

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

**August 22, 2013
6:00 p.m.**

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

MEMBERS PRESENT:

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

OTHERS PRESENT:

Daniel Hortert, Director, Community Development
Steve Meadows, Planner
Jonathan Kesler, Planner

MEMBERS ABSENT:

None.

1. CALL TO ORDER

Chairman Villescas called the Regular Meeting of the Extra-Territorial Zoning Commission to order at 6:10 p.m. Thursday, August 22, 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 Villescas	Here

3. ANNOUNCEMENTS

Commissioner Hearn said he needed to recuse himself from the first case, Case #SU13-008/Mirimanian.

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

Commissioner Sanders made a motion to approve the June 20, 2013 meeting minutes, with **Commissioner Townsend** seconding the motion. The vote was 7-0-0 to **APPROVE** the minutes.

5. CHANGES TO THE AGENDA

None.

**NEW BUSINESS
REVIEW / DISCUSSION / ACTION**

6. CASE # SU13-008 / Mirimanian, 651 Baja Avenue, Las Cruces

Steve Meadows, Planner, said that he had spoken with Legal about being sworn in for each case he spoke about. Legal confirmed that he must be sworn in for each different case.

Steve Meadows, Planner, was sworn in and presented the case for a Special Use Permit to continue to allow the rescuing and fostering of large animals and variances to the front yard setbacks and total accessory building square footage, in an ER4M Zoning District on a 3.3-acre lot. There is a 10 foot utility easement at the northern boundary of the parcel. Staff received one call from Mr. Rivas, who owns four parcels in the area. He said he had no problem with Ms. Mirimanian's request. That was the only communication staff received about the case from the neighborhood.

The variance requests are: Front yard setback for the large pole barn from 25 ft. to 1 ft.; from 3,000 sf to 4,280 sf for the total square footage of accessory structures; and from 100 ft. to 12 ft. on the minimum distance from the private water well to an animal dwelling.

Based on the analysis and proposed findings, staff's recommendation is conditional approval for the special use permit with the condition that the applicant must relocate the 2,196 sf pole barn out of the front yard setback and at least 100 ft from the existing water well. The second recommendation is denial for the variance request for the front yard setback, maximum 3,000 sf accessory structures and the 100 ft. between the water well and the large pole barn.

Peggy Mirimanian, 651 Baja Avenue, Mesilla Park, was sworn in. Regarding the permit for the shed row, I made several phone calls to Planning without getting any calls back. For the utility easement, all of the utilities go on the outside of the fence and that is why I didn't think anything about it. I spoke with Denny who owns Jornada Water and he said the existing pipe is just for my house. It is not to go to neighbors. If any of the other houses east of me decide they want to be on Jornada Water, then he would go in the road and put in a line up through the road so that it would feed my house and then neighbors' houses down the road which is why I didn't think anything about this. The structure was already up when I had Jornada Water put in and he did comment to me that there was no problem because he knew that eventually we are going to have the water main going up Baja Avenue. The water well has been tested several times and the water has tested perfect. The well is only for the horses and landscaping, it is not used for the drinking water. When I first moved to the property, the previous owner owned horses, so horses were already there. If Jornada Water decides they want to tear down my structure to do something, they have my blessing. I don't see though, where there will be a problem, because the water main will go up Baja Avenue. I always thought that the "front" of my property was the side of my property because there was no road there. One day I came home from work and there was now a road. Then someone came by and said here is the name of your street. All of a sudden I had

a street and it became the front of my property. I had always considered the front of my property to be on Argus. Down through the years everything got changed. I have for years wanted to take care of horses, especially abused and neglected ones – ones that need my help. If I do have to take down my structures, I will no longer be able to foster horses because I don't feel that it will be a nice, safe place for them to be anymore. I knew nothing about the ETZ and it shocked me to find out that I was all wrong. I'm not used to doing things illegally, it's not my thing, and it's taken five years for me to get up enough nerve to finally come in front of you. I was given the wrong application in the first place, so when I was trying to fill it out, this was before I talked to a county planner; I was already frustrated. It's taken a long time because I have been scared to death.

Chairman Villescas said that the biggest sticking point I see is the pole barn. Is it out of the question to move it back and away from the water well?

