

**MINUTES OF THE
EXTRA-TERRITORIAL ZONING COMMISSION (ETZ) MEETING**

September 19, 2013

6:00 p.m.

(Note: These are not verbatim minutes, these are summary notes.)

MEMBERS PRESENT:

John Villescas, Chairman
Kenneth Allin, Vice-Chair
John Townsend, Commissioner
Tim Sanders, Commissioner
Robert Hearn, Commissioner
Douglas Hoffman, Commissioner

OTHERS PRESENT:

Luis Marmolejo, Sr. Planner, Community Development
Steve Meadows, Planner
Srijana Basnyat, Planner, City of Las Cruces
Paul Michaud, Sr. Planner, City of Las Cruces

MEMBERS ABSENT:

Janet Acosta (arrived at 6:37 p.m.)

1. CALL TO ORDER

Chairman Villescas called the Regular Meeting of the Extra-Territorial Zoning Commission to order at 6:12 p.m. Thursday, September 19, 2013 in the Doña Ana County Government Center, 845 N. Motel Blvd., Las Cruces, NM.

2. ROLL CALL

Commissioner Townsend	Here
Commissioner Sanders	Here
Commissioner Hearn	Here
Commissioner Hoffman	Here
Secretary Acosta	Absent
Vice-Chair Allin	Here
Chairman Villescas	Here

3. ANNOUNCEMENTS

Commissioner Townsend will be recusing himself after Item No. 7.

4. APPROVAL OF MINUTES: August 22, 2013 Meeting Minutes

Commissioner Sanders made a motion to approve the August 22, 2013 meeting minutes, with **Commissioner Townsend** seconding the motion. The vote was 6-0-0 to **APPROVE** the minutes.

5. CHANGES TO THE AGENDA

Steve Meadows reported that the City staff has asked to be moved forward. Item No. 8 will be moved to Item No. 6. **Commissioner Allin** made a motion to approve this request with

Commissioner Sanders seconding the motion. A vote was taken and the motion was **APPROVED** by a vote of 5-1-0.

**NEW BUSINESS
REVIEW / DISCUSSION / ACTION**

6. THE EAST MESA COMMUNITY BLUEPRINT UPDATE FROM THE CITY OF LAS CRUCES COMMUNITY DEVELOPMENT DEPARTMENT STAFF

Srijana Basnyat, Planner, CLC, gave an update on the East Mesa Community Blueprint from the City of Las Cruces. This update is because some of the area within the planning area falls outside the City limits within the ETZ. The planning area is located south of US 70 and east of Porter Drive. The neighborhood has large residential lots and a natural desert atmosphere. This process itself was initiated by interested residents who approached the City to do this blueprint for their area. The process involved neighborhood meetings from October through March. This has gone to the Planning & Zoning Commission and is scheduled to go before the City Council sometime in October.

Commissioner Acosta arrived and joined the Commission at 6:37 p.m.

7. CASE # Z13-002 / Stahmann's, 22505 S. Hwy. 28

Steve Meadows, Planner, was sworn in and presented this case as a zone change request from ER2 to EC2 on a 1.58-acre southern portion of a larger 123.6-acre parcel to establish a restaurant or other commercial uses in an existing 18,000 sf building.

Steve Meadows reported that one email was received in support of the zone change. No other communications were received either in opposition or support of the proposal. Based on staff's analysis and findings, their recommendation was for conditional approval of the zone change request with one condition – to clean up the split zoning issue, staff would like to see the 1.58 acre site subdivided off of the larger parcel.

Chairman Villescas asked if the applicant had any issues with the condition.

Steve Meadows responded that the applicant wasn't sure about it, but staff felt this was the best way of cleaning up the split zoning issue.

Chairman Villescas asked Steve, in his opinion what would be the worst use in that area if the parcel was sold in the future with the proposed zone change.

Steve Meadows responded that the applicants want to keep control of this. You can always have deed restrictions in your sales contract. The applicant's objective is specifically a restaurant; they might not operate it – it may be leased to a professional restaurateur. They want to retain control of the land. If it is not a restaurant, they are talking about some sort of retail store.

Commissioner Hearn asked about conditional approval regarding the future control of what will be on that parcel such as restaurant and shop – to be consistent with the pecan industry or the culture and spirit of the Camino Real Corridor Plan.

Steve Meadows said this Commission has the ability to limit the uses under a certain zone and limit the future uses of the parcel if it is sold to another owner.

Commissioner Hearn asked if there had never been anything on this property and the application was to rezone it from ER2 to EC2 in order to put in a restaurant, that could very likely be considered a spot zone, could it not?

Steve Meadows responded that the analysis of the spot zone criteria might be different.

Commissioner Hearn asked also about the comments by the State Engineer's Office saying using the well on the property for commercial operations would be problematic.

