

**EXTRA-TERRITORIAL ZONING AUTHORITY
SPECIAL MEETING**

June 02, 2009

THESE ARE NOT VERBATIM MINUTES, THESE ARE SUMMARY MINUTES

MEMBERS PRESENT:

Councilor Gil Jones, Chairman
Commissioner Leticia Benavidez, Alternate
Councilor Miguel G. Silva, Member
Commissioner Karen Perez, Vice-Chairwoman

MEMBERS ABSENT

Commissioner Scott Krahling, Member
Commissioner Oscar Vasquez-Butler, Member

OTHERS PRESENT:

Janine Divyak, DAC Chief Planner
Steve Meadows, DAC Planner
Jonathan Kesler, DAC Planner
Dave Medeiros, DAC Attorney
Terry Navarro-Peyton, DAC Planning Asst.
(Recording Secretary)

1. CALL TO ORDER: Vice Chair Jones called the Special Meeting of the Extra-Territorial Zoning Authority to order at 5:07 p.m., Wednesday, June 02, 2009 in the County Commission Chambers of the Doña Ana County Government Center, 845 N Motel Blvd., Las Cruces, NM.

2. ROLL CALL:

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

3. ANNOUNCEMENTS: None

4. CHANGES TO THE AGENDA: None

**NEW BUSINESS
REVIEW/DISCUSSION/ACTION**

5. 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, & 7-60AIA 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.

Steve Meadows gives a brief 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 ERSM 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:

- What is the definition for spot zoning?
- What type of waste water system will be provided?
- What if the system goes down?
- What does the package treatment plant look like and where will it be located?
- To where will the waste water treatment plant discharge?
- Who will the treatment plant service?
- How many more homes will the treatment plant service?
- Who would own the system after the completion of the project?

Dave Medeiros, DAC Attorney, sworn in. Mr. Medeiros gives a brief definition for spot zoning.

Marty Pillar, representative for applicant, sworn in. Mr. Pillar presents his case to the Authority. He shows what they propose for the development. He discusses the wastewater treatment plant and answers the questions the authority had.

Francisco Mario Ortiz, sworn in; Mr. Ortiz is concerned about the road, Calle De Fira. Burk Rd. was not made for all the development that is being proposed. The sewer plant location is also a problem, he does not like the fact that it is directly across his parcel.

George Olcott, sworn in; Mr. Olcott's concern is urban growth. The Del Rio Drain, the wildlife within the area will be eliminated from the area. There will be more children in the area and the crossing of Burk Rd. is not safe for anyone. There will be more traffic congestion because of school buses, there is no direct access. There is no time frame for this development so that will create more traffic. The density that smaller lots will create will be a problem.

Sheryl Fox, sworn in; Mrs. Fox states a high density subdivision will not fit in that area. There are several farm type animals in the area and this will bother a community that is not fit for a rural type living. There are plenty of developments out in this area already done that have not been completed and still have lots to be sold. This development is not needed. She would prefer to see larger lots in this area, 1-acre or larger.

Jose Flores, sworn in; Mr. Flores shares the same concerns as the other residents that spoke. His main concern is the entrance to the area and he would like the lots to be larger, the 1-acre minimum that is there now within the surrounding area.

Robert Bradshaw, sworn in; Mr. Bradshaw is concerned with the traffic. Burk is not large enough for so much traffic. This development will benefit no one. No one in his surrounding area wants the sewer system. This area is better off with lower density which will have a low impact on the existing road. The wildlife is important to him and his family and feels that this will be eliminated with such a large density proposal. The only benefit to this is greed, more money for the applicant.

Mr. Pillar gives a response to the statement made by those in opposition. Any type of development that goes in will increase the traffic. The traffic will be taken care of by the Traffic Impact Analysis. The location of the sewer plant could be moved if it is more feasible to place it in the back. The water discharged into the Rio Grand will have to comply with all the guidelines for the removal of anything toxic. He states that there will be no effect to the park as long as everything is running right in the plant and would be the same conditions that the City of Las Cruces has to abide by for their sewage treatment plant.

A discussion about what is involved with a Traffic Impact Analysis occurred.

Alfonso Archuleta, applicant, sworn in. Mr. Archuleta gives an estimated asking price for individual parcels. He would like to have site-built homes only; no mobile homes.

MOTION: Commissioner Perez moves to go into closed session for purposes of discussion.
Commissioner Benavidez seconds the motion.

AMENDMENT TO MOTION:

Commissioner Perez, "I move that the Authority convene in close session to deliberate in connection with this administrative adjudicatory proceeding regarding case number EAP09-001 as authorized by the Open Meetings Act 10-15-1H3."

Commissioner Benavidez seconded the motion.

Councilor Silva – yes

Commissioner Benavidez – yes

Commissioner Perez – yes

Chair Jones – yes

Motion passes with a 4-0-0 vote.

Authority goes into close session at 7:22 p.m.

Authority reconvenes at 8:25 p.m. Nothing was discussed in the closed session other than the item identified to go into closed session.