Ms. Mirimanian responded that the reason that she located it there is that in any other place it would be in standing water during rain which wouldn't be healthy for the horses. Also I have the lower field separated from the upper field with a gate. Sometimes horses do not get along with other horses and it helps to keep them separated. Where the structure is located, both horses in the upper and lower fields have access to shelter. Also when the neighbor irrigates, occasionally it would flow downhill and flood my lower area.

Commissioner Sanders brought up questions about the well and whether it was considered domestic if it wasn't used for household purposes.

Chairman Villescas brought up questions that he felt needed Legal's input such as the well, tearing down structures by the utility, and the right to encroach on an easement.

Steve Meadows said the comments from the state engineer regarding the well were for both domestic and agricultural use.

Both **Commissioners Allin** and **Sanders** said that they have domestic wells on their properties and subsequently hooked up to city water. Both said their wells are not now held to the health standards they were when the wells were used to supply their houses.

Chairman Villescas said he felt that the good that comes from the work Ms. Mirimanian provides outweighs the issues on the property.

Commissioner Hoffman said he felt the Commission had several issues they could not appropriately resolve such as granting a variance in a utility easement and wanted the Commission's thoughts on postponing this case to the next meeting in order to get some answers.

Daniel Hortert, Director of Community Development, was sworn in. He said that the Code does specifically state that the well is a private well and does have to meet the 100 ft.

requirement. He also stated that since the residence is addressed on Baja Avenue, that is considered the front of the property.

Chairman Villescas asked Daniel Hortert if he had an opinion if we have the legal ability to grant a variance on an easement.

Daniel Hortert said his opinion is that it is a technically a civil matter. What happens in those easements is generally an agreement between the grantee and grantor. When an easement is platted we would not allow anything to be built there, but this case is after the fact.

Commissioner Sanders said there are three issues under the variance that are up for discussion and my motion would be to grant the variance for exceeding the 3,000 sf. building limitation; secondly to grant the variance for proximity to the private well; thirdly to deny the variance for the pole barn based on two issues of the setback and easement encroachment.

Daniel Hortert said that the Special Use Permit would eliminate two of those variances.

Commissioner Sanders said we grant the variance for exceeding the 3,000 sf., grant the variance for being within 100 ft. of the private well, deny the pole barn, and grant the SUP for eight horses.

Chairman Villescas said we cannot make any motion in the negative.

Daniel Hortert said another option you have is to grant the SUP with no conditions and then go into the variances individually and vote on each one in the affirmative.

Commissioner Sanders said he withdrew his motion.

Commissioner Allin suggested calling for a division to approach each subject individually.

Commissioner Allin made a motion to approve the SUP, with **Commissioner Sanders** seconding the motion.

Commissioner Hoffman suggested using the wording as proposed by Steve Meadows because it addressed the conditions.

Commissioner Sanders made a motion to conditionally approve the SUP with the following condition: that the applicant must relocate the 2,196 sf pole barn out of the front yard setback and at least 100 feet from the existing well. **Commissioner Acosta** seconded the motion.

Commissioner Townsend said he had two problems with the motion. We are automatically approving the variances. The other problem is the easement. That agreement should be

between the easement holder, the water company, and the landowner. I think we need a separate vote on the variances.

Commissioner Townsend offered a friendly amendment to the main motion to grant the SUP without conditions. **Commissioner Sanders** seconded the amendment to the main motion.

Roll was called and the amendment was **Denied** by a vote of 3-3-0.

Roll was called for the original motion and the SUP was **APPROVED** with conditions by a vote of 4-2-0.

Commissioner Sanders made a motion to approve the variance for exceeding the 3,000 sf limitation on accessory structures. **Commissioner Townsend** seconded the motion.

Roll was called and the variance was **APPROVED** by a vote of 5-1-0.

Chairman Villescas called for a 5 minute recess.

