

**MINUTES OF THE  
EXTRA-TERRITORIAL ZONING COMMISSION (ETZ) MEETING**

**June 20, 2013  
6:00 p.m.**

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

**MEMBERS PRESENT:**

John Villescás, Chairman  
Kenneth Allin, Vice-Chair  
Janet Acosta, Secretary  
John Townsend, Commissioner  
Tim Sanders, Commissioner  
Robert Hearn, Commissioner  
Douglas Hoffman, Commissioner

**OTHERS PRESENT:**

Janine Divyak, Chief Planner  
Steve Meadows, Planner

**MEMBERS ABSENT:**

None.

**1. CALL TO ORDER**

**Chairman Villescás** called the Regular Meeting of the Extra-Territorial Zoning Commission to order at 6:08 p.m. Thursday, June 20, 2013 in the Doña Ana County Government Center, 845 N. Motel Blvd., Las Cruces, NM.

**2. ROLL CALL**

Commissioner Townsend	Here
Commissioner Sanders	Here
Commissioner Hearn	Here
Commissioner Hoffman	Here
Secretary Acosta	Present
Vice-Chair Allin	Here
Chairman Villescás	Here

**3. ANNOUNCEMENTS**

None.

**4. APPROVAL OF MINUTES:** March 21, 2013 Meeting Minutes

**Commissioner Sanders** made a motion to approve the March 21, 2013 meeting minutes, with **Commissioner Hearn** seconding the motion. The vote was 6-0-1 with Commissioner Hoffman abstaining, to **APPROVE** the minutes.

**5. CHANGES TO THE AGENDA**

None.

**NEW BUSINESS  
REVIEW / DISCUSSION / ACTION**

**6. CASE # SU13-004 / Ryan, 4820 Chinook Place, Las Cruces**

**Steve Meadows, Planner**, was sworn in and presented the case for a Special Use Permit to operate a commercial dog kennel on a 1.86 acre lot in an ER2 Zoning District.

**Commissioner Hearn** asked to be recognized. He stated that he lives ¼ mile from the subject property and asked if he needs to recuse himself due to a conflict of interest. Neither staff, Commission nor applicant felt Commissioner Hearn needed to recuse himself from the case.

Mr. Meadows continued with his presentation; after which he reported that staff's analysis was that the applicant's landscaping would mitigate any impact to the neighborhood. Also, they noted that the location of the kennels was on the north side of the residence which limits its visibility by others, no obtrusive lighting will be installed and that the infrastructure in place was adequate for the request. Based on the applicant's proposal meeting the criteria requirements for a Special Use Permit, Staff's recommendation is for approval.

**Commissioner Acosta** asked if the subject property currently operates as a kennel. Mr. Meadows responded that he was not sure; we should ask the applicant that. Commissioner Acosta asked to see the landscaping that would provide the buffer from the neighbors. Mr. Meadows showed a picture of the new landscaping.

**Chairman Villescas** asked what kind of trees were installed for the buffering. Mr. Meadows responded Red Oaks.

**Commissioner Acosta** asked what is the limitation on the number of pets on properties within the county.

**Steve Meadows** responded that a private kennel definition is up to seven animals; puppies up to four months are not included in the number. A commercial kennel has 8 or more as a definition. There is no maximum specified.

**Janine Divyak, Chief Planner**, was sworn in. She read from the ordinance regarding commercial kennels. "Any premises on which eight or more dogs and/or eight or more cats, four months of age or older, are kept and/or for the business of buying, selling, breeding, training, or boarding of dogs and/or cats, is conducted, does not include veterinary hospitals, or the humane societies or animal shelters or pounds approved by a governmental agency."

**Chairman Villescas** stated that he was surprised that it said "or more" with no maximum. He asked Janine to note that next time they look at the ordinance to look at that wording.

**Commissioner Sanders** asked if the Commission's approval of the Special Use Permit would place a limit of three breeding females on the applicant.

**Steve Meadows** responded that if the Commission wanted to put a condition on the permit, they could do that.

**Chairman Villescas** asked if the only limitation right now would be that the applicant has six kennels?

**Steve Meadows** responded yes, there may be a physical limitation to that based on the number of kennels. I would like you to direct this question to the applicant because his application does mention some potential future plans.

