

**EXTRA-TERRITORIAL ZONING AUTHORITY  
MEETING**

**April 15, 2009**

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

**MEMBERS PRESENT:**

Councillor Gil Jones, Chairman  
Commissioner Krahling, Member  
Commissioner Oscar Vasquez-Butler, Member  
Councillor Miguel G. Silva, Member  
Commissioner Perez, Vice-Chairwoman

**OTHERS PRESENT:**

Chuck McMahon, DAC Planning Director  
Steve Meadows, DAC Planner  
Dave Medeiros, DAC Attorney  
Cheryl Rodriguez, LC Planner  
Jennifer Robertson, LC Planner  
Terry Navarro-Peyton, DAC Planning Asst.  
(Recording Secretary)

**1. CALL TO ORDER:** Vice Chair Jones called the Regular Meeting of the Extra-Territorial Zoning Authority to order at 5:30 p.m., Wednesday, April 15, 2009 in the County Commission Chambers of the Doña Ana County Government Center, 845 N Motel Blvd., Las Cruces, NM.

**2. ROLL CALL:**

Commissioner Krahling – Here  
Commissioner Vasquez-Butler – Here  
Vice-Chair Perez, -Here  
Chair Jones - Here

**3. ANNOUNCEMENTS:** None

**4. APPROVAL OF MINUTES:** March 18, 2009

**Commissioner Krahling** moves to APPROVE the minutes of March 18, 2009.

**Commissioner Butler** seconded the motion.

Commissioner Krahling – Yes

Commissioner Butler – Yes

Commissioner Perez - Yes

Chair Jones - Yes

Minutes were **APPROVED** by a vote of 4-0-0.

**5. CHANGES TO THE AGENDA:** Item 6 was withdrawn.

A discussion occurred referencing the agenda. Chairman Jones wanted to move case # Z08-015/DURAN to occur on the next item on the agenda and move everything down. Councilor Silva would not be participating in this case and would be attending the meeting late. Sandra Geiger requests that agenda stays as it was posted because of public input that she would like to participate in and could not stay for the entire meeting. The agenda was not changed.

**MOTION: Commissioner Krahling** moves to APPROVE the agenda.

**Commissioner Butler** seconded the motion.

Commissioner Krahling – Yes

Commissioner Butler – Yes  
Commissioner Perez - Yes  
Chair Jones - Yes  
Agenda was **APPROVED** by a vote of 4-0-0.

**NEW BUSINESS  
REVIEW/DISCUSSION/ACTION**

**6. ETZ Zoning Boundary Line Correction per Section 2.5.C: Administrative Correction of Clerical Errors.**

Item 6 was withdrawn by County Staff.

**7. Report from the City of Las Cruces Community Development Department regarding the progress of the ETZ Subdivision Ordinance revision process.**

**Jennifer Robertson, City of Las Cruces Planner.** Ms. Robertson gave the report regarding the proposed process for the ETZ Subdivision Ordinance revision.

**Commissioner Perez** feels the commission is being left out of the process. The process and the thought process of development are what the commission is not there when the commission is being left out. In this particular one being presented now it's just government staff only, City and County, there is no input from the public and that was not the understanding that Commissioner Perez recalls.

**Ms. Robertson** explains what they are doing at this point in focusing on the problem areas first for the preliminary revisions. They are being done through stake holder analysis. Then they will include the public. It is being reviewed article by article.

**Commissioner Perez** would like to know how to resolve the problem with EDRC and that seems to be the basis of this whole process. She would like to see the stake holder analysis.

**Ms. Robertson** states that it wasn't intended to be the basis but it was a set schedule meeting every week and the reviewing parties to be present at EDRC are the parties that need to give the input because they are large reviewing parties of the ETZ Subdivision Ordinance and the development proposed from that. Request the Commission be kept up to date on the progress of the Ordinance revision.

**Commissioner Perez** understands that EDRC may not have been the intended party to base the process on but the fact that they are excludes the commissions that are going to implement these regulations and have identified issue within the Subdivision Ordinance.

**Ms. Robertson** explains how this is going to have checks and balances.

**Commissioner Perez** does not like the fact that the City is making the decisions of this Ordinance and would like to see more County input.

**Ms. Robertson** states they are working off of the County Design Standards.

**Commissioner Butler** concurs with everything that Commissioner Perez said. He feels that the commission has been left out and reviewing after the fact and readdress everything that the public is concerned with. He will be looking for community input and what was ignored.

**Chairman Jones** suggests that after every review staff and others will then review and state any other concerns. He would like to see this going through in a fluent way and to have staff work together.

**Commissioner Butler** asks if these changes will be compatible to the Comprehensive Plan and the 2040?

**Mr. Chuck McMahon, DAC Planning Director.** Mr. McMahon states that he doesn't see an issue with the process of the revision of the ETZ Subdivision Ordinance. He does believe that the Ordinance will implement the plan.

**Sandy Geiger, public input.** Mrs. Geiger doesn't think that the policies have been implemented. She is happy the revision is being done but is confused about where they are in the process and what has been discussed. She is also concerned about the cluster development policy and early notification. She compared certain City policies with the County policies.

Other comments and suggestions were made during this discussion.

#### **8. Report from the City of Las Cruces Community Development Department regarding Minor Subdivisions and Large Land Area Subdivisions.**

**Ms. Roberts** give a presentation/report regarding the minor and large proposed subdivisions in the ETZ. Frascatti Acres was presented and no questions were asked.

### **OLD BUSINESS REVIEW/DISCUSSION/ACTION**

**9. CASE # Z08-015/DURAN:** The applicants, Ron and Bea Duran, (Gerald Donohue, Agent) are requesting a Zone Change on a 3.09-acre parcel from ER4M (Residential, 1/2-acre minimum new lot size, single-family site built and mobile homes) to E11 (Light Industrial District, 5,000 sq. ft. minimum lot size) for future development of office facilities and construction yard for Frank's Excavating & Trenching. The subject property is located south of the City of Las Cruces, is addressed at 105 Watson Lane, within Section 32, Township 23 South, Range 2 East. The subject parcel is described as Lot #2 of the Watson Court Subdivision Replat of USRS Tract 11D-154A1 & 11D-154A2, filed with the County Clerk's Office in Book 19, Page 356 on December 20, 1999, and can be further identified by Map Code # 4-008-138-179-194.

**Councilor Silva recues himself from this case.**

**Steve Meadows, sworn in, gives a presentation.**

**MOTION: Commissioner Perez** moves to APPROVE Case #Z08-015 for purposes of discussion. **Commissioner Krahling** seconds the motion.

Extra-Territorial Zoning Commission recommendation: **CONDITIONAL APPROVAL**  
Based on staff's analysis, finding of fact, changes in conditions, the ETZ Comprehensive Plan, the zone change evaluation criteria, and adjacent zoning and land uses, the ETZ Commission, at its regularly scheduled meeting on February 19, 2009, by a 6-1-0 vote, recommended *Conditional Approval* of the Zone Change to E11 with the following condition:

- 1. The Zone Change shall be for the proposed contractor yard and office facility uses only.**

On March 18, 2009, the Extra-territorial Zoning Authority, by a 3-0-0 vote, postponed this case to April 15, 2009.

#### **ANALYSIS**

The Watson Lane and Highway 478 Highway intersection area is located in the South Valley Sub-area of the ETZ. The South Valley Sub-area is bounded by I-10 on the east, the ETZ five mile boundary on the south, the Rio Grande on the west and the Las Cruces city limits on the north.

The applicant is proposing that Frank's Excavating & Trenching will locate office facilities and a construction yard on the subject property, to accommodate 10 employees. Section 3.1.M.3.a.3 and

3.1.M.3.b.2 of the ETZ Ordinance allows, “Business offices” and “Construction yards” within the E11 zoning district.

The applicant has stated the *“changing nature of the Highway 478/Watson Lane intersection has rendered the area more conducive to commercial development, as demonstrated by the fact that the parcels adjoining us to the south are presently zoned as commercial/industrial.”*

The Watson Lane/Hwy 478 intersection realignment occurred in recent years, but Watson Lane has **not** been improved to the Collector status it holds with the Las Cruces MPO. Industrial zoned properties should have access to improved collector or arterial designated streets.

