

# MINUTES OF THE DOÑA ANA COUNTY PLANNING AND ZONING COMMISSION

August 25, 2016

## CALL TO ORDER

**9:11:38**

Chairman Westmoreland called the Regular Meeting of the Planning and Zoning Commission to order at 9:11 a.m., Thursday, August 25, 2016 in the County Commissioners Chambers, Doña Ana County Government Center, 845 N. Motel Blvd., Las Cruces, New Mexico.

## 1. ROLL CALL

**9:11:53**

Led by: Diane Duback, Recording Secretary

Mel Acosta	Absent
Bob Czerniak	Here
MaryAnn Galindo	Absent
Bill Zarges	Here
Greg Daviet	Here
John Townsend	Here
Brent Westmoreland	Here

## 2. APPROVAL OR CHANGES TO THE AGENDA

**09:12:24**

Motion to approve the agenda.

Motion: Greg Daviet

Second: Bill Zarges

The motion was passed by a vote of “ayes” from all Commissioners present.

## 3. APPROVAL OF MINUTES

**09:12:40**

Motion to approve the August 11 and August 18, 2016 minutes.

Motion: Bill Zarges

Second: Greg Daviet

The motion was passed by a vote of “ayes” from all Commissioners

A moment of silence was taken in respect for Officer Chavez from Hatch.

Chairman Westmoreland added that we lost Mark Salopek a few days ago and Janine Divyak said also Brian Haines, former County Manager, passed away.

**4. OLD BUSINESS**

**09:13:58**

**a. Discussion on the 10-Acre Minimum Lot Size for the Rural Zoning District per the Proposed Unified Development Code**

Albert Casillas and Janine Divyak presented a briefing on the proposed 10-acre minimum lot size; the history behind it; preservation of open space, rural character and our heritage; claims of exemption; community types; zones changes; and how the 10-acre minimum lot size relates to the UDC and Comprehensive Plan.

The Commission asked questions and discussed claims of exemption, creating a community type without access to sewer, the requirement of wastewater services for small villages, a property owner developing his property through a zone change, a change from the current code to the UDC for the requirement of a zone change to do 1-acre residential developments, the necessity of the 10-acre lot size in the R Zone to make community types viable, spot zoning, and NMED as the driving force in determining lot size for rural development.

Daniel Hortert described how the 10-acre minimum is a national standard in all rural - southwest, east, north - where it has been tested. That typically is what the minimum standard is.

Chairman Westmoreland opened the meeting up to public input.

Patty Hughs said the village zone has always been there in the ETZ Zoning Ordinance; it was designed for historic communities so they could continue to develop the way they started. Is staff proposing that community types be overlaid on historic communities? Daniel Hortert responded no, we are not. They already are, in a sense. We have already zoned them appropriately that would match the type of zoning that would be the same in the community types.

Bob Hearn spoke about continuity being important. With rules changing, we need to know where we are, where we are going and the impacts of these changes. He discussed preservation of the rural zone.

Donna O'Daniel spoke about the Report of Habitat on how land should be treated from the 1976 United Nations Conference on Human Settlement; the 1992 Earth Summit's Agenda 21 which discusses sustainable development as the UN's program for the global control and restriction over daily lives, etc.; and the 1996 Global Biodiversity Assessment section on property rights.

Bud Dierman, farmer and board member of Doña Ana County Farm & Livestock Bureau, spoke in opposition of the 10-acre minimum in the R Zone and stated his concerns and recommendations. The concerns are the site standard infringes on private property rights since they restrict the land management decisions that farmers and land owners must make when operating their agricultural business. Also, farmers and land owners in Hatch and lower valley have not been fully informed on how the adoption of the UDC will impact their land values, and most of the outreach effort that has been conducted by the County staff has occurred in the Las Cruces and Mesilla Valley area.

Benjamin Segovia, Regional Director for the New Mexico Farm & Livestock Bureau, spoke in support of the comments made by Bud Dierman for the Doña Ana County Farm & Livestock Bureau.

Bob Kaiser, Las Alturas, spoke about the Amana Colonies and cultural, racial and economic integration, and the lack of information in the UDC on the costs to the community.

David Lutz, Attorney, said the main goal of UDC is to follow the Comprehensive Plan. The Comprehensive Plan says it wants to preserve agricultural areas in the County. This is not what the UDC is doing with the 10-acre minimum. The agricultural community in the County is overwhelmingly against this. This should not be implemented without knowing how this impacts property values.

Doris Franzoy said there was no valid input from the North Valley and there was not enough outreach to that area. She asked where the 10-acre minimum has been used and has it been successful. She stated that the 10-acre minimum was not to support agriculture, but to support community types.

Kent Thurston, developer, asked how the UDC affected his future development project in a rural area. Did he need to put a plaza out in the middle of nowhere? He also discussed septic and open space. He asked if he needed to put a commercial piece out in the middle of nowhere and what type of mixed uses does he have to do that for. Daniel Hortert said community type is an option. You don't have to do a community type. You could do a standard subdivision. Daniel said the UDC is very much a market-driven code.

Scott Eschenbrenner, real estate appraiser, spoke about the onerous process for subdividing that drives down the values of land. Daniel Hortert said the process for subdivisions is required by statute.