7. CASE # Z13-001 / Nakayama, 4725 and 4735 El Camino Real, Las Cruces

Jonathan Kesler, Planner, was sworn in and presented the case as a request for a zone change from ER2M to ER4M on two parcels of 14.83 and 3.17 acres in order to create a 2-lot subdivision through the City of Las Cruces on the smaller parcel. There are two site-built homes on the smaller parcel, one built in 1941 and one built in 1964. The larger parcel has a shop and a barn and is almost entirely agricultural production. Access to both properties is from El Camino Real. Two calls of inquiry were received from neighbors and later a letter and petition. The petition states opposition to the proposed zone change. Based on staff's analyses and findings, their recommendation is for conditional approval of the zone change with the following conditions: that the zoning shall be changed on the smaller parcel and only that part of the large parcel not in agricultural production and which is located in the northeast corner of the parcel and east of the irrigation ditch which contains the barn and the shop buildings and per NMED the existing homes must get a liquid waste permit as required by their state statute.

Jonathan Kesler reported that he has spoken with the applicants and they are comfortable with these recommendations to their zone change request.

Corky Nakayama, 38 Evergreen Avenue, Clovis, California, was sworn in. Mr. Nakayama said they don't plan on making any other changes. It is only the subdivision to make two lots with two permanent houses. It will be sold to two different people. There is a purchaser for one lot already who is planning to totally restore the house. The original zone change was for the whole 14.83 acres but that has been changed now to encompass only the smaller lot of 3 acres and the .93-acre portion of the larger lot.

Jonathan Kesler pointed out the Nakayama's will need the 1.56 acres per lot in order to net enough land after the right-of-way for future improvements to El Camino Real is dedicated to LCMPO. Jonathan said that after the footage is dedicated for the easement, the two proposed lots will be roughly .9 acre in size and just big enough for a standard septic but only for a total of two lots, not any more.

Narciso Valdez, 115 West Taylor Road, Las Cruces, NM, was sworn in. My concern was based on the original petition that was given to the neighbors that the Nakayama's were requesting a zone change on the original 18 acre parcel to ER4M. If that little finger of land is rezoned to ER4M, the parcel that contains the shop and barn, wouldn't that be in violation of the setback of Camino Real? I think these properties should be rezoned ER3M.

Richard Arzibal, 4701 El Camino Real, Las Cruces, was sworn in. My family and neighbors protest this zone change. Rezoning will decrease the value of our homes and the land that we work extremely hard to keep values high. Every year the zoning for properties gets smaller and smaller. We don't want mobile homes. Behind those two homes there is enough land to make the two proposed lots into 4 acres.

Frank Hunter, 4812 Windrose Court, Las Cruces, was sworn in. On the original application the Nakayama Trust put down that they wanted to rezone from ER2M to ER4M. Now they only want to go with the 3.17 acres. However, I believe the application is incorrect not including the right-of-way. We believe that the 3.17 acres should be 3M not 4M. The 14.83 acres should stay 2M.

Lane R. Hauser, 150 Milestone Court, Las Cruces, was sworn in. He pointed out several addressing errors in the Notice of Public Hearing as well as one error in the letter he submitted. I believe the proposed zoning change from ER2M to ER4M would disrupt, distract from the characteristics of the adjacent and surrounding properties. The density would potentially increase from 9 lots to 36, a 75% increase. It would be disharmonious with the neighborhood.

Chairman Villescas said that whole issue is off the table. We are just talking about the front little area.

Mr. Hauser responded that the petition is on the entire 18 acres from ER2M to ER4M.

Chairman Villescas said but we are not discussing that tonight. We are only discussing that the one piece up in front on Camino Real.

Mr. Hauser responded that that is not what the Notice of Public Hearing says.

Daniel Hortert, Doña Ana County, 845 N. Motel Blvd., Las Cruces, was sworn in. Daniel said technically the petition is for the entire parcel, but staff's recommendation is to do what you see on the screen right now.

Chairman Villescas said, if I understand correctly, you spoke with the applicant and it was changed to this. So we are not talking about the large parcel, just the small piece in front.

Commissioner Hearn responded that since the original petition listed the whole 18 acres it would be appropriate to hear testimony on it.

Mr. Hauser said that currently there is minimal access through the proposed driveway which now mainly consists of agricultural equipment. He also discussed the number of vehicle trips per day associated with a subdivision into 36 lots, as well as the minimal size of lots needed to meet NMED's requirement for septic systems.

John Valdez, 5345 El Camino Real, Las Cruces, was sworn in. The main reason everyone is complaining is because of the ½ acre part. Why not solve the issues and make it ER3M.