The ETZ Comprehensive Plan 2000-2020 states, *“Limited mixed agribusiness and commercial activities also characterize this area (the South Valley Sub-area) located south of Mesilla and Mesilla Park. Much of the development is along New Mexico Highways 28 and 478 and the adjacent Burlington Northern & Santa Fe (BN&SF) Railroad, which support light industrial and agribusiness enterprises.”* The adjacent properties to the east are zoned EC2 and E11 which are adjacent to the BN&SF Railroad R-O-W. An EC2 Commercial Zone and an ER7 Residential Zone are located on the north side of Watson Lane. The 128-unit Rios Encantados Subdivision is located adjacent to the south property line of the subject parcel. The parcels to the west of the subject property are zoned either ER3, ER4, or ER4M residential districts.

The industrial and commercial businesses in the immediate area along NM Hwy. 478 (S. Main Street) have direct access to the BN&SF Railroad facilities, while the applicant’s proposed business location does **not** have direct access to the railroad infrastructure or to NM Hwy. 478. The only access will be from Watson Lane, the MPO designated Collector Street requiring eighty-five feet (85’) of R-O-W. The Traffic Impact Analysis, submitted by the applicant, indicates that after development the capacity analysis shows through traffic on Watson Lane would continue at a LOS A, level with the addition of the proposed office and construction yard. This is the same level of service indicated on the TIA before development.

An industrial zoning district has the potential to create several adverse impacts to the surrounding neighborhood. Those impacts include increased air and noise and light pollution, increased vehicle traffic, and possible visual impacts to surrounding properties. The operation of an industrial business is contrary to the rural character of residentially zoned neighborhoods without extensive mitigation measures. Site plan does not indicate buffering and landscaping on the property to mitigate potential noise and sight impacts to the surrounding area.

Staff has concerns about the buffering, landscaping and screening of the subject property from the surrounding properties. Staff is also concerned about the proposed access point to the property. Staff recommends that the proposed access be located as far away from the railroad tracks and Watson Lane/Hwy 478 intersection as possible, such as on the western property line rather than the east property line. There could be an encroachment issue to be addressed at a later date concerning the north property line rock wall possibly encroaching on the Watson Lane R-O-W. The hours of operation may need to be limited due to the proximity to the residential neighborhood abutting the south property line.

Although there are properties in the vicinity that contain commercial or industrial uses, this proposed Zone Change request does not meet the requirement to show that a substantial change has occurred in the original character of the neighborhood as to require a change in zoning to protect the public as required by *Supreme Court of New Mexico, Miller versus Albuquerque, September 9, 1976*. The surrounding neighborhoods are primarily residential in nature and the properties are located within platted residential subdivisions with some small scale agriculture.

Additionally, the applicant has not indicated in the application that an error in the initial zoning should be corrected on the subject parcel by this Zone Change request. Although there are commercial and industrial zones in the immediate area, the subject parcel surrounds a residence within the ER4M Residential District, is bounded on the west by agricultural land, is adjacent to a large residential subdivision to the south, and the zone change will primarily benefit the owner rather than the general public. These factors lead staff to conclude that this Zone Change request can be considered a *“Spot Zone”*.

**ADJACENT ZONING:**

North	ER7	Residential, 2-acre min. new lot size, single-family site built homes allowed.
	EC2	Commercial, Community Commercial District, 5,000 sq. ft minimum lot size.
East	EC2	<i>Commercial, Community Commercial District, 5,000 sq. ft minimum lot size.</i>
	EI1	
South	EI1	Industrial, Light Industrial District, 5,000 sq. ft. minimum lot size.
	ER5	Residential, 1/3-acre min. new lot size, single-family site-built homes allowed.
West	ER3	Residential, 1-acre min. new lot size, single-family site built homes allowed.

**Physical Characteristics of the Site:** The 3-09-acre subject parcel is a topographically flat, vacant lot with an accumulation of solid waste, namely construction materials, weeds, and debris. The northern portion of the parcel bounds, on three sides, a residential property containing a residence. The BN&SF Railroad tracks are approximately 250 feet to the east of the subject parcel and run parallel to the east property line. Although the parcel is vacant now, aerial photos in 2005 show a mobile home park on the property. Access to the property is gained from Watson Lane, a paved, MPO designated Collector Street, which connects to Highway 478 (South Main St.), a designated Principal Arterial.

**Agency Comments:**

**DAC Fire Marshal:** All fire code and fire flow requirements will be in affect at time of building plan review.

**County Building Inspection:** Any future buildings or dwellings require building permits and must meet all County, State and Local code requirements. No permits have been applied for.

**County Engineering Department:**

1. Access will be reviewed at the time of construction. As it shows that the east entrance has limited access.
2. If any other use is proposed, a revised TIA will be required. This should be a condition of the rezoning decision. If it cannot be a condition, the TIA will need to be redone assuming the maximum development which could occur on the site.

**County Flood Commission:**

1. The subject property is currently located outside a FEMA Special Flood Hazard Area (SFHA) as per FIRM # 35013C0633E & 35013C0634E, effective date: September 27, 1991.

**DAC Environmental Codes:** Property has numerous violations: Area must be cleaned and cleared. Weeds, construction materials, trash and debris.

**DAC Rural Addressing Coordinator:** No comments.

**New Mexico Environmental Department:** Development of a subdivision or commercial area will require review. Based on the information presented thus far, we have no opposition to the above stated action.

**New Mexico Department of Transportation:** Any future development may require a traffic analysis to determine the impacts to NM 478/Watson Lane intersection.

**City of Las Cruces MPO:** Watson is a Collector on MTP requiring, upon subdivision, eighty-five feet (85') of R-O-W. Main Street is a Principal Arterial.

**City of Las Cruces Planning:** Future land use concepts show commercial/industrial zones proposed here.

**Elephant Butte Irrigation District:** No objections.

**State Engineers Office:** No comments

**Community Notification:** Letters of notification were sent to forty (40) property owners. No letters of support or opposition were received.

## PROPOSED FINDINGS

1. The request of this application is consistent with the requirements of the Las Cruces Extra-territorial Zoning Ordinance Article II, Section 2.1.C/Application Procedures and Article II, Section 2.1.G/Public Hearing and Notice Requirements.
2. The Supreme Court of New Mexico, Miller versus Albuquerque, September 9, 1976, states: *“The fundamental justification for an amendatory or repealing zoning ordinance is a change of conditions making the amendment or repeal reasonably necessary to protect the public interest. Also, a zoning amendment may cover and perfect previous defective ordinances or correct mistakes or injustices therein.”*
3. The subject property is located outside the corporate limits of the City of Las Cruces, but within the five-mile Extra-territorial Zone (ETZ) as set forth by 3-19-5(1), NMSA 1978 and the Joint Powers Agreement between Doña Ana County and the City of Las Cruces. Therefore, the Las Cruces ETZ Commission (ETZ) has jurisdiction to review this case.
4. The 3.09-acre subject parcel is described as Lot #2 of the Watson Court Subdivision Replat of USRS Tract 11D-154A1 & 11D-154A2, filed with the County Clerk’s Office in Book 19, Page 356 on December 20, 1999.
5. Section 3.1.E.1; ER4M Residential District states *“The ER4M district is intended to provide for single-family site-built and mobile homes in low densities together with such recreational facilities, public uses and accessory uses as may be necessary or are normally compatible with residential surroundings.”*
6. Section 3.1.M; E11 Light Industrial District states, *“The purpose of the E11 district is to provide a wide variety of light industry, fabricating, processing, wholesale distributing and warehousing uses appropriately located relative to major transportation facilities. The major portion of the business activity is conducted within enclosed buildings. Land use in this district shall be constructed and operated to ensure there is no excessive noise, vibration, smoke, dust or other particulate matter, toxic or noxious matter, humidity, heat or glare at or beyond any lot line of the parcel on which it is located. Excessive is defined as a degree exceeding that caused in their customary manner of operation by users permitted in the E11 district, a degree injurious to the public health, safety, welfare or to a degree to which it is a nuisance by reason of excessiveness. Residential uses shall not be permitted except for a residential watchman, caretaker or proprietor of a commercial use.”*
7. The Las Cruces Extra-territorial Zoning Ordinance 88-02 Amended Article 1, Section 1.6.S; Definitions, defines **Spot Zoning** as, *“An amendment to a zoning ordinance that is not compatible with a comprehensive scheme of zoning, whether one lot, several lots or a large area. Spot zoning can also be created through variances, which are granted without regard for impact on the surrounding area.”*
8. The Zone Change Request is consistent with the following ETZ Comprehensive Plan 2000-2020 Goals and Objectives:
  - **Goal 7, Policy 7.1.1:** Where appropriate, consider allowing development consistent with the urban character generally found in close proximity to the corporate limits of the City of Las Cruces, *or within the two-mile area adjacent to the City of Las Cruces, that is suitable for urban development.*

