

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

October 17, 2013

6:00 p.m.

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

MEMBERS PRESENT:

Kenneth Allin, Vice-Chair
Douglas Hoffman, Commissioner
Janet Acosta, Secretary
Tim Sanders, Commissioner
Robert Hearn, Commissioner

OTHERS PRESENT:

Luis Marmolejo, Sr. Planner, Community Development
Steve Meadows, Planner, Community Development

MEMBERS ABSENT:

John Townsend (arrived at 6:20 p.m.)
John Villescascas

1. CALL TO ORDER

Vice-Chair Allin called the Regular Meeting of the Extra-Territorial Zoning Commission to order at 6:05 p.m. Thursday, October 17, 2013 in the Doña Ana County Government Center, 845 N. Motel Blvd., Las Cruces, NM.

2. ROLL CALL

Kenneth Allin, Vice-Chair	Present
Douglas Hoffman, Commissioner	Here
John Townsend, Commissioner	Absent
John Villescascas, Chairman	Absent
Janet Acosta, Secretary	Present
Tim Sanders, Commissioner	Here
Robert Hearn, Commissioner	Here

3. ANNOUNCEMENTS

None.

4. APPROVAL OF MINUTES: September 19, 2013 Meeting Minutes

Commissioner Acosta asked for a correction to be made to the September 19, 2013 minutes of the ETZ Commission Meeting. She was noted as absent on the roll call since she arrived late. She would like to be shown as present on the Roll Call. *(Note added after meeting: Recording Secretary Diane Duback noted that Commissioner Acosta was not present for the Roll Call at the September 19th meeting. Commissioner Acosta arrived at 6:37 p.m. which was after the beginning of Item No. 7 on the agenda, the presentation of Case Z13-002 by Steve Meadows, as shown on the notes of the September 19th meeting.)*

Commissioner Hoffman made a motion to approve the minutes of the September 19, 2013 meeting, with **Commissioner Hearn** seconding the motion.

Commissioner Sanders	Aye
Commissioner Hearn	Aye
Commissioner Hoffman	Aye
Commissioner Acosta	Aye
Vice-Chairman Allin	Aye

The vote was 5-0-0 to **APPROVE** the minutes.

5. CHANGES TO THE AGENDA

None.

**OLD BUSINESS
REVIEW / DISCUSSION / ACTION**

6. CASE #Z13-002 – Stahmann’s, 22505 S. Hwy. 28

Steve Meadows, Planner, was sworn in and presented this case. This case was postponed from September. The Commission had voted 7-0-0 to postpone this case for a month with the applicant’s agreement. Steve Meadows asked the Commission if they wanted the condensed version or the whole presentation.

Vice-Chair Allin said he’d be willing to hear the condensed version if there were no changes.

Commissioner Hearn said he’d be willing to hear the condensed version and then any new material.

Commissioner Acosta agreed with Commissioner Hearn. She added that Commissioner Townsend has arrived and is now present for the cases.

Steve Meadows gave a shortened version, hitting all the highlights. This case is 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 use in an existing 18,000 sf building. 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.

Commissioner Hoffman asked Steve to reconcile his opinion that this is not spot zoning to that of Daniel Hortert and Jonathan Kesler in the Nakayama case heard on August 22nd.

Steve Meadows responded that our stance on this is because it is harmonious or similar to all the uses around it and that it will benefit the community, it will benefit the applicant, it will not be a burden on the surrounding area; we feel that it is not a spot zone.

Commissioner Hearn said it sounded to me in the discussion that part of the reason for saying this is not spot zoning is because it is a restaurant. It was a restaurant before. But what we're being asked to do is rezone it for the carte blanche EC2 which is drug stores, dry goods stores, etc. To me that skirts around spot zoning. If we make it conditional and say this could be what it always has been, and the reason it was zoned this way in the first place, it makes sense.

Steve Meadows said we don't think this is a spot zone and the Commission has to weigh the evidence that they hear, what they think, and make their decision.

Commissioner Hearn said just to be clear, you don't think it's a spot zone for any of the uses that are authorized without question under EC2?

Steve Meadows responded me personally, no. I can only speak for what we said in this.

Sally Stahmann Salice, 22705 South Hwy 28, Las Mesa, was sworn in. Stahmann's started in 1925. That particular building that we're trying to rezone probably was built in the 1930's. It was our original office, the Mercantile Store. It was a full store then as well as a restaurant. That one particular building has gone through a lot of different types of businesses. If I am able to lease this building out, it will give the El Paso-Las Cruces communities, the La Mesa-San Miguel communities a different business there, provide more jobs. I do not want to be limited to one thing. I am asking for EC2 and I would like for everything to be available for us in EC2. Most of it probably is not even thinkable that we would even do, but you never know. I can't go market this place if I don't know what rules I'm playing under. The main thing is my core business is pecans. I'd like to get somebody in there to put in a new business and provide jobs for the community. So I'm going to leave it up to you all to decide – do you want jobs for the community or do you want me to turn it into a warehouse or a parking lot?

