason he worked from home was to take his children to school and be there for them. She also stated that neighbors had not complained about him having his equipment and materials at the residence. She said her brother was a peaceful and compassionate man who helps people by not charging full price. She stated that if he was forced to move his materials and equipment, it would be a financial hardship on the family.

Sandra Estrada, 3981 Jeri Street, sworn in. She stated that she has lived 11 years next to Rudy and has had no problems with traffic. She has her garbage can outside and has had no problems with it being picked up because of traffic and have had no trouble with Rudy's trucks getting in the way for the mailman. She stated that a portion of her house burned down last year and the firemen had no problems getting to her house. She also stated that Rudy and his family are very nice people.

Ricardo González, 663 Taos Lane, Mesilla Park, sworn in. He stated that they live next to the Applicant and they have never had any problems with him. He stated that Applicant is a hard working man and he has known Applicant since he was a minor and Applicant provided good advice and has been a good example for him. He stated that there has never been any kind of problems with Applicant's trucks, the noise or the work that is done. He stated that the Applicant is working, doing a job and being an example. He and his family support Mr. Chávez to continue his work because as his parents said, "If someone is hard-working and being a good example, then it is good to support someone like that." He also stated that they were aware that there are regulations that need to be followed, but Applicant was only working and not doing any harm. He said that everything is just supposing if Applicant because successful so it is just a supposition.

Rudy Chávez, Applicant, asked if there was a way for him to be permitted to keep his things there instead of having to go through a zone change.

Chairman Villescas stated that he had asked Mr. Meadows about an SUP, like an exception, but it was not possible.

Steve Meadows stated no there was no other option due to the materials and equipment that classifies it as industrial. He said that in residential zones there are no special permits and it is a commercial use. He stated that commercial use have a negative impact on the residential area due to the smoke, the noise, the dust and stock piling of materials.

Commissioner Hearn stated that he would like to table this for a year because there comes a time when you have to look at people goes beyond the rules. He suggested giving themselves and Staff time to think about it and figure something out in a year.

Commissioner Allin asked what kind of situations have the Commission used in the past that have allowed them to use a notation on plats or something that reverted back to the zoning if a different owner purchased the land.

Janine Divyak stated that as they had previously done in the Chávez case, if the Commission felt that the case was worthy of conditional zoning, then that condition can be placed on the approval process. She stated that it would be stated in the order that would be process through the Clerk as well as on the GIS label. She mentioned that this was a zoning violation and would be best to give him a year or so to find a new location, if the Commission is not supportive. She stated that the business has out grown this location, as a home occupation and the odors and the noise have started to affect the neighborhood.

Commissioner Hearn moved to postpone this matter for 30 days.

Commissioner Terry 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 was **APPROVED** for postponement.

9. ADMINISTRATIVE APPROVALS:

Janine Divyak stated 9 new family residential dwelling units and 2 commercial permits; 4 claim of exemption applications, and 17 mobile home permits were issued in the month of January.

10. PUBLIC INPUT: None.

11. STAFF INPUT:

Janine Divyak mentioned that the proposed ETZ zoning ordinance amendment was tabled by the ETA with the provision that the Commission review it again as to traffic, number of employees, signage and there were a few more issues. She stated that it would be brought back to them at next month's meeting.

12. COMMISSION INPUT:

Commissioner Hearn reported that the cell tower ordinance was stopped because Staff decided there was going to be a new Unified Development Code and he believed it was really, really wrong.

Chairman Villescas stated that they would be left hanging.

Janine Divyak stated that it can be added to the agenda for discussion.

Chairman Villescas agreed with it being on the agenda.

Commissioner Hearn stated that it needed to be on the P&Z agenda also.

Janine Divyak stated that no final decision has been reached yet.

Commissioner Hearn stated that he did not understand why Staff's action to stop it after so much work has been done.

Janine Divyak stated that because in two years the consultants would be drafting a unified code one and the issue would be addressed.

Commissioner Hearn stated that in two years it would be drafting a code, in five years they would have one, but in the mean time, they need one.

Chairman Villescas stated that it could always be redone in two years and they need something to go by since there is currently nothing.

13. ADJOURNMENT:

Commissioner Terry moved to adjourn the meeting.

Commissioner Townsend seconded the motion.

All Ayes.

Chairman Villescas adjourned the meeting at 9:44 p.m.

Officer: Extra-Territorial Zoning Commission

Submitted by: Isabel De La Rosa, Recording Secretary