Las Cruces Extra-territorial Zoning Authority
Las Cruces Extra-territorial Zoning Commission

CITY OFFICES
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TO: Extra-Territorial Zoning Authority
FROM: Extra-Territorial Zoning Commission
PREPARED BY: Sara Gonzales, Planner
DATE: July 28, 2016
SUBJECT: Margaritas Subdivision Replat No. 1 Waiver Request – Appeal

65413A: Margaritas Subdivision Replat No. 1 Waiver Request Appeal
An appeal of the decision of the Extra-Territorial Zoning Commission for case 65413W made on July 7, 2016, denying a waiver request for road improvements associated with a proposed subdivision known as Margaritas Subdivision Replat No. 1. The applicant is seeking to waive the required roadway improvements to the 50-foot-wide road and utility easement created by the subdivision, Margaritas Lane, which provides access to the subdivision which is adjacent to the nearest paved road. The subject property encompasses 5.181 ± acres, is zoned ER4M and is located on the west side of Calle De Las Margaritas, 809 ± feet south of its intersection with Watson Lane; Parcel ID# 03-29734. Submitted by Moy Surveying Inc., on behalf of Manuel and Yolanda Avalos, Olivia Romero, and Lorenzo Villalobos, property owners.

BACKGROUND

Margaritas Subdivision Replat No. 1 proposes four (4) lots on 5.181 ± acres. The subject property will have access from Calle De Las Margaritas which is a local roadway comprised of a 50-foot-wide section of right-of-way with a 24-foot-wide paved road along the proposed subdivision line. ETZC made the decision to approve the waiver for the additional road improvements required on Calle De Las Margaritas including sidewalk, curb and gutter.

The ETZ Subdivision Ordinance, Section 4.2A, states right-of-way improvements shall be required of all subdivisions within the ETZ, except those which may qualify under Section 4.2L (Large Land Area Subdivisions). The ETZ Subdivision Ordinance, Section 4.2C states that all subdivisions shall provide one hundred percent of the required road
improvements to interior rights-of-way. The subdivider is requesting a waiver to the required roadway improvements to Margaritas Lane.

The waiver request for no interior road improvements was not supported by the EDRC (Extra-Territorial Zoning Review Committee) or the Dona Ana County Engineering Department on May 5, 2016. Furthermore, on July 7, 2016, the ETZ Commission considered the waiver request for the subject property for road improvements to Margaritas Lane. The ETZ Commission denied the applicant’s waiver request during the July 7, 2016 due to the discussion of a concerned neighboring property and the current status of the roadway. The denial is consistent based upon the following findings:

1. The applicant is requesting to waive roadway improvements to Margaritas Lane.
2. Section 4.2C states that all subdivisions shall provide one hundred percent of the required road improvements to interior rights-of-way.
3. As specified by Section 6.1 of the ETZ Subdivision Ordinance, the applicant did not demonstrate a substantial hardship due to exceptional topographic, soil or other sub-surface conditions that would otherwise inhibit the objectives of the ETZ regulations.

RECOMMENDATION

The ETZ Commission convened on July 7, 2016 to consider the proposed waiver request. The waiver request was denied by a 3-3 (one Commissioners absent) vote. Additionally, the EDRC convened on Thursday May 5, 2016 and unanimously recommended denial for the waiver request to the ETZ Commission.

OPTIONS

1. Approve the appeal. This action reverses the ETZ Commission decision of denial. The applicant will not be responsible for roadway improvements for the interior right-of-way.
2. Deny the appeal. This action affirms the ETZ Commission decision of denial. The appellant will be responsible for roadway improvements for the interior right-of-way.

ATTACHMENTS

1. Appeal Letter from Applicant
2. ETZ Commission Meeting Agenda and Minutes
3. ETZ Commission Staff Report and Attachments for Case 65413W, Margaritas Subdivision Replat No. 1 Waiver Request
4. Vicinity Map
1: Dunlap Summary Sub. No. 2
1986 Prior to Joint Power 1987

2: Dunlap Summary Sub No. 1 Replat No. 2
1990 Waiver approved
July 12, 2016

Public Works Dept.
Community Development Dept.
City of Las Cruces
700 N. Main Street
Las Cruces, NM 88001

Re: Appeal on the Extra-Territorial Zoning Commission decision to deny the waiver for road improvements for Case 65413W: Margarita's Subdivision Replat No. 1

Department Sirs;

On behalf of our client we are submitting this letter to formally accept this notice to appeal the decision of the Extra-Territorial Zoning Commission decision of July 7, 2016, to deny the waiver for road improvements for Case 65413W: Margarita's Subdivision Replat No. 1 to the City of Las Cruces Municipal Code, Chapter 32 - Design Standards, Article II, Sec. 32-36 - City Streets.

Thank you.

[Signature]
Henry Magahahéz LS# 18078
Moy Surveying, Inc.
Las Cruces Extra-territorial Zoning Authority
Las Cruces Extra-territorial Zoning Commission

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EXTRA-TERITORIAL ZONING COMMISSION
AGENDA

The Las Cruces Extra-Territorial Zoning Commission agenda for a public hearing to be held on Thursday, July 7, 2016 at 6:00 p.m. in the County Commission Chambers at 845 N. Motel Boulevard, Las Cruces, New Mexico.

The City of Las Cruces does not discriminate on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability in the provision of services. The City of Las Cruces will make reasonable accommodation for a qualified individual who wishes to attend this meeting. Please notify the City Community Development Department at least 48 hours before the meeting by calling 528-3043 (voice) or 1-800-659-8331 (TTY) if accommodation is necessary. This document can be made available in alternative formats by calling the same numbers listed above.