Steve Meadows responded that when the applicants change the use of the property, they will have to deal with the State Engineer and whatever they recommend.

Commissioner Sanders said it looks like EC1 would accommodate the applicants' needs. Why use EC2?

Steve Meadows responded that EC2 includes commercial, retail sales and some of the other uses the applicants are thinking about.

Judy Mitchell, Stahmann Farms, 22715 So. Hwy 28, and **Virginia Beck**, 2705 West Hadley, Las Cruces, Western Land Surveying, were both sworn in.

Virginia Beck addressed the comment of limiting the uses under the EC2 zoning. The buildings that surround the store are all being used in heavy industry, pecan sorting buildings, and heavy equipment repair. The whole nature of the area is heavy industry. The person who might want to come in and open up a business may possibly want something totally different from a restaurant and that is why we are asking for the EC2 zoning is totally consistent with what is already there. It would give us a lot more options without having to come back. Anyone who is going to open up a business is going to have to come back to the County and ask for a business license. It will be inspected. There will be lots of opportunities for the County to get whatever is going to go in to be orderly. To deny Stahmann Farms the use of the full extent of EC2 in that area – I really wish you would think about that again.

Judy Mitchell said the store was closed at the end of May 2012.

Chairman Villescas discussed that a zone change is permanent. The issue is that if the parcel was sold, the new owner may want to put in an upholstery shop, automotive service station, liquor store or bowling alley. Do you have a problem with the condition of subdividing the

property? Do you have a problem with a condition that lists that only a store or a restaurant could be placed there?

Judy Mitchell said we can't predict exactly what will go in there. We want to be very careful what goes in there on our land, but we also want the flexibility to be able to choose what kind of business that is.

Commissioner Townsend said that he disagreed with Chairman Villescas. If you're going to grant this zone change to EC2, it should be EC2, you shouldn't be trying to govern what will happen in 50 years.

Commissioner Hearn said the purpose of zoning is to control what happens in certain areas. It keeps the whole area developing the way people would like to see it go. These EC1 and EC2 zones are catchalls for a lot of uses. Conditional zoning is a very viable part of the zoning toolbox. Putting conditions that restrict from this entire list is not unusual, in fact it is part of other cases that we see all the time. Let's just take out those things that don't belong in that area – just rule them out and allow the kinds of things that right now look like they are needed.

Commissioner Hoffman asked if the applicant would look at the list of permitted uses under EC1 and EC2 and tell us which ones they would like us to include.

Commissioner Acosta said she feels very strongly that we should not put the applicant here in front of us to make a decision and check the list for what is appropriate for her and what is not. She may need to consult with her attorney or other people to get advice. I think it is very unfair that we're sitting here asking her to do this and I think it is inappropriate for us as Commissioners to do that.

Commissioner Hoffman said that we are called upon to make a decision in this matter and the request is a change to EC2 to establish a restaurant or other future commercial activities. The very nature of this request requires us to have some understanding of what is actually being requested and that is based on the earlier discussion about the fact that this is a huge number of different uses which have all been thrown in together and the request is for a very open use of this land. So it is actually incumbent upon us and our responsibility to have the information to make an appropriate decision.

Commissioner Acosta said I can agree to that but I feel like we are just asking the applicant to go through 77 items on the list. We are here to make that decision, I agree, but we also have experts that have given their recommendations and that is staff. I don't oppose the applicant saying we plan to use it as a restaurant or a retail store, but I don't think it is appropriate for her to go through the whole list. This could be tabled in order to allow the applicant to have further discussions with staff.

Commissioner Hearn said that is a reasonable suggestion.

Commissioner Allin said that quite often we get proposals for changes for a specific reason. Is it appropriate to ask the applicant to go back and have a plan for this before we look at it. This is very open-ended for us to grasp all the problems that might be involved.

Commissioner Hoffman said for our conditional zoning, a rezoning subject to condition is appropriate to allow certain uses that are compatible with the surrounding uses and environment. We may also go on to condition design standards and time limitations and similar issues. If we are going to table this, I would ask staff for the future discussion to explain how the definition and application of spot zoning in this piece is compatible with the definition and application in the very last case we heard, referring to the minutes we just approved, where Mr. Kesler and Mr. Hortert spoke about spot zoning.

Commissioner Sanders said I am personally inclined to granting zoning as a package and not trying to segment uses that are allowed under a particular zoning. EC1 seems to accommodate what the applicant is looking for, and there is an added list of uses under EC2 that seems to go beyond what the applicant is looking for. Did you go to the EC2 zoning for a particular reason or is EC1 zoning adequate for what you are looking at?

Judy Mitchell said we chose EC2 because it granted a little more flexibility for what we can do. We can't envision who the lessee might be. We don't know what the lessee will want to do.

