

**EXTRA-TERRITORIAL ZONING AUTHORITY  
MEETING**

**May 20, 2009**

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

**MEMBERS PRESENT:**

Councilor Gil Jones, Chairman  
Commissioner Perez, Vice-Chairwoman  
Commissioner Benavidez, Alternate  
Councilor Small, Alternate

**MEMBERS ABSENT:**

Commissioner Vasquez-Butler, Member  
Councilor Silva, Member  
Commissioner Krahling, Member

**OTHERS PRESENT:**

Chuck McMahon, DAC Planning Director  
Dave Medeiros, DAC Attorney  
Steve Meadows, DAC Planner  
Jonathan Kesler, DAC Planner  
Gary Hembree, CLC Planning Director  
Jennifer Robertson, LC Planner  
Cheryl Rodriguez, 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 5:08 p.m., Wednesday, May 20, 2009 in the County Commission Chambers of the Doña Ana County Government Center, 845 N Motel Blvd., Las Cruces, NM.

**2. ROLL CALL:**

Councilor Small – Here  
Commissioner Benavidez – Here  
Vice-Chair Perez,-Here  
Chair Jones - Here

**3. ANNOUNCEMENTS:** None

**4. APPROVAL OF MINUTES:** April 15, 2009

**MOTION: Commissioner Perez** moves to APPROVE the minutes of April 15, 2009.  
**Councilor Small** seconded the motion.

Councilor Small - Yes  
Commissioner Benavidez – Yes  
Commissioner Perez - Yes  
Chair Jones - Yes  
Minutes were **APPROVED** by a vote of 4-0-0.

**5. CHANGES TO THE AGENDA:** Item 8 will be moved to Item 6 on the Agenda.

**MOTION: Commissioner Perez** motions to move item 8 to item 6 on the Agenda.  
**Councilor Small** seconds the motion.

Councilor Small - Yes  
Commissioner Benavidez – Yes  
Commissioner Perez - Yes  
Chair Jones - Yes  
Motion was **APPROVED** by a vote of 4-0-0.

**NEW BUSINESS  
REVIEW/DISCUSSION/ACTION**

6. **CASE # EAP09-001/ARCHULETA:** The applicant, Archuleta Real Estate Solutions, Inc., Martin Pillar, agent, is appealing a decision of the ETZ Commission, by a vote of 0-7-0, to deny **CASE # Z08-016/ARCHULETA.**, for a Zone Change on the north 63.33 acres of a 70.57-acre proposal on 4 parcels from ER4M (Residential, 1/2-acre minimum new lot size, single-family site-built and mobile homes) to ER5 (Residential, 1/3-acre minimum new lot size, single-family site-built homes) for the proposed 141-lot River Walk Estates Subdivision. 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, & 7-60AIA as recorded in the Office of the Doña Ana County Clerk, in Book 450, Pages 1338-1342, on August 11, 2003, and Book 597, Pages 953-959, recorded March 30, 2005. The subject parcels can be further identified by Map Code No's. 4-004-134-225-326, 4-004-134-237-368, 4-004-134-330-503, and 4-004-135-366-082.

**STAFF RECOMMENDATION:** Based on the analysis, findings of fact, and the recommendation of the ETZ Commission, staff recommends **DENIAL of the APPEAL, CASE # EAP09-001/ARCHULETA,** and the upholding of the ETZ Commission decision to DENY the proposed residential portion of Zone Change request Case # Z08-016/ARCHULETA.

**FINDINGS:**

The Extra-territorial Zoning Ordinance No. 88-02, Section 2.4/Appeals Procedures states:

- When an appeal is taken to the Extra-territorial Authority, the Planning Director, on behalf of the Extra-territorial Zoning Commission, shall have the initial burden of presenting to the Extra-territorial Authority sufficient evidence and argument to justify the order or decision appealed from.
- The burden of presenting evidence and argument to the contrary then shifts to presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- The burden of presenting evidence sufficient to allow the Extra-territorial Authority to reach a conclusion on the appeal, as well as the burden of persuasion on the issues set forth, remains with the appellant.
- Upon hearing the appeal, the Extra-territorial Authority by a majority vote of the total membership, may reverse or affirm (in whole or part) or may modify the order, requirement or decision or determination that in its opinion ought to be made in the case before it.