I. CALL TO ORDER

II. ANNOUNCEMENTS

III. APPROVAL OF MINUTES – June 2, 2016

IV. POSTPONEMENTS – NONE

V. OLD BUSINESS

1. Case 64783W: Replat of Lot 21, Subdivision “C” EBL&T Waiver Request
   A request for approval of a waiver to the required roadway improvements associated with a replat known as Replat of Lot 21, Subdivision “C” EBL&T. The applicant is seeking to waive the required roadway improvements to Webb Road as well as the required access roadway improvements within the proposed subdivision. The subject property encompasses 4.92 ± acres, is zoned ER5 and is located on the east side of White Thorn Road, 619 ± feet south of its intersection with Westmoreland Avenue; a.k.a. 2595 Webb Road Parcel ID# 03-30038. Submitted by Moy Surveying Inc., on behalf of
Tommy and Sandra Brown, property owners.

2. **Case 65413W: Margarita's Subdivision Replat No. 1 Waiver Request**
   A request for approval of a waiver to the required roadway improvements associated with a replat known as Margarita's Subdivision Replat No. 1. The applicant is seeking to waive the required roadway improvements to Calle de Las Margaritas as well as the required roadway improvements within the proposed subdivision. The subject property encompasses 5.181 ± acres, is zoned ER4M and is located on the west side of Calle de Las Margaritas, 809 ± feet south of its intersection with Watson Lane; a.k.a. 3876 Calle de Margaritas; Parcel ID# 03-29734. Submitted by Moy Surveying Inc., on behalf of Manuel & Yolanda Avalos, Olivia Romero, and Lorenzo Villalobos, property owners.

VI. **NEW BUSINESS – NONE**

VII. **STAFF INPUT**

   1. Monthly Subdivision Report

VIII. **COMMISSION INPUT**

IX. **PUBLIC INPUT**

X. **ADJOURNMENT**
Acosta: Five to one sir, it passes.

Villegas: Five to one. So the waiver request is granted on the portion B which is the waiver request on Webb Road. So that waiver request does pass by a vote of five to one. So that is Case 64783W. Our next case is ...

Acosta: Mr. Chairman if I may interrupt?

Villegas: Oh, go ahead.

Acosta: Do they appeal this to?

Villegas: Yes, this can be, any of our business can be appealed to the ETZA. Am I correct Ms. Gonzales?

Gonzales: Mr. Chair, Commissioner. That is correct. The applicant does have 15 days from tonight's meeting to appeal the case.

2. **Case 65413W: Margarita's Subdivision Replat No. 1 Waiver Request.** A request for approval of a waiver to the required roadway improvements associated with a replat known as Margarita's Subdivision Replat No. 1. The applicant is seeking to waive the required roadway improvements to Calle de Las Margaritas as well as the required roadway improvements within the proposed subdivision. The subject property encompasses 5.181 +/- acres, is zoned ER4M and is located on the west side of Calle de Las Margaritas, 809 +/- feet south of its intersection with Watson Lane; a.k.a. 3876 Calle de Margaritas; Parcel ID# 03-29734. Submitted by Moy Surveying Inc., on behalf of Manuel and Yolanda Avalos, Olivia Romero, and Lorenzo Villalobos, property owners.


Gonzales: Mr. Chair this is Margarita Subdivision Replat No. 1 Waive Request for a property that is located at 3876 Calle de Las Margaritas for Case 65413W.

Best: Mr. Chairman. This is a new case; doesn't she have to be sworn in again?

Acosta: Yes. Ms. Gonzales can you raise your right hand for me. State your name and address for the record.

Best: Sorry.

Acosta: No thank you ...
Gonzales: Sara ...

Acosta: Mr. Best, or Commissioner Best. I was working on the tallies here. Go ahead.

Gonzales: Sara Gonzales 700 North Main Street, City of Las Cruces Planning.

Acosta: Ms. Gonzales do you swear and affirm the testimony you are about to give is the truth and/or, truth and nothing but the truth under penalty of law?

Gonzales: Yes.

Acosta: Thank you ma'am.

Gonzales: Okay. So this is the location for the case. It is located on the west side of Calle de las Margaritas. It is about 809 feet south of Watson Lane. The property is approximately 5.181 acres and they are also proposing a four-lot subdivision. This is the subject property that is to be subdivided. In front of the property on Calle de Margaritas the access entrance way is only a 50-foot wide entrance. So off of Calle de Margaritas the road is a paved road, however once again we are back to it does have to meet City standards. The zoning for it is the ER4M which does require the City of Las Cruces Design Standards. They are also proposing a waiver from the interior road and utility access easement that is provided for the four interior lots. This is the proposed subdivision. As you can see towards the east side of the property on Calle de las Margaritas it is only 50 feet wide. That will be complete entrance in for the property. So that easement will be utilized for those four lots. Through the center of it which is, we will call it at this point a.k.a. Margaritas Lane, it has not been addressed yet of course. They are providing the 50-foot width but they are asking to only do a gravel surface as well for the easement that is provided for these four lots that will be developed.

Once again the ETZ code does require that you do pave to the nearest paved road; in this case the requirements are being met, however they are required to do curb, gutter, and sidewalk only for that 50-foot section, not the entire roadway, not all the way to Watson, but just the 50-foot entrance into their property. The other waiver they are requesting is for section 402., 4.2C which does require that any roadway improvements within an interior lots that are being developed be improved as well. So everything through Margarita Lane since it is an access road and utility easement would need to be improved. This is the picture of what the road would look like, but only for that 50-foot section. Once I show you the pictures for what the area is located, it is a paved road, however this would be towards the middle of these properties. In this case the applicant is requesting two waivers, once again, one from the road improvements for Calle de Margaritas for curb, gutter, and sidewalk, the
second would be for the road improvements required for the utility and road access easement provided for the four lots.