**Commissioner Sanders** asked what is the maximum number of animals allowed. Mr. Meadows responded that the ordinance does not limit the number of animals for a commercial kennel.

**Chairman Villescas** said that we can put a condition on it.

**Commissioner Hearn** asked if there were any business regulations on a commercial kennel that have to do with how they are designed, constructed, operated and maintained.

**Steve Meadows** responded that the only thing in the ordinance is that the kennels be clean, taken care of, no abuse. There may be some regulations that the applicant is bound to follow because of his AKC German Shepherds, but I'm not aware of any. I know from Animal Control that they have to be well taken care of, no abuse, facilities have to be adequate, have to be clean, but our ordinance does not address those specifics.

**Commissioner Hearn** asked if there was no requirement for Animal Control to inspect the operations once a quarter, half-year, year, anything like that?

**Steve Meadows** responded not that he was aware of, though if you do get a private kennel license, they do go out and look at it at first, but I don't know if there is any follow-up on a regular basis. I don't know if a commercial kennel would have to pass that initial inspection also, but we can find that out. The applicant may know about that because he has been involved with these dogs for quite some time.

**Commissioner Hearn** said that he wished someone was here from Animal Control, that they had been asked earlier on to give input on this.

**Chairman Villescas** said that was a note in our packet from Animal Control.

**Steve Meadows** said we did not get comments from Animal Control. We got comments from DASO Codes which would have, if there had been a problem, relayed those issues and our zoning code administrator would have done the same thing. They would have called Animal Control if they saw issues, and as you see on page 8, both of those show that there were no code violations.

**Chairman Villescas** said he would assume that due to the small nature of our Codes Department, most of our issues are handled on a complaint-type basis. He asked Ms. Divyak to make a note to make sure we look at this next time. The other thing that the owners have done is to put in the trees to help with noise abatement. This might be something we write into future codes concerning kennels.

**Commissioner Hoffman** asked if the applicant has applied for a home occupation?

**Steve Meadows** responded that he has not yet, but it is a requirement.

**Commissioner Acosta** asked if a Special Use Permit is indefinite and goes with the owner as long as he owns the property or can we specify an expiration date?

**Steve Meadows** responded that there was a case three or four years ago where the Commission did put in a condition that the commercial kennel would go with that owner only. You do have the right to put in any kind of condition you would like. Normally, with Special Use Permits you can put a time limit on accessory dwellings, but there have been those kind of conditions put on where the applicant has to come in and renew or it stays with that owner or it stays with that property.

**Sean Ryan**, 4820 Chinook, was sworn in. I am currently a full-time sworn police officer with White Sands Police Department. I have been breeding for many years. The dogs are AKC German Shepherds. I have gotten a permit and been inspected twice with a good report. I am looking to retire within the next five years from the federal government and am looking to start an operation that will supplement my retirement. As far as the commercial kennel, I only kennel my own dogs; currently I have six dogs. I do not kennel anyone else's dogs.

**Commissioner Hoffman** asked Mr. Ryan, when you are fully operational will there be food deliveries, bedding, any deliveries to your property creating truck traffic?

**Mr. Ryan** responded no.

**Commissioner Hoffman** asked if when you are at full capacity, will there be more than the one container stored onsite for the solid waste disposal system?

**Mr. Ryan** responded that the waste is discarded once a month when the garbage system picks up and empties the container. The urine is hosed down twice a day into the gravel surrounding the area.

**Commissioner Hoffman** asked what kind of noise level with barking dogs are we expecting here.

**Mr. Ryan** responded that these dogs are well-trained, but when someone enters the property the dogs may bark for about five minutes.

**Chairman Villescas** asked about noise abatement and the planted trees around the kennel area. According to Mr. Meadows, the ordinance does not specify noise abatement standards. What is your input on this subject?

**Mr. Ryan** responded I always use automatic feeders for water; the whelping areas have fans and heaters for the puppies; the trees planted around the area are Red Oaks, they grow tall and will provide additional shading for the kennels. On the property perimeter, I planted 50 African Pines which will work as a wind and sound break.