The Extra-territorial Zoning Ordinance No. 88-02, Article II, Section 2.1.I states that during the vote of an appeal of a decision by the Extra-territorial Zoning Commission, the Extra-territorial Authority by a majority vote of its total membership may:

1. Reverse any order, requirement, decision or determination of an administrative official, commission or committee
2. Decide in favor of the appellant
3. Make any change in any order, requirement, decision or determination of an administrative official, commission or committee.

**SYNOPSIS:**

On March 23, 2009, Archuleta Real Estate Solutions, Inc., filed this appeal after the ETZ Commission, at its regularly scheduled meeting on Thursday, February 19, 2009, denied Case # Z08-016/ARCHULETA, by a vote of 0-7-0, for a Zone Change request on 63.33-acres from ER4M (Residential, 1/2-acre minimum new lot size, single-family site-built and mobile homes) to ER5 (Residential, 1/3-acre minimum new lot

size, single-family site-built homes) for the proposed River Walk Estates Subdivision. Six (6) members of the public spoke at the ETZ Commission meeting. Five (5) of the speakers were opposed to the proposed zone change citing increased traffic, the location, construction and operation of the proposed waste water treatment plant, there being no need to rezone if the present zone allows 141 lots, and possible future problems concerning the impact the proposed subdivision will have on the surrounding properties with large animals. One resident spoke in support of the proposal based on the proposed development being a benefit to the area.

Archuleta Real Estate Solutions, Inc. is appealing the decision of the ETZ Commission on the grounds that the proposed River Walk Estates development meets many of the policies listed in the ETZ Comprehensive Plan and the ETZ Ordinance No. 88-02. The items are discussed in the narrative submitted by the appellant (*Pgs. 8-11*). The submittal asserts the development will meet several goals pertaining to transitioning between rural and urban areas, allowing development where services and infrastructure exist or are likely to be developed, using “alternative septic technology”, and allowing higher densities in the ER5 zone which would promote the goal of more affordable housing. The applicant also asserts the development meets the goal of providing multi-use parks and open-space linkages, and the proposed residential development will provide an attractive “gateway” to Las Cruces and the community.

Staff recommends **DENIAL** of Appeal Case # EAP09-001/ARCHULETA, because the issues raised by the appellant do not conform to the criteria set forth in *Miller vs. Albuquerque, 1976*, which would support a zone change. The Appeal does not question staffs original analysis concerning the insufficient change in conditions to warrant a zone change to protect the public or to perfect a defective ordinance or correct a mistake or injustice therein. The Appeal does not challenge staffs finding that the proposed residential development is disharmonious with the surrounding area because of the disparity in densities between the adjacent ER3M Residential Zoning Districts and the proposed ER5 Zoning District. The ER3M Zoning Districts are for moderate to large lot residential developments (1-acre minimum lot size) to meet the demand for those who wish to raise and keep large and small animals in a semi-rural atmosphere. The purpose of the ER5 district is to provide for moderate low densities (1/3-acre minimum lot size) together with recreational facilities, public uses and accessory uses as may be necessary or are normally compatible with residential surroundings. This discrepancy between the moderate to large lots (ER3M; 1-acre) and the moderate low density lots (ER5; 1/3-acre) is contrary to normal transitional zoning design, and illustrates the difference between the surrounding rural densities and the proposed urban density.

The appellant, if denied the Zone Change request by the ETA, could develop the property within the ER4M development standards.

On April 15, 2009, the Extra-territorial Zoning Authority (ETA) approved, by a vote of 4-1-0, the 7.24-acre southern portion of the proposed River Walk Estates from ER4M to EC2 on the southern parcel abutting Picacho Ave. and the northern city limits of the City of Las Cruces.