These are the pictures on the outside of the property. Within the property it is a fenced off area that is basically, you'll just see plants, vegetation, natural state. It has not been graded, it is not changed. The roads to each side of Calle de Margaritas do show that it is a paved roadway. This was the notification map that was sent out for all the properties that were located within the area of the 300 feet that is required. We did attend EDRC on May 5th, however we did propose denial, or recommend denial from staff cause it does not meet any topography or hardships from the soil or subsurface areas.

This is the moment where you have to vote; "yes" to approve the waiver request; vote "yes" to approve the waiver request with conditions; vote "no" to deny the waiver request; or postpone. This is a map of the subject property again. And I stand for questions and of course the applicant is here and their representative as well.

Villessas: Are there any questions from the Commission for Ms. Gonzales?

Townsend: Fifty feet.

Villessas: Ms. Gonzales as, as with the other one, there's a difference in the roadway that is a 50 foot to the subject property that goes to Calle de las Margaritas and then the roadway that is within the subject property?

Gonzales: Mr. Chair. That is correct. The 50 feet that is indicated at the east side of the, or directly on Calle de Margaritas, that section is where you would have road improvements of curb, gutter, and sidewalk only on Calle de Margaritas. Within the proposed subdivision, of the four lots, would be required the 24-foot double penetrated surface for the access utility easement.

Villessas: Okay. So within the subdivision is what, for reference, similar to what we just had the prior applicants do on their eastern borderer?

Gonzales: Mr. Chair, Commissioner. That is correct.

Villessas: Okay. And what is in front of is what we granted a waiver on in front of the subject property which was, I forget the name of the street already.

Gonzales: Mr. Chair. On Webb Road ...

Villessas: Uh huh, Webb Road.

Gonzales: That is correct that it, they are the same similarities of this proposed subdivision.
Villecas: Okay, difference here is that this 50-foot roadway doesn't, doesn't go, isn't one of those that goes nowhere. I mean this on is definitely going from Point A to Point B.

Gonzales: Mr. Chair. Correct. That is within the subdivision itself. It will never go out. It has its own cul-de-sac in order for fire and emergency vehicles. It is within the subdivision.

Villecas: Yeah. Okay. Anyone else have any questions for Ms. Gonzales?

Best: Mr. Chairman.

Villecas: Please.

Best: Just for clarification Mr. Gonzales, that little ...

Townsend: Bottleneck.

Best: Top of the, top of the Tequila bottle. Is there anything there now? Or is that undevelop, completely undeveloped.

Gonzales: This is directly in front of that property. It is basically just a paved roadway and on the sides is the gravel and then the brush that is just grown. On each side, I'm basically standing in the middle of the property when I took the two pictures so you see one side to the left, one side to the right of that subject property.

Villecas: And this is where the, this is the, the, the shorter section which would be taken up to City code.

Gonzales: This would be the section that is only 50 feet wide and that's where they would make the 50-foot cross section.

Villecas: Okay.

Gonzales: That is correct. Mr. Chair.

Villecas: Got it.

Hearn: I thought I understood but I'm not sure I do. Mr. Chairman may ...

Villecas: Yeah go ahead Mr. Hearn. I, I, I've got it but go ahead.

Gonzales: Let me see.
Hearn: Okay.

Gonzales: Let's go this picture.

Hearn: That's no helping. Okay.

Gonzales: This picture.

Hearn: The, the top of the Tequila bottle, how long is that?

Villegas: The neck?

Gonzales: Mr. Chair, Commissioner. The neck of that ...

Hearn: Yeah.

Gonzales: Is showing 290 feet based on the survey.

Hearn: Okay. And that, that, is that the picture that you were just showing us the photograph?

Gonzales: Mr. Chair. No. We're looking off of Calle de Margaritas. We're looking at the roadway that is directly in front of it, that is adjacent to that bottleneck.

Hearn: But ...

Gonzales: Calle de Margaritas is right here.

Hearn: Right.

Gonzales: So this is the piece, this little 50-foot, right where it says 50 feet, that is the section in which the applicant would have to improve to curb, gutter, and sidewalk.

Hearn: But your photographs weren't, weren't of what's there now. That, what, what is there now?

Gonzales: The photographs that I was taken, that I took, I'm standing in Calle de Margaritas Street, right in front of the property, directly adjacent, in front of it. So what would have to be improved would be the curb, gutter, and sidewalk.

Villegas: Okay, on Margaritas Lane.

Gonzales: Margaritas Lane is the access road utility easement.
Villegas: Okay.

Gonzales: That is the one that would be improved only to the 24-foot wide double penetrated surface. That's the access easement for just the four lots to access.

Villegas: Okay.

Gonzales: The access that it's getting from the main street is Calle de Margaritas.

Villegas: Okay.

Gonzales: That's that 50-foot section at the edge of the bottle.

Villegas: Good question Mr. Hearn.

Hearn: Still not tracking.

Villegas: Okay now, actually you just clarified it for me.

Hearn: Good.

Villegas: Yeah, so what is going to City Design Standards is 50-feet wide, by how far across is that? Ms. Gonzales.

Gonzales: Mr. Chair, Commissioner. It's a, it's a local roadway so it would require the 50-foot cross-section.

Villegas: See from you know what I mean, I, I know it's 50 foot across but how, how long I guess is my question.

Gonzales: It would be 50 feet wide; 50 feet across ...

Villegas: Right.

Gonzales: And then 50 feet wide ...

Villegas: Oh, okay.

Gonzales: It's 50 by 50.

Villegas: Okay.

Hearn: Curb, curb, gutter, and sidewalk.

Gonzales: Mr. Chair, Commissioner. Yes.
Vilascas: I see. I see. Okay.

Hearn: Good. Okay.

Vilascas: And then ...