Greg Daviet, Dixie Ranch, 4020 N. Hwy. 28 was sworn in. My family farms about 4 miles from this location and we've been farming there since 1905. We've been neighbors with the Stahmann's for almost 90 years now. They have been exceptional stewards of our community, leaders of our industry. This location has been a destination for our community for decades. It has been a destination for people outside of our community for nearly as long. I believe that what the Stahmanns would like to do with this location will benefit not only our local community but the broader community of Las Cruces. Speaking as a board member for New Mexico Pecan Growers, we encourage the promotion and the strengthening of the pecan industry in Mesilla Valley. Having a location as iconic as Stahmann's store for people to come to helps to remind folks that there are non-monetary benefits to having a valley filled with pecan trees. I support what they want to do and encourage the Commission to approve their request.

Commissioner Hoffman said this is not about whether this property should be used for a wide variety of commercial purposes, the traditional commercial purposes or other similar purposes, but what are the appropriate uses that are best suited and that the zoning ordinance in front of us directs us to apply. And it is a very imperfect ordinance, I think we can all agree. So the question is what is the appropriate zoning for this area?

Vice-Chair Allin said that along with the staff's recommendation of zoning with the one condition, the next should be any particular limitations that the Commission wants to put on it relative to those things that are allowed under that zone. I would like some comments along those lines and/or a motion to approve.

Commissioner Acosta made a motion based on staff's recommendations for conditional approval of the zone change request, with the condition that the 1.58-acre site be subdivided off of the larger parcel. **Commissioner Townsend** seconded the motion.

Commissioner Townsend	Aye
Commissioner Sanders	Aye
Commissioner Hearn	Aye
Commissioner Hoffman	No
Commissioner Acosta	Aye
Vice-Chairman Allin	Aye

The motion was **APPROVED** with a Commission vote of 5-1-0.

NEW BUSINESS REVIEW / DISCUSSION / ACTION

7. **CASE #Z13-004 – Sage, 3205 El Camino Real, Las Cruces**
Steve Meadows, Planner, was sworn in and presented this case as a zone change request on a 6.38-acre parcel of which 5 acres is zoned ER2 and 1.38 acres is zoned EC2. The request is to rezone the 5-acre western portion of the parcel to ER7M to establish an 18-space mobile home park. No correspondence was received either in opposition or in support of the request. Based on staff's analysis and findings, their recommendation was for conditional approval of the zone change request with the following three conditions: 1) applicant shall submit and receive approval for a special use permit per Section 3.5.a of the ETZ ordinance; 2) applicant shall adhere to landscaping and buffering requirements of Section 4.2.c of the ETZ ordinance; and 3) applicant shall adhere to the requirements of Article 12 Outdoor Lighting of the ETZ ordinance.

Vice-Chair Allin asked if the water treatment plant was strictly for this property.

Steve Meadows responded that is correct.

Commissioner Sanders asked if the property to the east of the subject property that has the gymnasium provides access to the mobile home park and is also owned by the applicant. And they are going to establish an easement across there?

Steve Meadows responded yes, they will have to have an easement in case something changed hands.

Commissioner Hearn asked if the whole area out there was zoned wrong.

Steve Meadows responded that it didn't develop to what the zoning was that was placed on it.

Commissioner Hearn asked if that was because it was already developed at the time the zoning was done. Or was the zoning done and it developed that way anyway?

Steve Meadows replied said that we know that the mobile home park was there before the zoning was done. Some of the lots to the north were developed prior to ER2 zoning, some were not. There is ER4 to the south for the trailer park.

Frank Sage, 1095 Jasmin, was sworn in. Steve Meadows did such a great job, I'm not sure what else I can say other than do you have any questions?

Commissioner Hearn asked if the applicant owns the property to the south, the other trailer park.

Frank Sage responded no, that is owned by St. Johns.

Carol Laurie, 3115 El Camino Real, #109, was sworn in. One of our concerns is if there are going to be any issues regarding flooding, since the people in St. John's have had a lot of issues. As they continue to develop the East Mesa, the Sandhill Arroyo drains down into El Camino Real and then follows El Camino Real south and dumps into St. John's mobile home park. I'm wondering if that's going to be an issue that will affect their mobile home park as well. Just a question I have, a concern.

Steve Meadows said the ordinance and the Flood Commission require at the construction phase a grading and drainage plan. All of that will be addressed by the Flood Commission and the rule is that water on your property can't go to somebody else's. That will be scrutinized on the construction drawings by the Engineering Department, the Flood Commission, and Building Services.

Carol Laurie said that he said it would be on the landowner to deal with it and I am wondering if the County is going to do something because it is coming from the East Mesa and how it's traveling down the Sandhill Arroyo.

Vice-Chair Allin said you have to go to the County Commissioners for that, we can't help you here. All we can work on is this property.