**ADJACENT ZONING:**

North	ER3M	Residential, 1-acre min. new lot size, single-family site-built and mobile homes.
South:	C-2C	City of Las Cruces Commercial Zoning.
East	ER3M EC1	Residential, 1-acre min. new lot size, single-family site-built and mobile homes. Neighborhood Commercial District, 5-acre minimum lot size.
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 63.33-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 recently approved (April 15, 2009) 7.24-acre EC2

Zoning District adjacent to Picacho Ave. There are 6 residential properties located along Hoskins Lane, the western boundary of the subject properties.

**Agency Comments:**

*New comments in italics.*

**DAC Fire Marshal:** *Zone change approved. 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. 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:** *Refer to previous comments. 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:** *Same comments as previously submitted for zone change request.*

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:** *No comments. 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 additional comments. No comments.*

**New Mexico Department of Transportation:** *Same as previous comments. 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:** *No comments. 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:** *I know the intent of this zone change is within present zoning. 141 lots are allowed, but the applicant wishes to provide a community septic tank. So in order to compensate for the loss in developable land, the applicant would like a rezone to consolidate & allow for a 141-lot development. Regardless, this potential subdivision would require compliance with NMED standards, therefore we have no issue with the rezone. No comments.*

**City of Las Cruces Utilities Department:** *Conditional approval with previous comment.* 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:** *No objections.* 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.* No comments were received

**Community Notification:** Letters of notification were sent to one hundred twenty-seven (127) property owners. One letter in opposition to the proposal was received on May 7, 2009 from Mr. George Olcott (#54 on Notification List) voicing his continuing concerns about the increased density, the construction & operation of the sewage facility, and various traffic issues. No letters of support were received. Signs were placed on May 4, 2009, and the case was advertised in the Las Cruces Sun-News on May 3, 2009.

**MOTION: Commissioner Perez** moves to **postpone** Case #EAP09-001/ARCHULETA to June 02, 2009. **Commissioner Benavidez** seconded the motion.

Councilor Small -Yes

Commissioner Benavidez – Yes

Commissioner Perez - Yes

Chair Jones - Yes

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

#### **7. ETZ SUBDIVISION CODE OVERVIEW AND AMENDMENT PROCESS UPDATE AND AMENDMENT PRIORITIZATION FROM THE CITY OF LAS CRUCES COMMUNITY DEVELOPMENT DEPARTMENT**

**Chair Jones** expects policy questions or issues to arise from this exercise. Once this happens, the questions and issues need to be kept track of and a decision will be made about what must then occur. At this point the decision will be made what body will address it and where, here at the county or the city etc... Once we come to an intersection in our work we will then stop and address the policy issue before we continue. As Jennifer Robertson states on the introduction this is a beginning of the revision of disjointed technical aspects of the ETZ Subdivision Ordinance.

**Cheryl Rodriguez** explains how the process is working and how the committee is sharing information with the other concerned parties involved in the revision of the ETZ Subdivision Ordinance.

**Sandy Geiger** request information on public participation on the issues at hand and would like a timeline. She would like to know when the cluster subdivision portion of the ETZ Subdivision Ordinance will be reviewed and completed. How do you implement the existing policy, in the ETZ Comprehensive Plan. Mrs. Geiger would like specific information on the progress and what process of the ordinance will occur next.

#### **8. MINOR SUBDIVISIONS AND LARGE LAND AREA SUBDIVISIONS REPORT UPDATE FROM THE CITY OF LAS CRUCES COMMUNITY DEVELOPMENT DEPARTMENT**

**Commissioner Perez** states that the information given described the proposed subdivisions very well and she had no questions.

**Ms. Jennifer Robertson** asked the Authority if she could answer and questions.

No questions were asked.

#### **9. PUBLIC INPUT: None**

**12. STAFF INPUT:** None

**13. AUTHORITY INPUT:** **Chair Jones** thanked the alternates and the review committee.

**14. ADJOURNMENT:**

**Councilor Small** motions to adjourn.

**Commissioner Perez** seconds the motion.

**Vice Chair Jones** adjourned the meeting at 7:05 p.m.

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Officer: Extra-Territorial Zoning Authority

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Submitted by: Terry Navarro-Peyton, Recording Secretary