- **Goal 8, Program 8.1.1.1:** Development of industrial sites shall be encouraged to *locate on existing or planned arterial or collector streets* or in planned industrial parks.
9. The Zone Change request is **not** consistent with the following ETZ Comprehensive Plan 2000-2020 Goals and Objectives:
- **Goal 8, Objective 8.1:** *Use existing* resources, structures, and **commercial or industrial zoned spaces** for economic development activities in a manner that will support the expansion and diversification of the region's economic base.
  - **Goal 8, Policy 8.1.1:** Identify commercial and industrial nodes that are compatible with existing development/zoning districts.
  - **Goal 8, Policy 8.1.2:** Preference for the development of commercial activity should be located at major intersections (i.e., intersections of two arterials, two collectors or **an arterial and a collector road**).
  - **Goal 10, Policy 10.2.1.4:** Development **shall not be approved** when it significantly decreases the level of service of the surrounding infrastructure.

**Determination Criteria:**

The ETZ Commission may recommend a Zone Change to the ETA as specified by the Extra-territorial Zoning Ordinance Article II, Section 2.1.B/Zoning District Changes: Rezoning and by using the criteria defined by the Extra-territorial Zoning Ordinance Article II, Section 2.1.D/Evaluation Criteria:

2.1.D.1 Determination of the number of homes, population, and population demographics.  
*No potential for additional homes or increase in population will result from this zone change.*

2.1.D.2 Determination of potential traffic flows (average daily traffic) and where they will impact the transportation system.  
*Existing traffic flow will not be significantly altered by this zone change.*

2.1.D.3 Determination of need for new commercial activity.  
*Commercial activity will be limited to office and equipment storage.*

2.1.D.4 Determination of potential water and sewage needs.  
*Water and sewer needs will be unaffected.*

2.1.D.5 Evaluation of existing infrastructure capacities and an analysis of the ability of the existing system to accommodate the new development.  
*No additional development will result.*

2.1.D.6 The difference between capacity and impact should be stated. Those areas that are appropriate for the developer to underwrite should be negotiated between local government and developer.  
*No difference between capacity and impact exists.*

2.1.D.7 The ETZ should reserve the right to place appropriate zoning categories on environmentally sensitive areas, areas of historical significance, or areas on which contain endangered or rare species of animal or plant life.  
*N/A*

2.1.D.8 Any analysis required should be undertaken and paid for by the developer and verified by the ETZ Commission.  
*N/A*

2.1.D.9 Determination of impact of a proposed zone change on surrounding properties.  
*There will be minimal impact on the surrounding area by this zone change.*

The proposed zoning will permit uses outlined as follows:

**Section 3.1.M E11 LIGHT INDUSTRIAL DISTRICT**

**3.1.M.1 PURPOSE**

The purpose of the E11 district is to provide a wide variety of light industry, fabricating, processing, wholesale distributing and warehousing uses appropriately located relative to major transportation facilities. The major portion of the business activity is conducted within enclosed buildings. Land use in this district shall be constructed and operated to ensure there is no excessive noise, vibration, smoke, dust or other particulate matter, toxic or noxious matter, humidity, heat or glare at or beyond any lot line of the parcel on which it is located. Excessive is defined as a degree exceeding that caused in their customary manner of operation by users permitted in the E11 district, a degree injurious to the public health, safety, welfare or to a degree to which it is a nuisance by reason of excessiveness. Residential uses shall not be permitted except for a residential watchman, caretaker or proprietor of a commercial use.

**3.1.M.2 DEVELOPMENT REQUIREMENTS**

Minimum lot area	5,000 square feet
Minimum lot width	60 feet
Minimum lot depth	70 feet
Minimum front setback	25 feet
Minimum side setback	7 feet
Minimum rear setback	15 feet
Maximum building height	50 feet

**3.1.M.3 E11 PERMITTED USES**

**The following uses are permitted by right in the E11 district:**

**3.1.M.3.a PERMITTED USES - NO CONDITIONS**

1. Automobile and truck parking garages and lots	12. Lumber yards
2. Automobile and truck service stations	13. Newspaper establishments, distribution centers
3. Business offices	14. Paint supplies, sales and distribution
4. Commercial or trade schools	15. Rental and sales of contractor equipment
5. Dwelling for resident watchmen and caretakers employed on the premises, and business proprietors, provided they are located on the same property as the business.	16. Restaurants with no drive-in service
6. Electrical shops	17. Service establishments for repair and maintenance of home and business appliances, building maintenance and repair, including pest control, tree and lawn services
7. Engraving shops	18. Sign construction and sales
8. Fence and wall sales and storage	19. Storage building and warehouses
9. Glass cutting and finishing	20. Telephone exchange stations
10. Hardware stores	21. Tire sales and service establishments
11. Laboratories- research, experimental or testing	22. Welding and light fabrication

**3.1.M.3.b PERMITTED USES - WITH CONDITIONS**

**The following uses are permitted in E11 in accordance with stated conditions:**

**1. Automobile, mobile home, trailer and truck sales, rentals and storage**

The vehicle area must be graded and surfaced with asphalt, concrete or other materials that will provide equivalent protection against potholes, erosion, dust, and a solid wall or fence six (6) feet high shall be maintained along any side of such area abutting or contiguous to any residential zone.

**2. Construction or contractor's yard**



Yard shall be maintained in a neat and orderly fashion and enclosed by a solid wall or fence of a minimum six (6) feet in height. However there shall be no fence or wall more than three (3) feet of a street intersection.

**3. *Garages for repair of passenger motor vehicles, light trucks, vans and motorcycles, including body work***

All work must be performed in a completely enclosed building. There shall be no storage of junk automobiles for salvage purposes and only those motor vehicles awaiting repairs can be parked on the premises behind a solid wall or fence so that such vehicles will not be visible from surrounding properties.

**4. *Heavy equipment repair service (accessory use)***

Permitted only as an incidental or accessory use to heavy equipment sales or rentals. Floor area for repair shall not exceed three thousand (3,000) square feet and not exceed thirty (30) percent of the total gross floor area. Welding is permitted only in conjunction and shall not be used for the purpose of heavy equipment assembly.

**5. *Open or exterior storage and display of merchandise, materials***

Storage or display of materials on the exterior of a building shall be completely enclosed by a fence or wall of solid construction, no less than six (6) feet in height, except for mobile homes, cars, trucks or motorcycles

**6. *Paint shop, mixing, treatment and spraying***

Buildings shall be located on hundred (100) feet from any residential zoning district and obtain approval from the County Fire Prevention Inspector

**7. *Public utility installations, substations and water wells***

The site shall be developed and maintained in conformance with the general character and appearance of the zoning district, and shall include landscaping and suitable screening in the form of a solid wall, fence or compact shrubbery around the perimeter of the lot or tract

**8. *Restaurants with drive-in service***

Must have at least one (1) stacking lane ten (10) feet in width and two hundred (200) feet in length for each drive-in window that is designed to ensure that no business traffic backs onto the street giving access

**9. *Storage of wrecked or dismantled vehicles and parts (accessory use)***

The storage of wrecked and dismantled vehicles and parts thereof shall be permitted only as an incidental or accessory use to a vehicle repair establishment or body shop permitted in the EII district. Such use shall be in accordance with the following

- a. Storage shall be within an enclosed building or within a site obscuring fence at least six (6) feet in height above adjacent road grades
- b. Vehicles and parts stored at the exterior of a building shall be owned by customers of the business and such storage shall be only for the purpose of repair and return to customers
- c. Exterior storage of vehicles shall not remain on the premises for a period exceeding three (3) months
- d. There shall be a maximum of twenty (20) wrecked vehicles stored at the building exterior during any one time
- e. Exterior storage shall be a minimum of one hundred (100) feet from a residential zoning district

**3.1.M.4 EII SPECIAL USE PERMITS**

The following uses require a public hearing pursuant to Section 2.1.G of this Ordinance and approval by the ETZ Commission:

1. Airports or heliports
2. Buss passenger terminals, including storage of buses
3. Major facilities for generation of energy, water treatment plants, sewer treatment plants, commercial and public radio and television broadcasting and microwave broadcasting and receiving facilities, storage yards for public utilities and similar uses.
4. Recycling centers
5. Satellite parking areas
6. Wind driven electrical generators or wind driven pumps

7. Mobile homes on a permanent basis for the purpose of housing security guards pursuant to Section 3.01 of this Article. Conditions shall be attached regarding unobtrusive siteing and screening.

