

**MINUTES OF THE
EXTRA-TERRITORIAL ZONING AUTHORITY (ETA) MEETING**

**March 20, 2013
5:30 p.m.**

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

MEMBERS PRESENT:

Karen Perez, Chairwoman
Miguel Silva, Vice-Chair
Billy G. Garrett, Alternate
Leticia Benavidez, Member

OTHERS PRESENT:

Dan Hortert, Director, Community Development
Janine Divyak, Chief Planner
Steve Meadows, Planner
Dave Medeiros, Deputy County Attorney
Katherine Harrison-Rogers, CLC Sr. Planner

MEMBERS ABSENT:

Nathan Small, Member
Wayne Hancock, Member

1. CALL TO ORDER

Chairwoman Perez called the Regular Meeting of the Extra-Territorial Zoning Authority to order at 5:40 p.m. Wednesday, March 20, 2013 in the Doña Ana County Government Center, 845 N. Motel Blvd., Las Cruces, NM.

2. ROLL CALL

Commissioner Benavidez	Here
Commissioner Garrett	Here
Vice-Chair Silva	Here
Chairwoman Perez	Here

3. ANNOUNCEMENTS

None.

4. APPROVAL OF MINUTES: February 20, 2013 Meeting Minutes

Commissioner Benavidez made a motion to approve the minutes of the February 20, 2013 meeting, and **Vice-Chair Silva** seconded the motion. By a vote of 3-1-0 with Commissioner Garrett abstaining, the minutes were **APPROVED**.

5. CHANGES TO THE AGENDA

None.

6. PUBLIC INPUT

None.

**OLD BUSINESS
REVIEW/ DISCUSSION / ACTION**

7. MINOR SUBDIVISIONS AND LARGE LAND AREA SUBDIVISIONS REPORT UPDATE FROM THE CITY OF LAS CRUCES COMMUNITY DEVELOPMENT DEPARTMENT STAFF

Katherine Harrison-Rogers, Sr. Planner, City of Las Cruces, presented a report for the month of February. There were only two minor subdivisions submitted and they were processed administratively. Both were for a two lot split and are zoned EV which is the Village District. Erroneously the minimum lot size was listed for the Ramirez Subdivision as 1 acre and for the Killingsworth Subdivision as 2 acres. For the record, the Ramirez Subdivision would have to adhere to the ER6 standards which is a 5,000 sf lot size minimum; the Killingsworth Subdivision would be an EC1 zone which is a maximum of 5 acres. Neither subdivision has any issues that we are aware of. Since the Ramirez Subdivision has smaller lots, that subdivision will need advanced treatment systems if they are to proceed with the subdivision. No large land or major subdivisions were submitted.

Commissioner Garrett asked for clarification about the Killingsworth Subdivision – what is the minimum size.

Katherine Harrison-Rogers responded there was no minimum size; EC1 is a commercial designation and the maximum size is 5 acres. The minimum has to be derived from the minimum width and depth that is specified in that particular zoning district.

**NEW BUSINESS
REVIEW / DISCUSSION / ACTION**

8. CASE # Z13-001: Garcia, 5821 Peachtree Hills Road

Steve Meadows, Planner, presented the case which is a request for a variance to decrease a side yard setback from 15' to 8' in order to permit an existing 32' x 38' carport that has already been constructed without a permit. The lot is zoned ER3M and it is a little over one acre. It contains a 2,600 sf double-wide ground-set mobile home with a septic system. Staff recommends denial of the variance based on the fact the owner is responsible to ensure that a permit is applied for prior to the construction of a structure being built on his property; instead he relied upon his contractor who did not apply for a permit.

Commissioner Garrett noted that surrounding lots of the subject property appear to have structures fairly close to the lot line within the setback, particularly lots 3 and 4.

Counselor Silva noted that lots 13, 11, and 19 appear to have 8' setbacks.