Hearn: No wonder I couldn't understand it.

Vilascas: And then Margaritas Lane is how long from Calle Margaritas till the turnaround, the last, the second turnaround, the final turnaround.

Gonzales: Calle de Margaritas is about 674 feet.

Vilascas: Okay.

Gonzales: You can see the line that runs directly through the middle.

Vilascas: Uh huh. That one.

Gonzales: And that's where the other property intersects almost to that cul-de-sac area. So it starts from the edge of the property line and goes into it to the west side. Once it gets to that cul-de-sac area it's about 674 feet to there. So ...

Vilascas: And that ...

Gonzales: So a few more feet additional for that cul-de-sac.

Vilascas: Okay. And not, not including the, the cul-de-sac since it's 24 foot.

Gonzales: Mr. Chair. Correct.

Vilascas: Okay. And that's not a, curb/gutter, that's just 24 feet, again not counting the cul-de-sacs.

Gonzales: Mr. Chair. Correct. It is just for the access of those properties.

Vilascas: Okay.

Hearn: And there is a request for a waiver for that as well.

Gonzales: Mr. Chairman. Commissioner. Yes, that is correct. The first waiver is the 50 by 50 cross section.

Hearn: Right.
Gonzales: The second waiver is for that access so including the, the two cul-de-sac areas, the bubbled out areas, that's the access road easement. They're asking for the waiver there. They would like to just provide the gravel roadway for access.

Hearn: As opposed to the double penetration which is in the, in the standards?

Gonzales: Mr. Chair. Correct.


Villegas: Yeah. That's why I said it's so similar because I mean different place, but it's a, the 24 foot in this case is down the center whereas in the previous case it was on the side. I think we got it.

Gonzales: Okay.

Best: The fact that it was 50 feet.

Villegas: Commissioner Best you got it.

Best: Yes.

Villegas: Okay. Any other questions for Ms. Gonzales? Thank you.

Gonzales: Okay.

Villegas: Would the applicant care to come forward? Oh, hang on one second.

Hearn: We've got to swear you in again sir and I got the duty this time.

Villegas: Okay, go ahead Mr., Mr. Hearn.

Hearn: Your name and address.

Magallanex: Henry Magallanex with Moy Surveying, 414 North Downtown Mall, Las Cruces, New Mexico.

Hearn: Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Magallanex: I will.

Hearn: Thank you.
Villegas: Please go ahead.

Magallanez: Again thank you for the opportunity. Margaritas, I mean this Margaritas subdivision was a three-lot subdivision and what you're looking at is almost like a bottle, is the neck of a bottle and then it's a wide section on there. The two little lots next, next to the neck were separate but part of this subdivision. Those are separate lots. So the only access to this lot was that 50-foot strip of land which is the neck of this bottle that's, it's been referred to here. The only frontage this property has is the 50-foot frontage. It's a 50-foot frontage and again we're, we're requesting the waiver for any, since Margaritas is paved, for any addition of road improvements, sidewalks, curb, and gutter of that nature. Even if you put sidewalks and curb and gutter you're gonna have a pavement of let's say 24-feet or 30-feet of pavement that you're having it there which would require, 24-feet will require for the subdivision access, that would give you about a 12-foot section of sidewalk in that particular area. So in this particular case you know Calle de Margaritas does not have any sidewalks at all. There's no sidewalks all along this strip of Calle de Margaritas. There are no sidewalks on this property here.

The road easement, the road easement, the private road easement that's in there, it has two cul-de-sacs in there for fire trucks and, of that nature. This would be improved to gravel, base course type roadway. The split of this property here is a group of people bought the property and having all of their names as three ownerships. And that, what they want to do is split up the property to give each of them their actual ownership. The two properties in the south will be one owner, so they'll actually two separate properties and then a third and the fourth would be the two top ones. The, again we are looking at very much like the, the case previously, we are looking for two waivers, one for the improvements to Calle de Margaritas and the other one to the pavement of what we call Margaritas Lane, but this is a private roadway. It's, it's not gonna go anywhere else. This is totally enclosed into this subdivision. The, on the east, west side, excuse me, there's a drain belonging to Elephant Butte Irrigation District and that's gonna be there. And so this is gonna be limited only to these four lots. It's a private road easement again, so we are requesting approval for the waiver. We have the owners here and if you have any particular questions to them and stuff like that I'd like to have them come up. Thank you. I guess I should wait to see if there's any questions of me.

Villegas: Any questions from the Commission? Looks like we're good. Thank you.

Magallanez: Thank you.

Villegas: Please come up. If you could state your name and address for the record, Ms. Acosta will swear you in.
Avalos: Okay, my name is Manual Avalos and I live on 860 Dunlop, Mesilla.

Acosta: Mr. Avalos do you, do you swear and affirm the testimony you are about to give is the truth under, truth and nothing but the truth under penalty of law?

Avalos: Yes I do.

Acosta: Thank you.

Avalos: We bought this property about, I would say about a year and a half ago and when we bought this property it was all trashy. It was just a bunch of bushes and dirt and trash from the neighbors. This property is surrounded by trailer parks. Okay, so there's three trailer parks around this property. And this property, these trailer parks, they just have gravel roads. They don't have pavement at all. I live on 60, 860 Dunlop and I have to go through 860 Dunlop to go to my house, it's a, it's all gravel also. I've lived there for 30 years now on that property and we have maintained that property every since I lived there. There's four, four neighbors that we have maintained that road ever since and that's one of the things that we would like to do on this also on this other property, one of the neighbors that's back there, his name is Lorenzo, he upgraded his property not too long ago. He planted like 15 pecan trees and the neighbor, Mauricio also planted 10 of them. I'm the owner of the two properties on the south side. My house is behind the two properties on the south side. And we would really like to get that waiver from you all and, to let you guys know, that properties subdivision doesn't have a name yet but I heard somebody said Tequila Bottle, that's gonna be it, if it's approved. Thank you.