**Commissioner Sanders** asked about the number of dogs that Mr. Ryan is envisioning having on the property long-term.

**Mr. Ryan** responded that currently there is one female with litters twice a year. Usually the litters are small with about six pups each. I have another female whose last litter had some signs of hip dysplasia, so she has been spayed.

**Commissioner Sanders** asked if three would work as a limit condition on the number of females.

**Mr. Ryan** responded in the near future I will be getting two more, totaling 3 females and 3 males.

**Commissioner Sanders** asked Mr. Ryan if he had any objection to having a limit of three females.

**Mr. Ryan** responded he had no objections.

**Chairman Villescas** asked if a limit of eight total would cause a hardship for Mr. Ryan.

**Mr. Ryan** responded that eight was fine. He plans on, within the next five years, building two more kennels.

**Commissioner Sanders** said he feels it is important to look at a maximum number of females and maximum number of males onsite.

**Commissioner Hoffman** said we may want to specify “over four months of age” to exclude the expected puppies.

**Commissioner Townsend** said we should be careful of adding conditions because we are defined as a judicial body, not a legislative body.

**Commissioner Hearn** said our main activity is granting variances, disagreeing in effect with the rules.

**Commissioner Townsend** said if there are certain requirements that the applicant has to meet to get a special use permit. If he meets those requirements, it is what it is.

**Janine Divyak, Chief Planner,** said Commissioner Townsend, you are correct, this is a quasi-judicial hearing, but legislatively in the ordinance, you can impose conditions and time limitations.

**Commissioner Townsend** responded yes, but if someone appeals it you're going to have to justify it, you can't do it just because you think it's a good idea.

**Commissioner Hearn** said he would like to add the condition that it remain in effect as long as the applicant owns the property and expires when the applicant leaves that property.

**Chairman Villescas** said he agreed with Commissioner Hearn.

**Commissioner Hearn** made a motion to approve the request for a special use permit with one condition that the total number of dogs not exceed 8 (the restriction not to include puppies under 4 months in age) with a maximum of 4 females and 4 males and a second condition that the SUP is valid only while the applicant owns that property.

**Commissioner Hoffman** seconded the motion. He asked to add the findings of facts to include the conditions to ensure that we are meeting the purpose and intent of the ordinance. Or, he said, Commissioner Hearn could accept adding the findings of fact as a friendly amendment.

**Janine Divyak** said I believe what Commissioner Hoffman is stating is that the conditions that are being imposed will meet the health and safety standards of the intent and purpose of the ordinance.

**Commissioner Hoffman** said that is correct, 3.3.b.4.

**Commissioner Hearn** said "these conditions be imposed on the approval as deemed necessary to ensure that the purpose and intent of this ordinance is met and to protect and provide safeguards for persons and property in the vicinity."

**Commissioner Townsend** asked for clarification on eight dogs and suggested adding the word "breeding" to the number of animals.

**Chairman Villescas** said we have a motion, but need a second, otherwise the spaded animal counts as one of the 8 animals. There was no second. Motion died for lack of a second.

The request for a Special Use Permit was **approved** by a vote of 7-0-0.

**7. CASE # SU13-005 / Velez, 1150 Sandy Hill Drive, Las Cruces**

**Steve Meadows** asked if he needed to be sworn in again, once for each case. Chair Villescas asked him to run this past Legal. Mr. Meadows will check with Legal and clarify at the next meeting.

**Steve Meadows, Planner**, presented the case as a request for a special use permit to allow large animals (horses) on a 2.5 acre lot in an ER4 Zoning District. Staff findings are that the applicant and the request for a special use permit meet all the necessary requirements. Also, the ordinance allows 3 horses per acre for 2+ acres so the maximum allowed would be 7 horses. Staff's recommendation is approval for the request for a special use permit.

**Commissioner Townsend** asked if a single-wide trailer in this area was not considered "site-built" but a double-wide was.

**Steve Meadows** responded that is correct.

**Chairman Villescas** asked if the number of animals has been taken care of since the ordinance specifies how many horses per acre, depending upon the size of the whole property.

**Steve Meadows** responded that would be the maximum allowed. The applicant has not asked for a specific number. She wants to market the property as a horse property.

**Commissioner Sanders** asked what was the limit on the Gaddie case.

**Steve Meadows** responded seven, but the facilities on that property were only set up for four horses.

**Chairman Villescas** said that the current owner has no horses or plans for horses; it is just for the marketability of the property as horse property.