Commissioner Hoffman said there are going to be more impervious surfaces which are good for dust control but going to add to potential run-off, but whatever happens within that lot has to be contained within that lot and the site plan that we received included a one-acre space that was going to be landscaped. So certainly there is the space for retention ponds to retain anything from that lot within the lot as required. The drainage issues from larger developments are something that the County Commission needs to address.

Commissioner Townsend made a motion to approve the zone change request from ER2 to ER7M based on the conditions recommended by staff: 1) applicant shall submit and receive approval for a special use permit per Section 3.5.a of the ETZ ordinance; 2) applicant shall adhere to landscaping and buffering requirements of Section 4.2.c of the ETZ ordinance; and 3) applicant shall adhere to the requirements of Article 12 Outdoor Lighting of the ETZ Ordinance. **Commissioner Hoffman** seconded the motion.

Commissioner Hearn said he feels that the last two conditions on this motion are inappropriate. They basically leave the decision open to conformance with these two restrictions forever. So that if 20 years from now the owner is found to be not following Article 12 Outdoor Lighting of the ETZ Ordinance, the zoning would be changed.

Vice-Chair Allin said if they ever don't adhere they can red-tag it and do something about it.

Commissioner Hearn said but this says they lose their zoning.

Vice-Chair Allin said then that's an incentive for them to do it then, isn't it?

Commissioner Hearn said I disagree with that as an incentive to zoning laws. I think that's a misapplication of zoning. If we're going to do that, why don't we put all the laws down there. Why do we just pick these two?

Luis Marmolejo, Sr. Planner, was sworn in. You have your zoning in place and then come back with a detailed site plan which would be your SUP. When the SUP comes in with all of the design standards required by the ordinance, we have everything from access to the property, turn-around within the park, landscaping requirements, buffer landscaping, etc. When it comes to our department, we review it, Engineering reviews it, and Flood reviews it. We make sure we have all the water requirements, the wastewater system, discharge requirements. To get the SUP approval, they would have gone through agency review, internal review from county staff that they're going to meet the design standards. Finally, they come in for the permits of the development of the property and go through inspections. If at some point we don't get landscape buffering, we don't sign off on that last portion of the SUP process. If they don't come in and do what's required for the permit requirements and development standards then the SUP doesn't get approved and it does revert back to the zoning. Now, after they have approval by the County and met all the

development standards, if several years later they are not meeting requirements, zoning officials will give them a citation.

Commissioner Hearn offered a friendly amendment that we just delete the conditions since the conditions are adequately covered elsewhere in the process.

Vice-Chair Allin suggested that we leave them as they are so that the applicant has a better concept for the road he has to go down.

Commissioner Hearn said that I move that we strike conditions 2 and 3 from the proposal currently before us. **Commissioner Hoffman** seconded the motion.

Steve Meadows said staff wanted the SUP part in there specifically because if you can't get the wastewater treatment plant in – if you don't get the SUP within 2 years per Section 2.1.b.4 then the zoning reverts back to the ER2. The other two conditions we thought were important because we're trying to make the statement that these things are important based on some of the issues that we saw, however, they are addressed in the ordinance and the SUP level as well.

Commissioner Townsend	aye
Commissioner Sanders	aye
Commissioner Hearn	aye
Commissioner Hoffman	aye
Commissioner Acosta	no
Vice-Chairman Allin	no

The vote to amend the main motion was **APPROVED** by a vote of 4-2-0.

Commissioner Townsend	aye
Commissioner Sanders	aye
Commissioner Hearn	aye
Commissioner Hoffman	aye
Commissioner Acosta	aye
Vice-Chairman Allin	aye

The amended main motion was **APPROVED** by a vote of 6-0-0.

8. ADMINISTRATIVE APPROVALS

Steve Meadows, Planner, reported for the month of September. They received requests for permits for 7 single family dwellings, 15 additions to single family dwellings, and 1 addition to commercial.

9. PUBLIC INPUT

None.

10. STAFF INPUT

None.

11. COMMISSION INPUT

Vice-Chair Allin said sometimes we see these cases, what appears to be the same case, two or three times, which is what we're going to do tonight. For instance a subdivision comes in for a zone change and then the subdivision comes in for approval. That's where we were tonight except it was called a mobile home park this time and the additional things were things that staff has put in because they have gotten overlooked occasionally, not our fault, but they got overlooked occasionally when they got advanced on down the road. So staff has in some cases put them in for their own preservation. We took 30 minutes to take two recommendations out, when we could have passed it and gone on down the road and it would have given staff the tools they wanted to do something. They were giving us their best advice. I'm not building a case for anything, just trying to point out a little bit of what I think is the background. I've taken enough time.

12. ADJOURNMENT

Commissioner Acosta made a motion for adjournment, with **Commissioner Hoffman** seconding the motion. The next meeting was scheduled for November 21, 2013 at 6:00 p.m. **Vice-Chairman Allin** adjourned the meeting at 7:40 p.m.

Officer: Extra-Territorial Zoning Commission

Submitted by: Diane M. Duback, Recording Secretary