Vilascas: Thank you.

Avalos: Thank you.

Vilascas: At this point I'll open it up to the public. If there's any members of the public that would like to come forward and comment on this case, please do so. Is there anyone that would like to come forward? Please come on up. If you could state your name and address for the record, Ms. Acosta will swear you in.

Beal: My name is Jimmy Beal and I own the property directly adjacent to that, to the north of this proposed subdivision. The address there would be, oh there's three addresses; there's 3848, 3850, and 3852 Calle de las Margaritas. Again they're the property directly to the north of this proposed subdivision. I've got several concerns ...
Acosta: Sir ...

Villegas: Once sec, we need to get you sworn in.

Beal: Go ahead. I'm sorry.

Acosta: So can you say your last name for me once more ...

Beal: Beal. It's B as in boy, E as in apple, A as in apple, L.

Villegas: Property. Property four.

Acosta: Okay. Sir could you raise your right hand for me. Thank you. Do you swear and affirm the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Beal: I do.

Acosta: Thank you sir.

Villegas: Please go ahead sir.

Beal: I am not opposed to the subdivision however, and I'm not opposed to the, to the variance of disallowing the, it just makes common sense of the 50-foot there on Calle de las Margaritas. What I am opposed to is the, the improvements to the lane itself, whatever you want to call that lane. My question would be on the, one of the questions is on the 50 feet that you have there that is on Calle de las Margaritas and maybe staff can clear this up for me, but when you enter into that property and that 50-foot there, who owns the property to, directly to the north and to the south of that?

Villegas: On, you're talking about on the, on the, on the ...

Beal: Right where the ...

Villegas: The bottleneck itself?

Beal: Yes sir.

Villegas: The bottleneck.

Beal: The bottleneck itself. The north and the south lots there that are gonna be created by this four-unit lot subdivision, because ...
Villescas: It won't be created. They already exist.

Best: Twelve and 13.

Villescas: They're, they're on the, the list. Am I allowed to disclose that Ms. Gonzales?

Gonzales: (shakes head yes).

Villescas: I am. On one side it's Rudy Chavez, on the other side it's Sapna LLC.

Beal: Okay, so these are different owners then with respect to, with respect to the owners that are asking for the subdivision, is that correct?

Villescas: Correct.

Beal: Okay. So going forward with that then and having the property directly to the north of that that just touches up there on their northeast corner, my concern would be is that a single gravel road there is not going to work guys. We bought this property 30 years ago that is there to the north. I have stuck several vehicles in that lot. It is blow sand. It's not gonna cut it. So that would be one concern there. My other concern would be of course for emergency vehicles to enter into that property and attain it because this property, and it's not really to the south of the property, those are, those are houses. To the north I've got that lot there. To the northwest of that property, that is a mobile home park. I believe it's still named Scotia Mobile Home Park, I don't really know. Directly across Calle de las Margaritas are also mobile home parks. If there is a fire down there that would be cause for safety for everyone there with respect to not being able to get into that property that they're proposing to subdivide to create some sort, some type of fire barrier there between the two parks themselves. I, I can just see it, it's, it's, could be a very you know destructive tinderbox there. One of my other concerns would be that having done so with this and not giving legal access there is the utilities that go there. When I subdivided the property to the north, I have to comply with all of that. And one of the reasons it was given for me having to comply with that was because it had directly affects property values and I'm concerned that if we allow this as ETZ and one of their responsibilities, I was around when it was first implemented. One of the responsibilities is to make the properties that come into the City comply with current City rules and regulations. That's my understanding of why that, why that's like that. So I had to bear the cost of improving that. I actually had to give a utility easement to that mobile home park with respect to water utility easement that runs along the north side of my property in order to get Jornada Water down to the subdivision that, where I subdivided. So those
are kinda my concerns with respect to that. I appreciate your time. Thank you.

Villegas: Mr. Beal just for your information, the reason that that 24-foot road is required by the City down the center of the lot is exactly for what you stated, for safety.

Beal: Absolutely.

Villegas: For, for fire and that's why it's double pen, and that's why it's, it's required for the City.

Beal: I don't really have a problem ...

Villegas: Yeah.

Beal: With the, with the, you know double permeable base, but, and I'm not an engineer either.

Villegas: Yeah.

Beal: But Calle de las Margaritas started off as a gravel road guys. They go in there and in order to get the double permeable base, there's pavement on it now.

Villegas: Yeah.

Beal: But that's not really going in there and putting asphalt down.

Villegas: Right.

Beal: That's going in there and putting a single aggregate down, tarring the aggregate and then compacting that aggregate to get your double permeable base. It's not really asphalt, so that's kind where I'm headed with this you know with respect to that. I'm not in favor of curb and guttering something that doesn't need to be, believe me.

Villegas: Yeah.

Beal: That's, that's, that's kinda not the purpose of ...

Villegas: But the interior road.

Beal: Sure.

Villegas: Like you referred to for fire and safety.
Beal: I would like to see, I would like to see you know utility access down there and you know make it safe.

Vilaschas: Yeah. The other thing you referred to is, is, is cost.

Beal: Sure.

Vilaschas: You know and, and, and like you said you, you bore the cost.

Beal: We did.

Vilaschas: You know and, and to me you know when you subdivide it's, you know if you're gonna subdivide there's, there's cost.

Beal: The easement wasn't actually, the utility easement to Jornada Water was actually a condition of me being able to just to, to split that property once.

Vilaschas: Yep.

Beal: Not, not four times. Just once.

Vilaschas: Yeah. Yeah.