**AUTHORITY CONCERNS:**

- Commissioner Butler questions the definition of spot zoning.

**Commissioner Butler** moves to go into close session to discuss the issues of spot zoning. The authority shall convene in close session to deliberate in connection with this administrative judiciary proceeding regarding case number Z08-015/Duran as authorized by the open meetings act 10-15-1H.

**Commissioner Krahling** seconded the motion.

Commissioner Krahling – Yes

Commissioner Butler – Yes

Commissioner Perez - Yes

Chair Jones - Yes

Minutes were **APPROVED** by a vote of 4-0-0.

**Authority goes into close session at 6:52 p.m.**

**Authority reconvenes at 7:18 p.m. Nothing was discussed in closed session other than the item identified to go into closed session.**

**AUTHORITY CONCERNS:**

- Entrance on east side doesn't seem to be a good idea, would like it on the west side.
- How many and what kind of vehicles will in the yard.
- How would you pull out a large trailer without blocking the road.

**Ron Duran, applicant, sworn in.** Mr. Duran agreed to move the driveway to the west side. There is traffic in the morning and at the end of the day. There aren't any large trucks, they are trailers and regular trucks. The largest trailer is 30 feet. This is mainly for office staff. The traffic to the location is very minimal.

**Commissioner Krahling** withdraws his original motion for purposes of a corrected motion. Second dies with motion.

**Commissioner Krahling** moves to APPROVE Case # Z08-15/DURAN with the following conditions:

1. The Zone Change shall be for the proposed contractor yard and office facility uses only.
2. The access from Watson Lane should be from the west side of the parcel.
3. All buffering and landscaping requirements shall be installed on the parcel.
4. All rock wall encroachments shall be removed.

**Commissioner Perez** seconded the motion.

**Commissioner Butler:** I did have a concern with spot zoning and the reason I was concerned with spot zoning, this is just subject for discussion here, if we're into discussion of the motion. Is that one, I'm trying to reconcile here the industry and the conditions as they're set, construction site and make that compatible with what the zoning is and the permitted use in the area. So in struggling with that, that was my main struggle was spot zoning the others are commercial per say and this is light industrial. So in terms of Miller verses Albuquerque you might say I'm still not convinced personally that this isn't a drastic change actually because it's light industrial and I'm not sure yet in terms of your maintenance garage when you start taking out bearings or whether your going to use impact wrenches, air compressors and a bunch of noise so I'm kind of like trying to come to a resolve here in my mind and yet use the criteria as our legal council is suggesting for zoning. To me commercial zoning for a gas station is a little different for an industrial, light industrial. So I would say that as a minority opinion while I'm approving this I still have concerns with the spot zoning and the fact that its light industrial with I don't know what potentially this contractors yard is going to, how it's going to be used. I know what you're telling me how it's going to be

used, but I still can't envision in the future here how it's going to be so...

**Mr. Duran:** Well we don't do any kind of mechanic work at our place. If it's going to be something it's..., I don't, our guys just, I don't have any...

**Commissioner Butler:** Well I mean if that's a condition we could put on it then I would say that we're meeting the spirit of the Miller decision, we're meeting the spirit of the zoning, and we're meeting the spirit of you the spot zoning that we're going to minimize the operation to a point that it is compatible.

**Commissioner Krahlung:** Yes in justified that it does meet the Miller criteria, that it's not spot zoning.

**Commissioner Perez:** I do not think that this constitutes spot zoning it seems relatively harmonious with the surrounding area it's not a large parcel it's appropriate for the size of the business. It's is down there near to the intersection and if you look at the commercial area's it's consistent. It is not in any way, it doesn't sound like it's going to be noisy and awful and disruptive and it just sounds like a business and a good clean one. It appears that the infrastructure is there, the roads are there. I'm happy with the conditions, the curve is definitely, that curve coming in, bothered me. I like that the entrance is on the west side and I know it's a little narrower than the other one.

**Mr. Duran:** Now it's good that I get to knock the wall down cause now I'll just use the...

**Commissioner Perez:** Yea now you'll have room for the turning radius. I know I liked that too. And it does appear that the way that the zoning was sequenced that there's sufficient change of conditions to make it consistent with the Miller criteria. So I will support this.

**Chair Jones:** My vote is yes and I will justify it in the following manner.

1. There is support on this issue, the change is supported by sufficient change in condition making the zone change reasonably necessary and certainly reasonable if not necessary. There's been a propensity of information to show that the current requested zoning is reasonably appropriate for this area. That burden has been met by the applicant.
2. With regard to the zone change the ordinance criteria. Number item 2 talks about potential traffic flow and where they will impact, the TIA certainly demonstrates there is no materially impact so does the statements by the applicant. Item 6 discusses the difference between capacity and impact I see no difference between capacity and impact I think it's also supported by the TIA
3. There is no issue with respect to appropriate zoning in an environmentally sensitive area, no sensitivity has been established in my view. Regarding the proper analysis that has to be undertaken I think the TIA, statement and review show it's not necessary. The impact of the proposed zone change to the surrounding properties, I my view, is minimal especially given the change of nature in that area. Those changes have been identified to have occurred since the initial zoning of this property.
4. As it relates to spot zoning I see no disharmony with the surrounding area. I think that's obvious by how the zoning of the properties have changed and how the properties have developed in the surrounding area. Regarding the size of the area rezoned as that relate to spot zoning there is nothing that immediately stands out to be a problem as it relates to size relative to the size of other properties. Given all those rational my vote is yes.

Commissioner Krahlung – Yes

Commissioner Butler – Yes

Commissioner Perez - Yes

Chair Jones - Yes

Motion was **APPROVED** by a vote of 4-0-0.

**10. CASE # Z08-016/ARCHULETA:** The applicant, Archuleta Real Estate Solutions, Inc., Martin Pillar, Agent, is requesting a Zone Change on four (4) parcels totaling 70.569-acres. The applicant proposes a 7.237-acre parcel to be rezoned from ER4M (Residential, ½-acre minimum new lot size, single-family site-built and mobile homes) to EC2 (Community Commercial District, 5,000 sq. ft. minimum lot size) and the remaining 63.332-acres to be rezoned from ER4M to ER5 (Residential, 1/3-acre minimum new lot size, single-family site-built homes) for the future River Walk Estates residential and

commercial development. The subject parcels are located west of the City of Las Cruces, addressed at 3400 Picacho Ave., within Sections 10 & 15, Township 23 South, Range 1 East. The subject parcels are described as parts of U.S.R.S. Tract #'s 7-51B1A, 7-51B2A, 7-51B1B, 7-51B2B, 7-51B2, & 7-60A1A in the Doña Ana County Clerk's Office in Book 450, Pgs. 1338-1342, recorded August 11, 2003, and Book 597, Pgs. 953-959, recorded March 30, 2005, and can be further identified by Map Code #'s 4-004-134-225-326, 4-004-134-237-368, 4-004-134-330-503, and 4-004-135-366-082.