Steve Meadows responded that those lots were within the city. Peachtree Hills is the dividing line between the ETZ and the city, so they have different setbacks in their zoning area.

Chairwoman Perez asked what was located on the west side of the subject property.

Steve Meadows replied the septic was on the north side. Nothing on the west side.

Gilbert Garcia was sworn in and responded that there was a volleyball court on the west side; the leach fields were located on north side behind the house.

Commissioner Silva felt that the setbacks changed drastically from one street to the next, really creating a division between city and county.

Commissioner Garrett noted that to some degree the situation was brought about by the property owner because he did not get the permit when he should have. A lot of this could have been caught and dealt with earlier. Undoing it at this particular point would constitute a hardship. When I look at the rest of the development in this same zone there do appear to be ancillary structures that are closer to property lines. These are one-acre lots so there is plenty of access to the property. Public health and safety are being addressed. I think the intent of the Code is being addressed.

Commissioner Benavidez stated that the carport appeared well constructed. It is not detracting from the property or the neighborhood.

Chairwoman Perez stated that regardless of what the setbacks are in Sunny Acres, there is no question that the surrounding area has had a lot of latitude with accessory buildings. Residents look at adjacent properties and say “well, that’s what everybody has”. They don’t always think to come in and get a building permit because their neighbors didn’t. In this sense, I don’t see it as a special privilege. We always struggle with the fact that it is really hard to tell somebody “no” when they are looking around them and nobody else is coming in to get their variance. I am sure after the triple fees on the building permit, permits will be something that are remembered. I think that point has been made and I think this would violate the third part of the variance where we are talking about having substantial justice done. You have come in and followed up on the process regardless of how you got here. You are doing a quality structure – something to protect your home and your vehicles and this was done in a way that was respectful of your neighbors. I would be surprised if your neighbors came in and protested, but they sure didn’t. That second part where we’re looking at the welfare and whether or not it is injurious to the properties surrounding it - I think we have satisfied that criteria. Based on that and the comments of my three colleagues I think we have met the three criteria for the variance. I would entertain a motion for approval of the variance in this case.

Commissioner Garrett made a motion to approve the request for a variance and **Commissioner Benavidez** seconded the motion. By a vote of 4-0-0, the request for a variance was **APPROVED**.

9. ADMINISTRATIVE APPROVALS

Janine Divyak, Chief Planner, reported for the month of February 8 new single family residential building permits were issued along with permits for additions to two commercial buildings for warehousing. Additionally, 14 mobile home installation permits were issued.

10. STAFF INPUT

Chairwoman Perez asked for staff input on the concept of initial zoning for the Doña Ana Sand and Gravel case, specifically for areas that are contentious, such as at the foot of a recreational area, or having significant tribal or religious interest. How will we be arriving at a process and going forward with it?

Steve Meadows responded that staff was just getting organized on this; they would be gathering the NMSU, BLM, 2040, CLC and other master plans and information to perform comparisons. We want to see what the plans are for this area and from that point begin to do an analysis of what is the most appropriate. Will provide an update next month for the ETA.

Chairwoman Perez said that right now we have industrial, residential, and commercial categories for zoning along with their subcategories. For areas like this one, reverting from BLM, if there is not another zoning category that we ought to be looking at, for areas that are on or adjacent to public lands, that might not be entirely suited for our traditional zoning.

Dave Medeiros, Deputy County Attorney, responded that under the state law we cannot enforce our zoning regulations on Federal lands. There is a particular New Mexico case that says that while we cannot enforce our zoning, there is nothing that says we can't zone it. Theoretically, it is possible for us to zone every piece of Federal and State land and assign a map zoning category to it in the way you normally assign map zoning categories.

Chairwoman Perez said that what we were really looking at is land like the parcel we discussed at the last ETA meeting; a BLM parcel that was turned over to private hands and is there another zoning category other than residential, commercial or industrial that is more suited for lands that used to be public and are now private.