Beal: So my understand …

Vilaschas: And there's a cost, and there's a cost to it.

Beal: Sure. There, there was. Yes sir.

Vilaschas: Yeah. Yeah.

Beal: Thank you so much.

Vilaschas: All right. Thank you. Is there anyone else from the public that would like to make a comment?

Magallanes: Again my name is Henry Magallanes, I'm Moy Surveying. There is an easement through that 24, that property in there so there is an easement for sewer, water, whatever utility name be there. Again, a lot of the roads adjacent to this mobile home, I mean the subdivision, are not in private roads and they're not paved, they're gravel roadways and stuff like this here. Again we would like for you to consider the variance for not paving this portion and again for Calle de Margaritas, the 50-foot section. Thank you.
Villegas: Are there any other members of the public that would like to come forward? If not, we'll close it off to the public and open it up to the Commission.

Hearn: Mr. Chairman.

Villegas: Mr. Hearn,

Hearn: It seemed helpful in the previous case to split it up to talk about each of the requests separately, so I move that in Case 65413W we consider each of the waiver requests separately.

Villegas: Do we have a second?

Best: Second.

Villegas: Any discussion? If not, Ms. Acosta would you poll the Commission.

Acosta: Commissioner Allin.

Allin: Aye.

Acosta: Commissioner Hearn.

Hearn: Aye.

Acosta: Commissioner Best.

Best: Aye.

Acosta: Commissioner Townsend.

Townsend: Aye.

Acosta: Commissioner Acosta votes aye. And Mr. Chairman.

Villegas: I vote aye. And again since there's no rule on, on which way to order them, I will do so and we'll start with the interior road, that's the 24-foot double pen that goes through the center of the property, we'll call that one 65413W A, we'll take that one up first, followed by the one on Calle de las Margaritas which is the City code, curb, gutter, we'll call that one 65413W B. So we shall start with discussion on 65, well, actually we would need a motion first on 65413W A which is the interior road, 24-foot double pen through the interior of the property.

Hearn: Mr. Chairman.
Vilicescas: Mr. Hearn.

Hearn: I move to approve Case 65413W A for the waiver on the required paving on the access road.

Townsend: Second the motion.

Vilicescas: So we have a motion and a second on 65413W A, that's the interior road, 24-foot double pen road through the interior of the property. Do we have any discussion? Not to make myself repetitive, but you all have heard me say case after case after case I am a big proponent of those roads for the purpose of fire trucks, police, safety, I think it's important no matter what the rest of the neighborhood has, that any opportunity we have to make these neighborhoods safe for fire trucks which are quite heavy, to have the ability to go in there and keep the area safe, that we don't pass these opportunities by to put in these roads and you know any time that you subdivide it comes with a cost and I think that's just part of the cost and it's a matter of public safety. So I would like to see this 24-foot double pen road put in place. Any other comments, questions? Ms. Gonzales is, has the podium if anyone has any questions of Ms. Gonzales. If there's no further comments or questions, Ms. Acosta would you poll the Commission.

Acosta: Commissioner Allin.

Allin: Aye.

Acosta: Commissioner Hearn.

Hearn: No.

Acosta: Commissioner Best.

Best: No.

Acosta: Commissioner Townsend.

Townsend: Aye.

Acosta: Commissioner Acosta votes aye. And Mr. Chairman.

Vilicescas: No.

Acosta: Three/three sir. It does not pass.
Villocas: Okay. That's 65413W A, does not pass. So the waiver request there is
denied. Again you can appeal that to the ETZA. Now we'll take up 65413W B which is the improvements or the waiver request to Calle de las Margaritas, the 50-foot to City standards. Do we have a motion?

Hearn: Mr. Chairman.

Villocas: Mr. Hearn.

Hearn: Move to approve Case 65413W B, a request for waiver to meeting the City standards on the small piece of road on Calle de las Margaritas.

Villocas: Do we have a second?

Acosta: I'll second that.

Villocas: Do we have any discussion?

Hearn: Mr. Chairman.

Villocas: Mr. Hearn.

Hearn: I guess just this, this seems clearly to me an, another case where putting the curb, gutter, and, and all that pavement right in the middle of that road would, would be a hindrance to traffic safety and all sorts of things. It just doesn't seem to be the right thing to do. Thank you.

Villocas: Any other comments? I think, you know I was, I was leaning the other way until I heard Mr. Beal who was in a similar situation and did go through a, a great deal of expense and did his due diligence and did his thing, his properties the right way and he didn't have any problem with that waiver and didn't feel it was necessary. I first looked at it and thought, well you know what that's, that's one-sixth of that entire road, unlike the other cases where it was just a tiny portion of a huge road, so I said well you know one-sixth, that's you know like 18%, but I think Mr. Beal swayed me the other way. But anyway, that's just my comments. Anyone else have any comments? If not, Ms. Acosta would you poll the Commission.

Acosta: Commissioner Allin.

Allin: Could we have both sides of the question please, restated.