**Councilor Silva returns.**

**Steve Meadows** gives a presentation.

**Extra-Territorial Zoning Commission recommendation:**

The Extra-territorial Zoning Commission at its regularly scheduled meeting on February 19, 2009, by a 4-3-0 vote, recommended **approval** of the Zone Change to EC2 on the 7.24-acre parcel. *The case before the ETZ Authority is the commercial zone change only.* The ETZ Commission, by a 0-7-0 vote, **denied** the Zone Change to ER5 on the remaining parcels totaling 63.33-acres. The applicant has 30 days in which to appeal the **denial** decision. That Appeal (EAP09-001) was submitted to DAC staff on March 23, 2009

On March 18, 2009, the Extra-territorial Zoning Authority, by a 4-0-0 vote, postponed this case to April 15, 2009.

**PROPOSAL**

The applicant is requesting to rezone 7.237-acres adjacent to Picacho Ave. from ER 4M (Residential, ½-acre minimum new lot size, single-family site-built and mobile homes) to EC 2 (Community Commercial) and to rezone the remaining 63.332-acres ER 5 (Residential, 1/3-acre minimum new lot size, single-family site-built homes) of the proposed 70.569-acres River Walk Estates residential and commercial development. The original proposal included a 150 unit residential subdivision to be constructed on the northern 63.332-acres. The applicant is currently redesigning the residential subdivision for 141 units, the number of lots allowed with the existing ER 4M Zoning, in order to address concerns raised by the Flood Commission.

The proposed River Walk Estates subdivision and commercial zone is located within the exclusive wastewater service territory of Doña Ana Mutual Domestic Water Consumers Association (DAMDWCA). The applicant is proposing to construct an NMED approved package sewage treatment plant that will treat the wastewater from the 141 unit subdivision and the 7.237-acre commercial zone and will be operated and maintained by DAMDWCA. The package treatment plant will be constructed of sufficient capacity to include the 6 residences on Hoskins Lane, adjacent to the west boundary of the proposed River Walk Estates.

Water lines will be extended to the 70.232-acre development by the developer. Letters of commitment have been submitted to staff with this Zone Change request for water and wastewater. Adequate water and fire flow will be provided for the development and will also be available for the surrounding areas. The developer will provide gas, water and sewer utility stub-outs for the residences located along Hoskins Lane. Rio Grande Natural Gas will extend gas service to the development.

The proposal includes the upgrade of Hoskins Lane to ETZ Design Standards to "*improve the safety and functionality of the existing road.*" The layout of the River Walk Estates Subdivision will be designed to ensure that the six residences along the west side of Hoskins Lane will be the only lots fronting Hoskins Lane. The internal roadway system will be designed to ETZ Design Standards, and will provide access points to the development from Hoskins Lane and Burke Road for the residential development. Access to the commercial zoned development area will be from Picacho Ave. (a Principal Arterial) and Hoskins Lane. Any required improvements to Picacho Ave. will meet all requirements of local and state jurisdictions. The design of the development also includes access points to the Rio Grande and to the Del Rio Drain to allow residents to use the MPO proposed trail system along the levees and to access the La Llorona Park located adjacent to the development, thus providing open space access and recreation for the development.

Landscaping and buffering between the commercial and residential zones of the development will be installed per design standards. Lighting will be in accordance with existing night sky ordinances and will not infringe on the adjacent residential developments. The development will also have all electric, telephone, and cable television services installed underground.

The applicant has provided a Benefit/Cost Analysis for the proposed development reporting that the Benefit/Cost Analysis ratio is 51.08, with approximately \$15,701,933 in benefits and \$307,272 in government expenditures.

**ANALYSIS**

The applicant has stated that water rights were not transferred on the southernmost 22.709 acres, at the time of the purchase of the property, so the farmland is unproductive and has been left fallow. Comments received from EBID staff state, “our records indicate that these tracts have water rights.” The applicant also states that the 1.126-acre linear parcel adjacent to Picacho Ave. was rezoned by the City of Las Cruces in March of 2008, to C2-C commercial zoning. The 75 foot (75’) width of the parcel is not conducive to commercial development without additional acreage to the north. The proposed change from ER4M to EC2 on the 7.237-acre parcel will allow the commercial development of this parcel fronting Picacho Ave.

DAC Flood Commission comments on this proposal indicate that the subject properties are located within the 500-year flood zone and could possibly be within the 100-year flood zone based on the new proposed FEMA maps. They are also concerned about the proposed density for a flood prone (flood hazard) area and how it is counter to their floodplain management practices.

The applicant is basing the change in conditions on the factors listed above. The ER4M zoning allows residential development at this time. If the zone change is denied the applicant could still develop the parcels as a residential subdivision. Additionally, the applicant does not seek to correct an error in the initial zoning of the property. Staff does not agree that these are adequate changes in conditions to justify this zone change request as required by *Supreme Court of New Mexico, Miller versus Albuquerque, September 9, 1976.*

The proposed change to ER5 zoning is considered moderately low density development. The surrounding ER3M residential zones are designed to “meet the demand for those persons whose lifestyles include raising and keeping large and small animals in a semi-rural atmosphere.” An ER5 zoning district is not compatible with the residential pattern in the area as it is intended per the ETZ Ordinance and Comprehensive Plan. Therefore, staff considers this zone change proposal a “Spot Zone”.

**ADJACENT ZONING:**

North	ER3M	Residential, 1-acre min. new lot size, single-family site-built and mobile homes.
South:	C-2C	<i>City of Las Cruces Commercial Zoning.</i>
East	ER3M EC1	<i>Residential, 1-acre min. new lot size, single-family site-built and mobile homes.</i> <i>Neighborhood Commercial District, 5-acre minimum lot size.</i>
West	ER3M	Residential, 1-acre min. new lot size, single-family site-built and mobile homes.

**Physical Characteristics of the Site:** The 4 parcels, a combined 70.569-acres, are topographically flat agricultural land, bounded on the east side by the Del Rio Drain, and on the west side by the Rio Grande. The southern portion of the proposed project site abuts a seventy-five foot (75’) wide, 1.1-acre commercially zoned city lot adjacent to Picacho Ave. There are 6 residential properties located along Hoskins Lane, the western boundary of the subject properties.

**Agency Comments:**

**DAC Fire Marshal:** Zone change approved.

**County Building Inspection:** Building permits are required on all future dwellings and must meet County, State and code requirements. Permits have not been applied for.

**County Engineering Department:** The proposal may generate 3,000+ vehicle trips per day upon full development. A full TIA will be required for site plan approval.

**County Flood Commission:**

1. Pursuant to FIRM (Flood Insurance Rate Map) No. 35013C0627 E and 35013C0525 E, the subject property is currently located within a 500-year flood area, commonly known as Shaded X Flood Zone. Although, with the revised flood maps proposed, the entire 70.569-acre property appears to be included within a FEMA Special Flood Hazard Area, Flood Zone A.
  - a) When developing within a FEMA Special Flood Hazard Area, any home (or structure) will need to be elevated, at or above, a proposed Base Flood Elevation (BFE) facilitated by an Elevation Certificate.
  - b) If there is a federally backed mortgage on a home (or structure) that is located within a FEMA Special Flood Hazard Area, federal law requires the purchase of flood insurance.
  - c) If subdividing, a Detailed Study will need to be undertaken and submitted to FEMA for a Map Change which will entail designating a new Flood Zone designation of AE (Base flood elevations determined) or similar.
2. As Floodplain Managers, it is not wise floodplain management practices to increase the density of flood prone (flood hazard) properties.

**DAC Environmental Codes:** None. No code violations.

**DAC Rural Addressing Coordinator:** The parcel, 4-004-134-237-368, is addressed at 3480 W. Picacho Ave.

**New Mexico Environmental Department:** This office has no opposition to the rezoning of the above mentioned parcels. This area has a high water table and all subsequent liquid waste systems will need to be designed accordingly. Development of a subdivision or commercial area will require review. The subdividing of the property for residential/commercial use will need to meet the requirements of 20.7.3 NMAC.

**State Engineers Office:** No comments.

**New Mexico Department of Transportation:** No objection to zone change, but it is subject to access permit from Picacho Ave. How will this access fit w/vacant lot across the street access alignment? Consultation w/property across the street is highly recommended.

**City of Las Cruces MPO:** Picacho is a Principal Arterial, and a state highway. Circulation and access w/linear commercial development will need to be addressed.