Bob Hearn said a community type does not require zoning, it can go anywhere without regard for what the underlying zoning is. In the rural area you have to rezone to do a subdivision, you do not have to rezone to do a community type. He said leave the definitions of the community type the way it is, but change the minimum lot size in the R Zone to 3/4 acre. Does this hurt the prospects for development of community types?

Daniel Hortert said if you are referring to - can the community types still work with the minimum 10-acre requirement but zone the rest of the County 3/4 acre - we resoundingly heard the complete opposite. We heard people saying over and over again no to the 3/4 acre.

Bob Hearn asked if the minimum lot size in the R zone was NMED minimum, and the definition of the small village was still 10-acre minimum, would that hurt the viability of the community type 10-acre small village. Daniel Hortert responded no. As an option, it does rely on the 10-acre minimum. A discussion followed.

David Salopek said he was against the 10-acre minimum and spoke about it devaluing property.

Louis Bial asked why you have a staff who doesn't understand the financial impact on property values developing this code to begin with. He said government employees don't understand the valuation of agricultural properties. This document was already planned out before the process

was started; it is a zero growth policy. You need to start over and learn about the economic impact on agriculture first.

Michael Frames said he was opposed to the UDC; as a builder, I work with these types of documents on a daily basis, and I do not understand it. More time needs to be taken to understand it

Don Hackey, North Valley, said that he was against the 10-acre minimum. Who determines what are hazardous, important and fragile open spaces? Dan Hortert said the Flood Commissioner, the Fire Marshall, the Corps of Engineers. Commissioner Daviet read the entire paragraph that spoke to this and discussed it.

Les Fletcher, pecan grower in North Valley, said he doesn't like the 10-acre minimum and spoke about building on his property in the '80s when there were no permits required. Now when he builds, he has to provide a survey, permits for a driveway entrance, provide an environmental plan to dictate where the rain would fall off of his roof that had fallen for a millennia on the same ground and now it won't go into the Rio Grande and pollute anybody.

Chair Westmoreland said Mr. Fletcher currently has a portion of property zoned commercial. Will it be grandfathered in or will it be changed to R? Daniel Hortert responded no, it will not be zoned R. If it has existing entitlements of any sort, those entitlements will carry forward.

Commissioner Czerniak asked if the maps are online for the residents to check their current zoning. Dan Hortert said he would check with the GIS department.

Steve Montañez, real estate, said he was not in favor of the 10-acre minimum. If property cannot be subdivided, it decreases the amount of buyers for that property.

Bill Hausell asked if there was any notice of the meeting in Rodey. Janine Divyak responded the meeting was actually in Hatch and it was advertised by radio spots, newspaper ads, posters, flyers, email blasts.

Mr. Hausell asked how many of you people have taken the 5<sup>th</sup> amendment before? The last part of it says you cannot take private property for public use without compensation. Daniel Hortert said we are not taking any private property for public use.

Dave Fisher, owner of a winery and a grape farmer, said many wineries are only five acres in size; that is a viable grape farm. In order now to change that from being just a farm to a winery where you can sell your product, we have to go through a zone change, which is onerous.

Commissioner Daviet said currently in the code, agricultural processing, which includes wine making, is permitted in zones appropriate in the rural parts of the County, to the scale of that farm's operations. I don't know how they relate to direct sales. We need to consider this and ensure that it is appropriately addressed.

Daniel Hortert said processing is an agricultural exemption and the wine tasting room, similar to what they are now, are a special use permit in residential areas or permitted in the commercial areas.

Doris Franzoy said the Commission voted on the 20/40 Plan before the final draft was available. I came and asked for the final draft three days after they voted on it and was told it was not available. The County is in a hurry, the public is not.

Chair Westmoreland asked if the 10-acre minimum needs to be put on the agenda for next week discussion. A discussion was held and the Commissioners shared their comments.

Commissioner Daviet said there is strong consensus that in the rural parts of the County, subdividing into 10-acre residential lots is an impractical means of development. The R Zone 10-acre minimum lot size was not intended to be a means of creating 10-acre home sites. I do not believe it is necessary to have a 10-acre minimum lot size in the rural zone of the County in order to make community types viable. I propose that we change the minimum lot size in the R Zone to one acre.

Commissioner Zarges said he supports the 10-acre minimum and he could not find anything that supports a minimum lot size affecting property valuation.

Commissioner Czerniak said the community types are supposed to be market-driven. It is supposed to be in the developers' interest to make more money using that option than using a traditional form of development. I support the 10-acre minimum because you can go through the rezone process.

Commissioner Townsend said it is so expensive to rezone that it is no longer a viable option. I can't support the 10-acre minimum.

Chairman Westmoreland said he leans more towards Commissioner Daviet's approach. We need to have this on next week's agenda and be able to vote on this since we cannot reach a consensus.

Dino Cervantes asked if there was a criteria that we just pick 10 acres or is this an arbitrary number? If it is not arbitrary, could you gather the information and give it to the public.

Daniel said this was not just a number picked by the consultant, this was discussed in numerous meetings around the County. The economic analysis is on the Viva Doña Ana website.

Next meeting will be a special meeting for discussion and action on the 10-acre minimum.

## **5. ADJOURNMENT**

**11:42:40**

Chairman Westmoreland adjourned the meeting at 11:42 a.m.