Villocas: It's the waiver request to get a waiver for paving the portion that's on Calle de las, de las Margaritas to City standards 50-foot curb and gutter. Yeah to approve the waiver, no to deny it.
Allin: Yeah.
Townsend: He voted yeah.
Acosta: Commissioner Hearn.
Hearn: Yes.
Acosta: Commissioner Best.
Best: Yes.
Acosta: Commissioner Townsend.
Townsend: Yes.
Acosta: Commissioner Acosta ...
Villessas: That's you.
Acosta: I know but I was stuck. I just lost my chain of thought. So this is where they don't have to put it in correct?
Villessas: If you vote yes, you're granting the wavier and they would not have to put it in.
Acosta: Okay. Yes. Chairman, Mr. Chairman.
Villessas: I vote yes.
Acosta: Five to one sir. It passed.
Villessas: Okay. At one, that waiver passes
Magallanez: Six to none.
Acosta: Six to none, so sorry. I apologize.
Villessas: Six to six to zero.
Gonzales: Yes.
Magallanez: I'm sorry,
Acosta: No, thank you it's been one of those nights.
ETZ Commission
Staff Report

Meeting Date: June 2, 2016
Drafted by: Sara Gonzales, Planner

CASE # 65413W
PROJECT NAME: Margaritas Subdivision Replat No. 1 Waiver Request

APPLICANT/ REPRESENTATIVE: Moy Surveying Inc.
PROPERTY OWNER: Manuel & Yolanda Avalos, Olivia Romero, and Lorenzo Villalobos

LOCATION: Located on the west side of Calle de Margaritas, 809 ± feet south from Watson Lane
SIZE: 5.181 ± acres

EXISTING ZONING: ER4M
REQUEST/ APPLICATION TYPE: Waiver request from roadway improvements

EXISTING USE(S): Vacant/ undeveloped
PROPOSED USE(S): Four (4) Single-family residential lots

STAFF RECOMMENDATION: Denial based on findings

TABLE 1: CASE CHRONOLOGY

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
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<tbody>
<tr>
<td>April 07, 2016</td>
<td>Application submitted to Development Services</td>
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<tr>
<td>April 07, 2016</td>
<td>Case sent out for review to all reviewing departments</td>
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<tr>
<td>April 15, 2016</td>
<td>All comments returned by all reviewing departments</td>
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<tr>
<td>May 5, 2016</td>
<td>EDRC reviews and recommends denial of the waiver request</td>
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<tr>
<td>May 15, 2016</td>
<td>Newspaper advertisement</td>
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<tr>
<td>May 18, 2016</td>
<td>Public notice letter mailed to neighboring property owners</td>
</tr>
<tr>
<td>May 18, 2016</td>
<td>Sign posted on property</td>
</tr>
<tr>
<td>June 02, 2016</td>
<td>ETZ Commission public hearing</td>
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SECTION 1: SYNOPSIS OF PROPOSAL
The applicant is requesting a waiver from the required roadway improvements from the Extra-Territorial Zone (ETZ) Subdivision Ordinance for a subdivision proposal known as Margaritas Subdivision Replat No. 1. The subdivision proposes to split one (1) existing 5.181 ± acre tract into four (4) new single-family lots, which is considered a minor replat and will be processed administratively. The applicant requests that all adjacent roadway improvements and the interior access for each lot of the subdivision be waived.

TABLE 2: DEVELOPMENT STANDARDS & SITE CHARACTERISTICS

<table>
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<th>Standard</th>
<th>Existing</th>
<th>Proposed</th>
<th>ER4M Code Requirement</th>
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<tr>
<td>Min. Lot Area</td>
<td>5.181 ± acres</td>
<td>Lot 3A: 1.415 ± acre</td>
<td>1/2 acre minimum</td>
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<td></td>
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<td>Lot 3B: 1.248 ± acre</td>
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<td></td>
<td>Lot 3C: 1.139 ± acre</td>
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<tr>
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<td></td>
<td>Lot 3D: 1.379 ± acre</td>
<td></td>
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<tr>
<td>Min. Lot Width</td>
<td>226 ± feet</td>
<td>Lot 3A: 114 ± feet</td>
<td>100 feet minimum</td>
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<tr>
<td></td>
<td></td>
<td>Lot 3B: 143 ± feet</td>
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<td></td>
<td>Lot 3C: 137 ± acre</td>
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<td></td>
<td></td>
<td>Lot 3D: 112 ± acre</td>
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<tr>
<td>Min. Lot Depth</td>
<td>714 ± feet</td>
<td>Lot 3A: 384 ± feet</td>
<td>100 feet minimum</td>
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<td>Lot 3B: 360 ± feet</td>
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<td>Lot 3C: 330 ± acre</td>
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<td>Lot 3D: 384 ± acre</td>
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<td>Min. Building Height</td>
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<td>Lot 3B: N/A</td>
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<td>Lot 3C: N/A</td>
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<td></td>
<td>Lot 3D: N/A</td>
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<tr>
<td>Road Improvements</td>
<td>Calle de Margaritas: (right-of-way)</td>
<td>No improvements proposed</td>
<td>Sec. 4.2 requires adherence to City of Las Cruces Design Standards</td>
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<tr>
<td></td>
<td>• 50-foot-wide, 24 foot paved roadway</td>
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<td></td>
<td>• Margaritas Lane: (road and utility easement)</td>
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<tr>
<td></td>
<td>• 50-foot-wide graveled roadway</td>
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TABLE 3: SPECIAL CHARACTERISTICS

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<tr>
<th>Characteristic</th>
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TABLE 4: ADJACENT ZONING AND LAND USE INFORMATION

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<tr>
<th>Location</th>
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<tr>
<td>Subject Property</td>
<td>Vacant/undeveloped</td>
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<td>North</td>
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<td>South</td>
<td>Single-family dwelling</td>
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<td>East</td>
<td>Mobile Home park</td>
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### TABLE 5: PARCEL HISTORY

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<td>Variance</td>
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### SECTION 2: REVIEWING DEPARTMENT/AGENCY RECOMMENDATIONS

For specific comments and/or conditions, see attached

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<tr>
<th>Department Name</th>
<th>Approval (Yes/No)</th>
<th>Conditions (Yes/No)</th>
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<td>CLC CD Engineering Services</td>
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<td>DAC Fire</td>
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<td>DAC Flood Commission</td>
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### SECTION 3: STAFF ANALYSIS AND CONCLUSIONS

The applicants are proposing a waiver from road improvements that are associated with the subdivision of one (1) existing 5.181 ± acre single-family residential tract zoned ER4M into four (4) new single-family residential lots that meet all development standards of the ER4M zoning district. The Extra-Terrestrial Zone Subdivision Ordinance and Design Standards require all subdividers to provide the necessary amount of road improvements to all streets adjacent to the proposed subdivision. Those requirements are outlined below:

**Calle de Margaritas**

The proposed replat is adjacent to and has direct access to Calle de Margaritas, a Local roadway as classified by the Mesilla Valley Metropolitan Planning Organization (MPO), which is the only adjacent roadway. Calle de Margaritas is currently comprised of a 50-foot-wide section of right-of-way with a 24-foot-wide paved road along the proposed subdivision line.