MOTION: Commissioner Perez moves to **Approve** Case #EAP09-001.
Commissioner Benavidez seconds the motion.

Commissioner Perez, "Mr. Chairman, I would kind of like to talk through the process, because we have kind of three pieces of this that we look at when we go through it. The first of them are the Miller criteria which is based on, it gives us a criteria in which to look at a zone change. In going through the Miller criteria, the first is whether or not the zone change is in conformance with the Comprehensive Plan and frankly in my opinion for what ever it's worth there are pro's and con's. There are elements that are in conformance there are elements that are not in conformance in my opinion. The next three criteria are what are important in this case. One is whether or not the request is supported by sufficient change in conditions making the zone change reasonably necessary to protect the public interest. Let's look at the surrounding zoning around the area, well let me go through that. In my opinion it is not supported by sufficient change in conditions. The surrounding area's are 1-acre properties, there isn't a zone change that has taken place recently that effects the property, the commercial zone change that is recently is within that commercial corridor, it was designated in the city and Picacho and that criteria in my opinion was not met. The third criteria is whether or not it is supported by a need to cover or perfect previous defective ordinance, or correct mistakes or injustices, we look at whether or not the existing zoning is appropriate or inappropriate. A simple way of saying it is there's nothing wrong with the zoning that they have right now, there's nothing that's changed in the area that makes this a necessary change, there's nothing unjust about the original zoning, it's consistent with the area in fact it's denser than the exiting area which it's completely surrounded by zoning of a 1-acre zoning. Finally in the Miller criteria presumption that the current zoning district designations are the most appropriate designation has not been over come by the applicant. There's nothing that the applicant has presented that shows that there's any reason really to make this more densely populated than any other area. Let me go through the ordinance criteria for the zone change. Sorry if this is a little long winded but I want you to understand what we go through and we really take a lot of care when we go through the criteria and consider every single thing we're suppose to consider and I think you need to hear that. One is potential number of homes population and demographic, there was some math kind of a little bit of a slide of hand of whether or not the existing zoning would have 141 lots and the new zoning would have the same it really doesn't. There's less acreage when you take out roads or whatever I can't calculate that I'm not the designer on this but the existing zoning would have currently, would have less lots that 141, so it isn't an equal trade and there is a high density proposed and that's very clear to us. Potential traffic flows and where they'll impact again a lot of concern about both road and easement, rural roads the lack of shoulders the ability to access from an emergency basis, this is the benefit of the people who are buying your property that we feel an obligation that when they buy that property they want to know if we looked at it and we said yeah we can get emergency access in there that the potential traffic flows we're not going to see the impact. The third one is the need for new commercial activity obviously doesn't apply here. This potential water and sewer needs, this was a real problem. Not only with the water and the sewer but also with the drainage in the drain that's next to it where there are really no agreements in place. There's no discharge permit, the contradicting letters from Dona Ana, Dona Ana is not really a sewer service, and you have not written agreements in place for EBID. Lot's of good ideas and some proposals in there but there's really no agreements in place and that's really uncomfortable when your proposing a development again we look at the people who are buying these properties and they rely that somebody looked at the zoning and said it's going to work and we haven't seen any proof that those agreement are in place and the support is going to be there, the long term maintenance is in place. Existing infrastructure capacities and ability of existing systems to accommodate new development, we just talked about that, we've got narrow roads, the water service needs to be extended, the sewer service is up in the air, and we've got drains on both sides of it. The difference between the current capacity and what's going to be the impact to the systems that are out there not even in place. There's a couple irrelevant, environmentally sensitive analysis, there's another criteria none of us ever get and the last is the determination of the impact on the proposed zone change on the surrounding properties. Again we look at a change from an agricultural lot that's down in a basin, that's surrounded with drains and river and canals and all of a sudden we want to take that and we want to build it up and we want to put houses on it. It's going to happen with an impact. Filling in that ditch and trying to deal with EBID, whether that gets clogged how do we transition this from one purpose to another purpose and we don't see a clear transition. The final criteria is spot zoning and I'm sure my colleagues will have something to add to this. I looked at

the three pieces we had for spot zoning, in my opinion there is an element of spot zoning, I don't know if I would want to call this illegal spot zoning because that's very dramatic but the first is the disharmony with the surrounding area and I go back to the farm community, the agricultural community, the rural area and I'm going to disagree with Mr. Pillar on the statements that he made. We're adjacent to Picacho Blvd. and we're going to have this dense urban area because it's city and our gate way to the city and all of that and I look at a dense development like that having just driven through Phoenix and say really there is an element do we want it to be exactly like it is right now. I understand the applicants desire to have something nice and have a nice development of site built homes and paved streets and a nice development but by the same token there is no transition you have dense urban and you have rural and there's no transitional area where this has the ability to perhaps be a transitional area with the zoning that it has. My opinion again, the size of the area rezoned, spot zoning is when it's a little tiny thing and maybe it's taken out of context but again looking at that whole area and surrounded by 1-acre zoning there is an element of this just being kind of it's own little island in its own animal. The last part is the benefit of the rezoning to the community or primarily the owner of the parcel, I think that's obvious, we have a lot of unknowns we have issues with drainage and water and sewer and traffic and you know primarily there's nothing in the zoning in my opinion that benefits the community directly so sorry about the long windedness but again I think it's very important that you see we look at this criteria one by one by one and try to fit it into context and really carefully consider what we've heard and what's still hanging out there and make a good decision so those are the notes that I took and you guys tell me what I missed."