**City of Las Cruces Planning:** No comments.

**City of Las Cruces Utilities Department:** Existing gas mains on Burke and Hoskins should be extended to create a loop with the development of the subdivision.

**Doña Ana Mutual Domestic Water Association:** No comments.

**Elephant Butte Irrigation District:** Our records indicate that these tracts have water rights. If landowner does not wish to keep the water rights, they should be leased, sold or transferred.

**International Boundary & Water Commission:** No comments were received.

**Community Notification:** Letters of notification were sent to one hundred twenty-seven (127) property owners. One opposition letter was received from Mr. George Olcott (#54 on notification list) on February 4, 2009, and an email from Steve and Lisa Archuleta (#50 on notification list) in opposition to the zone change request was received by staff on February 9, 2009. No letters of support were received. Signs were placed on the property February 3, 2009, and the case was advertised on February 1, 2009, in the Las Cruces Sun-News.

## PROPOSED FINDINGS

1. The request of this application is consistent with the requirements of the Las Cruces Extra-territorial Zoning Ordinance Article II, Section 2.1.C/Application Procedures and Article II, Section 2.1.G/Public Hearing and Notice Requirements.
2. The Supreme Court of New Mexico, Miller versus Albuquerque, September 9, 1976, states: *“The fundamental justification for an amendatory or repealing zoning ordinance is a change of conditions making the amendment or repeal reasonably necessary to protect the public interest. Also, a zoning amendment may cover and perfect previous defective ordinances or correct mistakes or injustices therein.”*
3. The subject property is located outside the corporate limits of the City of Las Cruces, but within the five-mile Extra-territorial Zone (ETZ) as set forth by 3-19-5(1), NMSA 1978 and the Joint Powers Agreement between Doña Ana County and the City of Las Cruces. Therefore, the Las Cruces ETZ Commission (ETZ) has jurisdiction to review this case.
4. The combined 70.569-acre subject parcels were created in 1992 as part of the U.S.R.S. Tract 4-6B, Replat 2, an 8 lot, minor subdivision.
5. Section 3.1.F.2; ER5 Residential District states *“The purpose of the ER5 District is to provide for single-family site-built homes in moderately low densities together with such recreational facilities, public uses and accessory uses as may be necessary or are normally compatible with residential surroundings.”*
6. Section 3.1.; EC2 Commercial District states, *“The purpose of the EC2 District is to provide sufficient space in appropriate locations for retail and personal service uses and some commercial recreational uses, generally serving an area of several neighborhoods in a given community.”*
7. The Las Cruces Extra-territorial Zoning Ordinance 88-02 Amended Article 1, Section 1.6.S; Definitions, defines **Spot Zoning** as, *“An amendment to a zoning ordinance that is not compatible with a comprehensive scheme of zoning, whether one lot, several lots or a large area. Spot zoning can also be created through variances, which are granted without regard for impact on the surrounding area.”*
8. The Zone Change request is consistent with the following ETZ Comprehensive Plan 2000-2020:
  - **Goal 1, Policy 1.2.5.3:** Locate moderate and high-density residential development near commercial, recreational, and transportation facilities or near village centers.
  - **Goal 2, Policy 2.2.1:** Encourage development only where it can be supported by existing or planned expansions to infrastructure, without having a negative impact on the level of services available in the developed portion of the ETZ area.
  - **Goal 6, Policy 6.3.3:** Locate site-built homes, manufactured housing types and urban subdivisions within existing or planned wastewater service areas.
  - **Goal 6, Policy 6.3.5:** Promote the construction of site-built and the installation of permanent foundation systems for manufactured housing types and urban subdivisions within existing or planned wastewater service areas.
  - **Goal 10, Policy 10.1.2:** Urban development will be encouraged in areas where services and infrastructure exist or are likely to be developed.

- **Goal 10, Policy 10.1.3:** Costs for development that occur outside community service areas and require the extension of infrastructure (water, wastewater, roads, etc.) shall be the responsibility of the developer or other involved parties.
  - **Goal 10, Policy 10.3.2:** The underground placement of utilities shall be encouraged where feasible.
  - **Goal 11, Policy 11.2.2:** Multiple access routes into new subdivisions and other major developments for emergency purposes shall be required.
9. The Zone Change request is **not** consistent with the following ETZ Comprehensive Plan 2000-2020:
- **Goal 3, Program 3.2.2.3:** Major undeveloped flood plains and arroyos should be designated for multi-purpose recreational or open-space uses.
  - **Goal 5, Objective 5.1:** Agriculture lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products.
  - **Goal 5, Policy 5.1.3:** Non-farm uses permitted within farm use zones should be minimized to allow for maximum agricultural productivity.
  - **Goal 7, Program 7.1.1.1:** In determining whether rural land located within the two-mile area adjacent to the City of Las Cruces is suitable for urban development, the following factors should be considered: ....7) *Retention of agricultural land, open space and recreational areas.* 8) *Compatibility of the proposed urban uses with nearby agricultural activities.*
  - **Goal 8, Objective 8.1:** Use existing resources, structures, and commercial or industrial zoned spaces for economic development activities in a manner that will support the expansion and diversification of the region’s economic base.
  - **Goal 8, Policy 8.1.1:** Identify commercial and industrial nodes that are compatible with existing development/zoning districts.
  - **Goal 8, Policy 8.1.2:** Preference for the development of commercial activity should be located at major intersections (i.e., intersections of two arterials, two collectors or an arterial and a collector).
  - **Goal 8, Policy 8.2.1:** Support the farmland preservation programs for the agricultural industry in order to maintain the viability of this major sector of the local economy.
  - **Goal 11, Policy 11.4.5:** Development in floodplain areas shall be discouraged. Every effort shall be made to encourage the location of structures on the portions of property outside of delineated floodplains.

**Determination Criteria:**

The ETZ Commission may recommend a Zone Change to the ETA as specified by the Extra-territorial Zoning Ordinance Article II, Section 2.1.B/Zoning District Changes: Rezoning and by using the criteria defined by the Extra-territorial Zoning Ordinance Article II, Section 2.1.D/Evaluation Criteria: Applicant has supplied answers to the 2.1.D Evaluation Criteria

**Section 3.1.K EC2 COMMUNITY COMMERCIAL DISTRICT**

**3.1.K.1 PURPOSE**

The purpose of the EC2 district is to provide sufficient space in appropriate locations for retail and personal service uses and some commercial recreational uses, generally serving an area of several neighborhoods in a given community.

**3.1.K.2 DEVELOPMENT REQUIREMENTS**

Minimum lot area	5,000 sq. ft.
Minimum lot width	60 ft.
Minimum lot depth	70 ft.
Minimum front setback	25 ft.
Minimum side setback	7 ft.
Minimum rear setback	15 ft.
Maximum building height	45 ft.



Residences in the EC2 district shall comply with the development requirements for the ER5 district as outlined in Section 3.1.F.1 of this Article.

**3.1.K.3 PERMITTED USES IN EC2 DISTRICT**

The following uses are permitted by right in the EC2 district.