Pursuant to Section 4.2A and 4.2B of the ETZ Subdivision Ordinance, all ETZ subdivisions shall be required to provide right-of-way improvements. Roadways designated by the Mesilla Valley Metropolitan Planning Organization (MPO) Major Thoroughfare Plan shall comply with City of Las Cruces Design Standards for right-of-way improvements. This requires the applicant to provide right-of-way improvements to the 50-foot-wide right-of-way section including sidewalk, curb and gutter for the 50 ± liner feet adjacent to the subdivision line. The applicant is proposing to provide no right-of-way improvements with this proposed waiver.

**50-foot Road and Utility Easement**

The proposed replat is creating a 50-foot-wide road and utility easement to provide access for each lot from Calle de Margaritas. Pursuant to Section 4.2C, all subdivisions shall provide one hundred percent (100%) of the required road improvements to interior rights-of-way. The applicant is proposing to provide no right-of-way improvements with this proposed waiver.
Pursuant to Section 6.1 of the ETZ Subdivision Ordinance the Extra-Territorial Zoning Commission (ETZC) has the ability to vary, modify or waive requirements of the ETZ Subdivision Ordinance when strict compliance with the requirements would result in a substantial hardship to the subdivider because of exceptional topographic, soil or other surface or sub-surface conditions, or that these conditions would result in inhibiting the achievement of the objectives of the ETZ Subdivision Ordinance. The applicant has not demonstrated the waiver is warranted due to any of the provisions specified by Section 6.1 of the ETZ Subdivision Ordinance.

EDRC RECOMMENDATION
On May 5, 2016, the Extra-Territorial Development Review Committee (EDRC) reviewed the proposed waiver request. Discussion was limited, but it focused on the required roadway improvements required of the applicant and a brief history as to how the roads ended up the way they are now by the Dona Ana County Engineering Department. Furthermore, as areas throughout the County have been developed and waivers to road improvements granted, the proliferation of roads that are not improved to City standards has created access issues that have the potential for safety hazards as well as a monetary burden to the City and Citizens of Las Cruces for the future improvement to these roadways to rectify their inadequacies. After the discussion, the EDRC voted to recommended denial of the waiver request.

STAFF RECOMMENDATION
Based on the ETZ Subdivision Ordinance, and an unfavorable recommendation from the EDRC, staff recommends DENIAL of the waiver based on the following findings:

FINDINGS FOR DENIAL
1. The access roads to the proposed subdivision, Calle de Margaritas and the road and utility easement, do not meet the minimum standards required by the ETZ Subdivision Ordinance.
2. Section 4.2 of the ETZ Subdivision Ordinance requires right-of-way improvements for all subdivisions unless otherwise exempted by Section 4.2 M.
3. The applicant is not proposing alternatives to the requirements of the ETZ Subdivision Ordinance.
4. There is no evidence of exceptional topographic, soil or other surface or sub-surface conditions to substantiate a waiver, nor would the requirements result in inhibiting the achievement of the objectives of the ETZ Subdivision Ordinance.

DECISION
The ETZC has the option to approve the waiver request; approve the waiver request with condition(s); deny the waiver request, as recommended by the EDRC; or table/postpone the waiver request.

If it is the will of the ETZC to approve or deny portions of the waiver request, the following alternative have been provided to assist the ETZC in making separate motions for the waiver request. It should be noted that motions should be made in the affirmative, but can be denied with a vote of “No”:

1. Approve a 100% waiver from constructing the required road improvements as specified by City of Las Cruces Design Standards for the adjacent access road known as Calle de Margaritas.
2. Request for a waiver from constructing a 24-foot wide double-penetration asphalt surfaced road for the required access to the subdivision, Road and Utility Easement.

ATTACHMENTS
1. Vicinity Map
2. Aerial Map
3. Notification Map and List
4. Waiver Request Letter/ Applicant’s Narrative
5. Proposed Margaritas Subdivision Replat No. 1
6. EDRC Minutes from the May 5, 2016 Meeting
<table>
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<td>RY JO_RE</td>
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April 7, 2016

Public Works Dept.
Community Development Dept.
City of Las Cruces
700 N. Main Street
Las Cruces, NM 88001

Re: Margaritas Subdivision Replat #1
Waiver to street improvements

Department Directors;

On behalf of our client, we are submitting for waiver to the City of Las Cruces Municipal Code, Chapter 32 - Design Standards, Article II, Sec. 32-36 - City Streets.

The City of Las Cruces is requesting right of ways improvements to be applied to both proposed Calle de Margaritas and the interior road of the Subdivision. Our client is willing to comply to the road dedications, and is requesting a complete waiver to road improvements to Calle de Margaritas and the interior road of the Subdivision. Calle de Margaritas is already a paved road and the interior road a gravel road is been requested to service the four lots any additional improvements would make an costly endeavor to our clients. For the above mentioned conditions, we strongly feel that no further improvements to Calle de Margaritas and the interior road of the Subdivision is warranted and will not have any negative impact on the immediate neighborhood or community.

Thank you.

Henry Magallanes LS# 18978
Moy Surveying, Inc.