**Steve Meadows** responded that is her intent.

**Commissioner Hearn** said since the applicant is planning to sell this property, does it make us look at this in any different way – is it relevant to our decision?

**Steve Meadows** responded there is not any immediate use for horses. We should direct that question to the applicant.

**Commissioner Hearn** said I want to know the legal aspects. Is that fact relevant to the Commission?

**Steve Meadows** responded he didn't believe there were any legal aspects. He said the relevance of the fact was up to the Commission.

**Commissioner Townsend** said we can issue a special use permit that lasts for the life of the applicant owning the property or tie it to the property. This might be a case that we want to do that with.

**Steve Meadows** responded that the Commission can also put time limits into the conditions.

**Cindy Velez, 2094 Windsor Place**, was sworn in. It is necessary for me to sell this property. A real estate agent suggested that it might a good idea to get a special use permit and sell the property as a horse property. It is not on the market yet and I don't have any potential buyers, but I felt it would be a good idea to go ahead and request a permit for horses for the property.

**Dale Miles, 1149 Sandy Hill Drive**, was sworn in. He lives across the street from the subject property and expressed his concern about the flies and the odor created by horses.

**Robert M. Willis, 1190 Sandy Hill Drive**, was sworn in. He feels that 7 animals is far in excess of what the parcel can hold, because the east and south sides have large gullies so the property is not flat land.

**Chairman Villescas** asked Mr. Willis what number of horses would satisfy him.

**Mr. Willis** responded that we had three horses there before and the odor and flies were terrible and the animals were not well cared for.

**Chairman Villescas** said so you are saying you would like to not have any large animals on this property.

**Mr. Willis** responded I would like to have none, or at least limit the number of them.

**Chairman Villescas** asked him again, what number of horses?

**Mr. Willis** responded two.

**Thomas J. Mascatelli, 935 Shakespeare**, was sworn in. There are several issues here. I believe there should be two more people who emailed a complaint on your list - my neighbor, Tom Finole, and my daughter. The second problem is a picture has been painted that these are all horse properties and that is not true. There is only one horse here and she has been here 30 years. The other one is on Quesenberry and is downhill from us. About aviaries – we had to listen to 1 ½ years worth of illegal birds from Mexico that no one came by from Codes to take care of. This lady wants to change the codes for her gain and my loss. I do not want any horses here. This is not horse property.

**Todd Bretheld, 980 Shakespeare Lane**, was sworn in. My family and I were looking for a property in the West Mesa for a way of life that is associated with that area there. The subject property needs a lot of work done before it could be a horse property. There are a

lot of other things out there that are more of a nuisance than horse property. There is an ATV dirt track that throws off dust clouds, loose dogs roaming everyone's property and killing chickens, roosters crowing at 5am, sprint cars being worked on which are extremely loud. A possible limit on horses might help, but that particular property needs a lot of work before horses could be put on it.

**Rosemary Mascatelli, 935 Shakespeare**, was sworn in. We've gone through this already a while back. The person who was going to buy the five acres next to us wanted two horses, we had to come out here and go through this process, then she wants 7 horses right across from where we have our swimming pool. We all said we didn't want this so they didn't buy the property. We and a neighbor each bought half of this property so this wouldn't happen again. The subject property had birds, no one took care of them and they were really loud. We called Codes but no one would do anything. This property is not set up for horses, it's too hot and windy. We're tired of coming out here. People are dumping dogs, no one wants the puppies. Trying to keep everything neat and clean, but no one else cares. Let the person who buys the property try for the permit – then we'll just come out here again.

**Commissioner Hoffman** expressed some fundamental concerns. We are amateurs but we have a very specific charge to evaluate an application. This application is so premature and lacking in information that I cannot make an evaluation.

**Chairman Villescas** said that staff has to look if there are any infractions, does it meet the criteria, etc. It does not necessarily mean that it is a good thing; just that technically there are no infractions or breakings of the rules.

**Commissioner Allin** said that one of the things we have to keep in mind is that we can go either way on this. We are in a position where we need to make a positive motion. We may all vote against that positive motion, but the motion needs to be made positively.