**3.1.K.3.a PERMITTED USES - NO CONDITIONS**

1. All uses permitted under Section 3.1.J.3.a of this Article	17. Lawn and garden equipment sales, rentals and service
2. Ambulance services	18. Locksmith services
3. Apparel shops	19. Medical outpatient clinics
4. Automobile service stations	20. Miniature golf courses
5. Billiard or pool halls	21. Mortuaries
6. Bowling alleys	22. Motion picture theaters
7. Burglar alarm services	23. Musical instrument supplies, sales, rental and service
8. Data processing centers	24. Newspaper establishments, including distribution offices
9. Department stores	25. Pawn shops
10. Electrical shops	26. Painting equipment and supplies, sales and rentals
11. Frozen food lockers	27. Residences
12. Glass cutting and finishing shops	28. Retail sales of accessories, antiques, art, art supplies, jewelry, music records and tapes, sporting goods and similar stores and shops
13. Hospital equipment and supplies, sales, rentals and service	29. Second-hand goods - retail sales
14. Hotels and motels	30. Taxicab stands
15. Household appliances sales and service	31. Upholstery shops
16. Juke box and coin machine sales, rentals and service	32. Weight reduction salons

**3.1.K.3.b PERMITTED USES - WITH CONDITIONS**

The following uses are permitted in EC2 in accordance with stated conditions:

1. All permitted uses with conditions allowed under Section 3.1.J.3.b of this Article
2. **Amusement parks or enterprises**  
Temporary amusement enterprises are prohibited within three hundred (300) feet of any residential zoning district. Permanent amusement enterprises are prohibited within five hundred (500) feet of any residential zoning district. Go-cart tracks and other similar facilities must be located at least one thousand (1000) feet from any residence and at least one hundred (100) feet from any public way. The spectator areas shall be protected from the vehicular area by suitable fencing, bumpers or other protective devices.
3. **Auction yard, structure or flea market**  
The off-street parking area must be clearly separated from the sales area. A minimum of one (1) off-street parking space is required for each display stand or area and one (1) space for every two hundred (200) square feet designated as an entire display area. Each display stand requires a minimum of twenty (20) square feet and a minimum of one (1) chemical or standard toilet is required for every twenty (20) display stands or fraction thereof.
4. **Automobile, mobile home, trailer or truck sales, rentals and storage**  
The vehicle area must be graded and surfaced with asphalt, concrete or other materials that will provide equivalent protection against potholes, erosion, dust and a solid wall or fence six (6) feet high shall be maintained along any side of such area abutting any residential zone
5. **Heavy equipment repair service (accessory use)**  
Permitted only as an incidental or accessory use to heavy equipment sales or rentals. Floor area for repair shall not exceed three thousand (3000) square feet and not exceed thirty (30) percent of the total gross floor area. Welding is permitted only in conjunction with repairs and shall not be used for the purpose of heavy equipment assembly.

**6. Mini storage units**

Units shall not be used for commercial sales of products, merchandise, service or repair

**7. Welding (accessory use)**

Welding shall be permitted only as an incidental or accessory use necessary for the repair of vehicles or equipment. Welding for the purpose of assembly is prohibited. Welding uses shall be approved by the County Codes Compliance Division.

**3.1.K.4 EC2 SPECIAL USE PERMITS**

**1. Adult entertainment uses:**

Uses such as adult bookstores, adult photo studios, adult theaters and adult news racks as defined under Section 1.6 of this Ordinance, shall be permitted provided such use is located a minimum of one thousand (1,000) feet from a property line of any school, church, public park or recreational facility or residential zoning district. There shall be no public display of adult pictures or materials within a grocery store, bookstore or other retail or wholesale outlet and the pictures and materials must be concealed from public view at all time.

**2. Mobile homes on a temporary basis during construction period for the purpose of housing security guards, pursuant to Section 3.1. of this Article. Conditions shall be attached regarding unobtrusive sitting and screening.**

3. All uses requiring a Special Use Permit under Section 3.1.J.3.c of this Ordinance	13. Drive-in theaters
4. Airport and heliports	14. Major facilities for generation of energy
5. Animal hospitals and clinics	15. Nursing or convalescent homes
6. Auditorium or assembly halls	16. Racetracks
7. Bus passenger terminals	17. Recreational vehicle parks
8. Cemeteries and crematoriums	18. Recycling purchase centers
9. Commercial kennels	19. Skating rink: roller or ice skating
10. Commercial parking garages	20. Stadiums or athletic fields: baseball, football, soccer, track or similar sports
11. Convention or exhibition halls	21. Mobile home units for security guards on temporary basis during construction period only
12. Dance halls	

**Section 3.1.F.2 ER5 RESIDENTIAL DISTRICT**

**3.1.F.2.a PURPOSE**

The purpose of the ER5 district is to provide for single-family site-built homes in moderately low densities together with such recreational facilities, public uses and accessory uses as may be necessary or are normally compatible with residential surroundings.

**3.1.F.2.b DEVELOPMENT REQUIREMENTS**

The development requirements set for the ER5M district as outlined in Section 3.1.F.1.b of this Article are applicable to the ER5 district.

**3.1.F.2.c ER5 PERMITTED USES**

The permitted uses set for the ER5M district as outlined in Section 3.1.F.1.c of this Article are applicable to the ER5 district, EXCEPT that mobile homes are not allowed in the ER5 district.

**3.1.F.2.d ER5 SPECIAL USE PERMITS**

The Special Use Permit uses and conditions set for the ER5M district as outlined in Section 3.1.F.1.d of this Article are applicable to the ER5 district.

### **Section 3.1.F.1 ER5M RESIDENTIAL DISTRICT**

#### **3.1.F.1.a PURPOSE**

The purpose of the ER5M district is to provide for single-family site-built and mobile homes in moderately low densities together with such recreational facilities, public uses and accessory uses as may be necessary or are normally compatible with residential surroundings.

#### **3.1.F.1.b DEVELOPMENT REQUIREMENTS**

Minimum lot size	1/3 acre (except cluster development)
Minimum lot width	80 feet
Minimum lot depth	80 feet
Minimum front setback	20 feet
Minimum side setback	10 feet
Minimum rear setback	25 feet
Maximum building height	35 feet

#### **3.1.F.1.c ER5M PERMITTED USES**

**The following uses are permitted by right in the ER5M district:**

1. Cluster developments in accordance with the Subdivision Regulations adopted by the ETZ Authority.
2. Detached single-family site-built homes and mobile homes.
3. Garage and yard sales or similar uses, limited to three (3) sales in a one (1) year period at a single address and each sale shall be limited to three (3) consecutive days.
4. Greenhouses (non-commercial), garden and tool sheds. If detached from the main dwelling, the structures are subject to the provisions of Accessory Buildings under Article VII of this Ordinance.
5. Home occupations subject to Section 3.4 of this Article.
6. Private swimming pools provided the provisions of Article 5 of this ordinance for fencing are met. The pool shall be no closer than five (5) feet from any property line and approval from all utilities is obtained to ensure overhead safety.
7. Recreational vehicles such as boats, trailers or similar uses, limited to a maximum of one (1) per dwelling unit in the front or side yard, and no limitations for the rear yard, provided there is at least a distance of five (5) feet from any property line.
8. Residential type satellite dishes, television or receiving antenna, roof mounted, and not exceeding twenty (20) feet in height at the highest point on the roof.
9. Temporary real estate offices, when used in conjunction with a residential subdivision, provided such use is discontinued upon the completion of the development or within three (3) years from the date the building permit is issued, whichever is sooner.
10. Keeping small animals subject to Article VIII of this Ordinance.

#### **3.1.F.1.d ER5M SPECIAL USE PERMITS**

**The following uses require a public hearing pursuant to Section 2.1.G of this Ordinance and approval by the ETZ Commission:**

1. All types of agriculture.
2. Boarding houses and rest homes.
3. Cemeteries.
4. Community and publicly owned recreational centers, clubhouses and similarly used buildings and structures open to the public.
5. Day care center or child care center for five (5) or more children.
6. Parks, golf courses, churches, schools and other public or semi-public and open recreational uses.
7. Public utility installations, substations and water wells.
8. Keeping small, wild or exotic animals and fowl on lots of less than one (1) acre in size.
9. Sale of farm produce provided it is raised on the premises.
10. Veterinary facilities.

#### **AUTHORITY CONCERNS:**

- Will the pad have to be elevated and how high?
- What was the intention for the City annexation of the front portion of parcel?
- Is the sewer just for the commercial area? The treatment center not being developed at the same time of the commercial proposal is a concern.
- What if the subdivision gets denied?
- What is the ground water table in area?
- Where are the domestic wells?
- What is the cost component to hooking up to city water?
- Has NMED approved?
- There is an issue with having this in front of the board discussing the sewer plant when no application or approval for SUP has been done?

**Marty Pillar, representative for applicant, sworn in.** Mr. Pillar gives a presentation. He states they will elevate the pad about 1 ½ ' -2 '. They are working to drain into the Del Rio Drain. The sewer plant is for the commercial and residential area and to serve outside the proposed subdivision. The development of the plant will come first. Mr. Pillar states there are wells in the area but he doesn't know exactly where. The area is in DAMW so they can't hook up. Either option would be good. Mr. Pillar states he doesn't believe they cannot hook up to the city. NMED has approved this system.