Councilor Silva, "Mr. Chair I agree with my colleague there, I believe Commissioner Perez covered it all. I really didn't feel as well that there was no sufficient change in the condition. Listening to the neighbors and the persons that live in the area I did look at the traffic part and even though it's not required by the applicant to provide a TIA at this point, living in the neighborhood and stuff I will put some weight to the towards the persons that live in that area. They know Burk Rd. more than anything and they know that area. At this point I really don't see a benefit or advantages for this and when you look at how it's currently zoned an ER4M and what's being asked for to me there's not much of a change, maybe 20 homes or something. If you continue to develop it as is I don't really see a big difference. I don't really see a significant change to require a zoning change and I think the commission (inaudible) is going to require a higher density. So that's what I looked at and the quality of life and that was what I really felt was going to be effected and you look at traffic and you start looking into the safety issue, how will that area be serviced by emergency vehicles and so forth. One of the other items again which was a major concern in this discussion was the waste water treatment facility and I didn't feel comfortable with the letters that were provided and I didn't feel that there was a high degree of assurance or any type of commitment by Dona Ana Mutual in committing them selves to this project. Those are pretty much my comments."

Chair Jones "Let me review some of my comments. One I would say, just looking at the different set of criteria's, a couple of phrases in our packet I can't argue with and what I'm referring to is on page 3 the discrepancy of the proposed zoning and the existing zoning is contrary to normal transitional zoning design and illustrates the difference between the surrounding rural densities and the proposed urban densities and I think our neighbors have illustrated that a lot. The question about whether there's support by significant change in condition making the zone change reasonably necessary, I didn't see supporting conditions. But one of the key, there's two to three elements that I would point out that would have to be considered. One of the things that was not argued well and is some what neutral is, we're talking about 126 home sites verses 141 rough numbers, and I heard nothing that tilted the pendulum to say when we go from 126 to 141 that the hardship has increased that much so that the hardship is greater. What I heard was or the feeling I got was everybody would like nothing to happen there and I understand that, I hear that all the time but the fact is the right by law is that the owners have the right to build homes there of a rate of about 126 units in that area, rough numbers. That said is probably the biggest concern I had with respect to the waste water treatment issue. This is the area that bothers me a lot we've had cases that we've had to deal with this in the past. There are so many variables associated with the treating of waste water and there are so many variables that were not adequately addressed. Frankly there's a lot of conflicting information provided by Dona Ana Mutual Domestic as to whether the city access would be permissible or whether a local site facility would be the answer and that was very confusing. I'm not sure I would object to this subdivision if I was confident that the city would be the waste water treatment provider because it's not simply to protect the interest of this city it's to protect the interest of the residents if that were the case, I'm not sure how I would vote but if I knew the city was going to be the provider I would be much more assured that we

wouldn't have discharge issues, issues with leach fields discharge in the river, septic systems a threat to local wells all of that would be the case but the language in my understanding is vague in the two letters that we have and we have to rely on what we have. The language is not consistent about what is permissible and what is not and I think it's something in the future we have to work on and we've had cases in the past where basically we considered changes where the City of Las Cruces said yes we will be the provider and Mutual Domestic said, well not in that particular case but it was as if someone had said yes we will go ahead and use the city system but the fact is there is so many unknowns about those systems. Now frankly there's nothing to prohibit the property owners from building the site system there, nothing that we could do that would prevent the property owner to build that system on that area regardless what the zoning is but that said there is a burden on us to, if we're uncertain there is, I am paraphrasing, to rely on the existing zoning. The key to the issues discussed about transition, the density, my concerns about waste water treatment, I cannot support this zone change."

Commissioner Benavidez, "I would like Mr. Chairman to agree with the stated reasons mentioned by Commissioner Perez and I too would like to emphasis that there are no approvals at this moment that are available for the discharge of the water into the Rio Grande, no commitments by either Mutual Domestic or EBID no significant change in conditions and the quality of life in the area will be impacted by level of increase in population and the impact by traffic those are the things that we currently are not sure how that will impact so those are my comments."

Councilor Silva -No
Commissioner Benavidez – No
Commissioner Perez - No
Chair Jones – No

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

6. ADJOURNMENT:

Commissioner Perez motions to adjourn.
Commissioner Benavidez seconds the motion.
Vice Chair Jones adjourned the meeting at 8:43 p.m.

Officer: Extra-Territorial Zoning Authority

Submitted by: Terry Navarro-Peyton, Recording Secretary