Commissioner Allin said I think that we don't have enough information to make a decision; maybe we should ask the proponents to withdraw at this time.

Commissioner Hoffman made a motion to table this zone change request to the next ETZ meeting. **Commissioner Hearn** seconded the motion.

Commissioner Acosta asked wouldn't it be wiser to have the applicant consult with Mr. Meadows to find out if they want the matter tabled or not.

Steve Meadows said the way we would usually do this is to consult with the applicant to see what they wish to do.

Chairman Villescas called for a 10-minute break for Steve Meadows to speak to the applicants and find out what they wanted to do.

The Commission reconvened in 10 minutes and **Steve Meadows** said the applicants would like to postpone this case.

Judy Mitchell stated that they would like to table the case until the October 17th ETZ Meeting.

Commissioner Hearn asked that staff update the handouts that they've received to reflect the proper language for a motion.

Commissioner Hoffman said the motion is now that I move to table this discussion until the October 17th ETZ Meeting at 6:00 p.m. **Commissioner Hearn** seconded the motion.

The motion was **APPROVED** by a vote of 7-0-0.

8. CASE # Z13-003 / Peña, 5555 S. Main Street, Las Cruces

Steve Meadows, Planner, said he would like to relate what we learned at last month's ETA Meeting – that he must be sworn in separately for each case.

Steve Meadows was sworn in and presented this case as a zone change request from EC1 to EI2 with conditions on a 2.78-acre section of a larger 5.46-acre parcel to operate a pecan cleaning and sorting plant in an existing 9,000 sf structure. Only one letter was received expressing concern over dust issues. No other correspondence was received either in support or in opposition to the zone change request. Based on staff analysis and findings, staff's recommendation was for conditional approval of the zone change request with the one condition that the applicant adhere to all the requirements of the Office of the State Engineer.

Chairman Villescas asked if the condition was redundant?

Steve Meadows responded yes, but staff felt it was important enough to highlight the condition.

Commissioner Hearn said he appreciated the applicant specified the uses of the zone that they were requesting, but asked why they chose them.

Paul Pompeo, Southwest Engineering, 475 Archuleta Road, Las Cruces, was sworn in. He is representing the applicant and gave a presentation on the proposed zone change. We have asked for EI1 because it exactly matches the uses of the property to the north. We are asking for EI2 conditional with just the three items of that list. The zone change will allow for a small-scale pecan sorting, grading and processing facility. The facility will only be in operation approximately three months of the year. Showing you several slides, I would like to get this information in the record because it addresses both the items dealing with the Miller Criteria, that being a change of condition and also to correct a mistake in the current zoning code.

Chairman Villescas asked where the small farmer goes now for grading, sorting and bundling of pecans.

Paul Pompeo responded that there are two facilities that he is aware of, one is on Amador and one is on the corner of Valley and Boutz.

Chairman Villescas asked why the processing structure was open-air?

Paul Pompeo said it is open-air right now, but it could be closed-in in the future. Forced air is used to separate out the pecans from leaves and twigs on the ground; the only dust created is from heavy equipment which we will not be using.

Commissioner Hoffman said he wanted to correct one comment: extra-territorial zoning developed around the country because after World War II cities implemented zoning and this created a rush across their borders and a chaotic condition in the unzoned land around them. That is the purpose of extra-territorial zoning. It is only an accident that it has become used to prepare land for annexation.

Commissioner Allin made a motion to approve the zone change request with the one condition: applicant will adhere to all requirements of the Office of the State Engineer. **Commissioner Acosta** seconded the motion.

The motion was **APPROVED** by a vote of 7-0-0 by the Commissioners.

9. ADMINISTRATIVE APPROVALS

Steve Meadows, Planner, reported for the month of August. They received requests for permits for 12 single family dwellings, 14 additions to single family dwellings, 1 addition to commercial, 26 mobile house installations, 5 agricultural accessory buildings, 5 storage structures, 5 garages, and 16 rock walls and fences. The total value of those projects was \$6.78 million. Total permitting fees were \$51,538.

10. PUBLIC INPUT

None.

11. STAFF INPUT

Steve Meadows said he has several mylars for the Commissioners' signatures for the City.

12. COMMISSION INPUT

Commissioner Acosta apologized for being late and asked that the record be changed to show that she was present to hear both cases.

13. ADJOURNMENT

Commissioner Sanders made a motion for adjournment, with **Commissioner Townsend** seconding the motion. The next meeting was scheduled for October 17, 2013 at 6:00 p.m. **Chairman Villescas** adjourned the meeting at 8:35 p.m.

Officer: Extra-Territorial Zoning Commission

Submitted by: Diane M. Duback, Recording Secretary