**Sheryl Fox, opposed.** Access is a problem and the lot size as it exists and road is a problem. She has concerns about the maintenance and where the discharge will go. She is concerned about time line in placing the sewer treatment. The Annexation was done in the early 80's to control development on the strip.

**MOTION: Commissioner Perez** moves to APPROVE Case #Z08-016 for purposes of discussion.  
**Commissioner Krahling** seconds the motion.

#### **AMENDMENT TO MAIN MOTION:**

**Commissioner Perez** moves an amendment that the applicant seek and receive a Special Use Permit for a package plant or a lift station that would connect to the City of Las Cruces and secondly that no on site septic systems would be permitted on this property.

**Commissioner Krahling** seconded the motion.

**Commissioner Perez:** I'll start with the spot zoning because we didn't discuss that and I know it was mentioned in the packet. I don't see that this is necessarily spot zoning. I do believe it is disharmonious with the surrounding area, in fact, I don't believe it constitutes spot zoning. I just think it's disharmonious for other reasons. For the size of area rezoned the benefits of the community, in my opinion it doesn't meet the spot zoning. But in the Miller criteria I do not believe that this zone change request is supported by sufficient change of conditions. This is a change of conditions that goes back to the 80's. Fault lacking better information, I'm going to rely on the one piece of information we have that does seem like a reasonable explanation which was, this was annexed nominally along the Picacho corridor and then picked up some area on the bank of the river for some security reasons but I don't see that as being a change of conditions. It wouldn't necessarily change this from residential to a commercial nature. I don't see that. Certainly there were no previous defective ordinances or zoning and I don't believe that the current zoning applications are inappropriate. I don't believe that the applicant has met that burden. From the ordinance criteria for the zone change is where I'm really having a problem. The access to the property I agree is off of Picacho Ave. we have access residential areas, historical long standing residential areas, narrow unimproved roads that are already debatable, for access on to Picacho and then we put a commercial area in there with a driveway, we have people slowing down, people coming out, the access to it is awkward and difficult. I don't see a big necessity for new commercial activity, I'm just going to go by our list. There's commercial activity all along Picacho, this area doesn't have a dearth of commercial activity and I don't believe that, that is criteria either. The water and sewer issue bothers me. Again I understand and appreciate what you're trying to do I think your being responsible, I think the conditions will support us

and I think your trying to do the best thing you can with a bad situation. But the fact of the matter is, in my opinion is it's a bad situation. It's a low lying area, it's got a high water table, it's a nightmare for sewer systems and you're surrounded by domestic wells. Trying to offset that by saying it's, and I hear this I'm not trying to put words in your mouth, but it's ok if we potentially impact the ground water because we're willing to hook people up to a central water system. It's always an argument but I have a really hard time with, we just try not to impact the domestic well and in this area it's going to be very, very difficult. Appropriate zoning on environmentally sensitive areas that's very poorly defined in our ordinance but I'm going to go back to the flood plain and I'm going to go back to the high ground water table. This is the area that is essentially a wetlands type area you've got soft soil, you've got high ground water table, you're right next to the river. And the potential impact from any kind of waste water discharge on this I think is significant. And again the detrimental impact on the proposed zone change on the surrounding properties, I acknowledge that you have the ability to develop this to some extent and I would like to see that minimized. We have ground water wells we have long standing communities we have a residential area and I don't see this as being compatible.

**Commissioner Butler:** I'm going to vote yes on this because I think we put a condition to try to minimize all the things that Commissioner Perez has indicated are her concerns. That condition if (inaudible) and I think addresses her concerns in terms of the high water table, in terms of the spot zoning, I don't think its spot zoning either. I think when you look just across the river we have a chili vending machine or a chili sales plant there, we have Mesilla Valley Trucking, we have a variety of septic systems through out the area, those five homes are on septic next to the river. These other homes that go on have a right to develop that land, residential can eventually be septic and they'll be septic because we have no control over NMED approving a 3 acre parcel of land that's going to be developed for residential of which will hold septic in the ground and we can't control that and it's never been our position to look at the high water table vs. the low water table but when you look at Miller the zoning in this area has changed and it's not because of the City zoning but if you look on Picacho it self, it's a Hwy 70, it's a corridor for commercial development or the City wouldn't have put a commercial zoning in the area, in their ultimate wisdom and so when you look at the zoning it self they are looking at commercial zoning which is compatible with the zoning the City has recognized. So I will vote for this because the condition should be the case precedent to determine whether one the septic is the system problem in this issue. So I will vote for it seeing that it does meet, it does not have spot zoning, it does meet the Miller requirement and that the zoning permitted is compatible with the area.

**Councilor Silva:** I'll support it also with similar reasons as my colleague, Mr. Butler, and I feel it follows the Miller criteria as well. I don't think it's a spot zone, I looked at the commercial across the street, I think it fills in with the commercial aspect. With prior to coming in here I wasn't quite sure that we were, I didn't realize that we were splitting it off until I read the entire packet I thought we were going to vote the whole thing and then we started discussing this, the bigger picture if the residential comes in I think the front area would be buffer for the area in the back. That's my personal opinion and that's for another discussion whether that occurs or not and I am concerned about what was raised earlier. It's still zoned where individual septic tanks can come into the area and I think that the modifications that we put into place regarding the receiving the package and trying to hook into the system to me I think that's a good modification. So that's where I stand on this one.

**Commissioner Krahling:** I'm going to vote in favor of this as well. I think there is reasonable argument that this meets the Miller criteria of the Comprehensive Plan, of the change of conditions and the appropriateness of the zoning. I also think that reasonable argument can be made that it meets the ordinance criteria for the zone change. I don't see it as spot zoning. I think that we've come up with a good motion that's going to, I won't reiterate what's been said but basically I agree with my colleagues that have gone before me and again I will be supporting this.

**Chair Jones:** I will support this matter also, the point that hasn't been brought up at length and again this is subjective and this is my opinion and maybe someone will disagree but, the fact that we have commercial on Picacho. The change in conditions in the environment presets that there is more and more commercial on Picacho and given the size of Picacho and the speed of travel the nature of it and given my experience in my own district where we see residential along the road say Elks, where traffic has to enter and exit, Elks is a difficult environment so I'm reluctant to see residential abutting Picacho and if there was residential, my

view, the best way in and out of the residential would be through the adjacent road and that would be another burden on Hoskins. But that's my opinion and so I see a change in condition with the change in the environment on Picacho. I can see where there's a more appropriate (inaudible) the Miller issues, whether there's a more appropriate zoning on property immediately adjacent to Picacho to accommodate commercial, and again give the problems I see with residential it would have to exit and enter Picacho street and even if you did a cut there it would be tough and other wise your going to burden Hoskins. The traffic flows obviously there is traffic flow and the TIA will have to address that. I think it would be less of an impact if we have that cut into Picacho than if we have 7 more acres of residential. Existing infrastructure and capacity I think we're putting more of the burden on Picacho than we are on Hoskins. I see and recognize the need for the developer to do more analysis. Spot zoning I don't see spot zoning. I think if you look up and down Picacho in the appropriate areas you will see that there is a great deal of commercial along that area and this will be that type of commercial as well so I don't see that and with that said I will vote yes and again with regard to the waste water that's a very sensitive issue and it is an uncomfortable situation but I wonder if we go this route if we'd have a better situation than what would other wise be the case. Numerous homes up and down that area at some future point they'd all rely on septic systems and that is to give you a visual of two evils that this system would be a better situation then we will see if indeed we'll have a bunch of homes on ¾ acres potentially using septic systems and also looking for well permits. So with that stated let's pull the authority.

Commissioner Krahling – Yes

Councilor Silva -Yes

Commissioner Butler – Yes

Commissioner Perez - No

Chair Jones – Yes

Motion was **APPROVED** by a vote of 4-1-0.

**11. PUBLIC INPUT:** None

**12. STAFF INPUT:** None

**13. AUTHORITY INPUT:** None

**14. ADJOURNMENT:**

**Commissioner Krahling** motions to adjourn.

**Commissioner Perez** seconds the motion.

**Vice Chair Jones** adjourned the meeting at p.m.

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Officer: Extra-Territorial Zoning Authority

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Submitted by: Terry Navarro-Peyton, Recording Secretary