**Commissioner Acosta** said that she concurs with Commissioner Hoffman

**Commissioner Hearn** said this is a request for a special use permit which modifies the character of the neighborhood and causes some concern for the neighbors. It is being made by a person that is never going to use it but is packing up and leaving. I am very uncomfortable approving this kind of request. I feel that I would not approve this because it is not being made by anyone who will enforce it or enact it on the neighborhood and who is not going to part of the consequences if it should be done for this property as it was with the past property. I think it should be done by someone who is doing it for their own use and is going to be there to live with the consequences.

**Commissioner Hoffman** said we have no reason presented in the evidence to support this request and I think that is sufficient grounds to deny this request. There is no evidence supporting that this use would be compatible with present uses and would promote the health, safety, and welfare of the residents of the county. I would like to remind everyone we are not in any way forbidding the presence of large animals on this parcel – that is

permitted with a special use permit. We are not denying anyone a right. Certain requirements need to be met in order to protect the neighborhood, and we have no evidence of that.

**Chairman Villescas** said I agree. My opinion would be if a person buys this property and is a horse person, they can apply for a special use permit for large animals.

**Commissioner Allin** made a motion to approve the special use permit with two conditions: 1) the number of horses be limited to 3, and 2) the SUP be limited to a three year period at which time the permit needs to be reapproved.

**Commissioner Hoffman** seconded the motion.

**Commissioner Sanders** said he was very uncomfortable with the application in that they are not dealing with the person who is going to be managing the animals.

Roll was called and the special use permit was **DENIED** by a vote of 6-1-0 based on findings of facts and discussion.

**Janine Divyak** said to be clear, it would be helpful to really have some findings and facts based on the denial. In the discussion before the vote is generally where these are made. Commissioner Hoffman worded it fairly eloquently.

**Chairman Villescas** said he recalled with a previous commissioner that we go around and make a statement, then Legal told us to quit doing that and make our positions clear during discussion - so we can't go back afterwards and make a point.

**Janine Divyak** said but Commissioner Hoffman did state that there was no evidence to support the request, so that would take care of it.

**Commissioner Townsend** said he made an error. He was confused on how he was voting. He meant to vote no.

## 8. ADMINISTRATIVE APPROVALS

**Janine Divyak, Chief Planner**, reported for the month of May. Permits were issued for 12 new single-family residences, 3 new commercial, 18 additions to single-family residences, one addition to a commercial property, and 22 installations of mobile homes.

## 9. PUBLIC INPUT

None.

## 10. STAFF INPUT

**Janine Divyak** reported that House Bill 21 was recently passed by the legislature which delineates a 72-hour notification period for emergency meetings. Currently our standards

require 24 hours so we will bring that before you at the next meeting to make the amendment to the bylaws.

**Steve Meadows** handed out a press release for the Camino Real Sustainable Regional Grant which is now called “Viva Doña Ana”. We will be having a nationally recognized strategist, Scott Bernstein, with the Center for Neighborhood Technology in Chicago, on Friday, June 28<sup>th</sup> to discuss some strategies that we may want to address in our plans. He’ll talk about jobs, transportation, and the quality of life. He’ll be sharing some cost of living data which we have here in Doña Ana County and how that information along with other better planning principles can result in better personal cost savings and transportation choices. This is from PlaceMakers, our consultant, for the Unified Development Code. You are invited to the presentation on Friday from 1:00 to 2:30 p.m. here in the Chambers and which will also be streaming live if you are interested in going to our website.

**Commissioner Allin** asked if we could make an effort to give out correctly spelled information to the public and on the website since there was a typo in the document.

**Steve Meadows** reported that no cases have been scheduled for the July meeting, so that meeting is cancelled. The next meeting will be August 22<sup>nd</sup>.

**11. COMMISSION INPUT**

None.

**12. ADJOURNMENT**

**Commissioner Sanders** made a motion for adjournment, with **Commissioner Townsend** seconding the motion. The vote was 7-0-0 for **APPROVAL** to adjourn the meeting. The next meeting was scheduled for August 22, 2013 at 6:00 p.m. **Chairman Villescas** adjourned the meeting at 8:29 p.m.

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Officer: Extra-Territorial Zoning Commission

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Submitted by: Diane M. Duback, Recording Secretary