Dave Medeiros responded that the ECN1 zoning is just a stop-gap measure. Instead of going through all of the trouble and zoning it ahead of time while it is in Federal or State hands so that it comes with a zoning category, we're going to give it this temporary assignment. Is there a category that fits? I'm not aware of one. But with this process that the Planning Department goes through in making a recommendation for this initial zoning, you may not get just one recommendation, you may get a list of two things that could be appropriate there. You may end up having to make the decision as to which one is the more appropriate for that particular area.

Commissioner Garrett asked if there might be complementary tools that might go with the zoning – perhaps development standards or processes. I think an important word that came up is “sensitivity”. Sometimes you need to have some process that allows for a particular site to be developed in a particular way around certain kinds of resources or concerns and I am thinking, along with the zoning, it might be development standards or additional processes or complementary pieces rather than just zoning as a category.

Commissioner Garrett inquired if we have, as part of the permitting process, a document that we give the applicant that says here is the zone that you are in, here are the setbacks, if you are going to build a support or ancillary structure or put a garage in, here is the process you need to go through. Do we inform people when they get their permits about subsequent permitting requirements?

Dan Hortert, Director, responded that staff is currently working on that in-house to formalize the streamlined process so that applicants can get all the permit information up front when they first submit their permit.

Commissioner Garrett said that we should take every opportunity to educate the public and to minimize the problems coming in after the fact.

11. AUTHORITY INPUT

Chairwoman Perez brought up for discussion having two extensive items on the agenda at the same time. We should think about what we as a group agree is a reasonable time to call the meeting and reconvene the next morning or whenever we are able to meet as a group. Our decisions at 3:00 a.m. are not going to be high quality as the ones we make at 6:00 p.m. Legal and staff support this. It is also a safety hazard in having older people or people not feeling well having to drive home at 3:00 a.m.

Dave Medeiros said we can do it as a formal policy rather than an amendment to the bylaws. It is covered within the authority of the Chair.

Vice-Chair Silva said that the public is the other component of this discussion of the process. We had well over 30 to 40 people at the beginning and it wound down to just a handful. The public would like to be a part of the process. I think that not only is it the process itself just going forever, but also the fact that we start excluding the public. That's not transparency. I agree that we should look at something different next time.

Commissioner Benavidez recommended 10:00 p.m., 11:00 at the latest.

Chairwoman Perez said that if you adopt a formal policy and say "the ETA is not going to meet after 10:00 or 11:00 p.m." then everyone sitting out there knows what to expect. We had people here that should definitely not have been out and driving after midnight. We were still continuing the meeting and they were afraid they wouldn't get heard. That is dangerous and not how the process should work.

Dave Medeiros said that there is a resolution in place regarding procedures for quasi-judicial hearings before the ETA and ETZ. It would be an appropriate place to put some language about what you would normally entertain as far as how long you are going to go. I would recommend that you not set in stone the absolute time because there may be instances where the Authority and the public want to keep going for a few more minutes to finish the meeting. Since the resolution applies to both the Authority and the Commission, the

resolution will need to go through the Commission. We can ask them to brainstorm for guidance and language.

Commissioner Garrett asked if you were going to be continuing the next morning or postponed until the next regular meeting. It has to do with fairness to the applicant with a timely hearing. What happens if you have agenda items left on the agenda? How do you handle that?

Dave Medeiros suggested that since staff generally has a heads-up for controversial cases and some leeway most often of where to place them on the agenda, staff should try to schedule these types of cases at different meetings. A special meeting can always be called to hear a case that has been waiting.

12. ADJOURNMENT

Vice-Chair Silva made a motion to adjourn the meeting, with **Commissioner Benavidez** seconding the motion. **Chairwoman Perez** adjourned the meeting at 6:40 p.m.

Officer: Extra-Territorial Zoning Authority

Submitted by: Diane M. Duback, Recording Secretary