Van Bullock, 720 Roadrunner Circle, Las Cruces, was sworn in. The Nakayama's never wanted to rezone the larger parcel. All they want to do is split the smaller parcel into two lots. Planning staff said a cleaner way to do that is to rezone. The Nakayama's never wanted these lots to be high density. That would hurt the value of the surrounding land. And they can't take part of the larger piece to make the proposed two smaller lots 4 acres because that land is in separate ownership.

Peggy Swoveland, 1438 Fisher Road, Las Cruces, was sworn in. I am a member of the Nakayama family. This property we are having the discussion about is property that my grandparents bought in 1928. My interest is in purchasing the one parcel with the older house on it. I have an emotional attachment to it. Contrary to some of the things that we have heard this evening, I am not interested in making a profit off this house. I have the historical perspective of wanting to keep this one piece of the family property intact and in the family.

Commissioner Sanders made a motion to grant conditional approval of the zone change request with the following conditions: the zoning shall be changed on the 3.17 acre parcel and only the 3.17 acre parcel to ER3M; and per NMED the existing homes must get a liquid waste permit as required by 20.7.3 New Mexico Code. **Commissioner Hoffman** seconded the motion.

Commissioner Acosta made an amendment to the main motion with the following conditions: the zone shall be changed on the smaller parcel and only that part of the larger parcel that is not in ag production and which is located in northeast corner of the parcel and east of the irrigation ditch which contains the barn and the shop buildings, approximately 0.93 acre and per NMED the existing home must get a liquid waste permit as requested by 20.7-3 NMAC. **Commissioner Allin** seconded the amendment to the main motion.

Jonathan Kesler asked if the amendment was to go back to the ER4M?

Commissioner Acosta said yes, as recommended by staff.

Commissioner Hearn asked Mr. Chairman if he understood that her amendment just took the entire motion away?

Commissioner Acosta said to go with the staff recommendation because they've done their research.

Commissioner Hoffman said that our agency comments say there are no liquid waste permits; the existing homes must get a liquid waste permit for occupancy.

Daniel Hortert said potentially the building permit could trigger the requirement for an NMED permit. It is staff understands that the Nakayama's fully intend to comply with that. In addition though, the condition of the rezone would also require them to get current NMED septic permits.

Commissioner Hoffman said this was flagged in our agency comments that NMED said the existing homes must get a liquid waste permit for a standard system; we're just building that into our approval.

Jonathan Kesler said that is true. You could delete it but they can't get a certificate of occupancy without it.

Chairman Villescas asked the recording secretary if we ever got a second to the amendment to the main motion?

Diane Duback said yes we did.

Chairman Villescas said so we are discussing the amendment to the main motion.

Commissioner Acosta said just go ahead and delete number 2 so we can proceed.

Chairman Villescas asked do we need to reread her amendment to the main motion again and get a new second?

Jonathan Kesler responded yes sir.

Commissioner Acosta said she would like to approve zone change request Case Z13-001 with the following conditions: the zone shall be changed on the smaller parcel and only that part of the larger parcel that is not ag production and which is located in northeast corner of the parcel and east of the irrigation ditch which contains the barn and shop building, approximately .30 acres.

Chairman Villescas corrected her saying .93.

Commissioner Allin seconded the motion.

Chairman Villescas said now we have discussion on the amendment to the main motion. What the amendment to the main motion does is put in as a suggested condition one condition, no second condition. The one condition is that it can only be split in half.

Commissioner Sanders said no – the condition, I read Ms. Acosta’s amendment as she is proposing that it changes to 4M.

Commissioner Hearn said it is the staff recommendation minus condition #2.

Commissioner Sanders said correct, but it is 4M zoning, just to make it clear. Not her, but the staff is recommending 4M zoning.

Commissioner Townsend said I’d like to hear from the staff on why you preferred not to use the 3M spot zoning?

Jonathan Kesler said as part of good planning practice you have the uniform zoning, that’s why we connected with the ER4M to the north.

Commissioner Townsend said what is this about spot zoning – that we weren’t allowed to do that or it was frowned on?

Chairman Villescas said it is frowned upon. We don’t want to spot zone. There is nothing to prevent us from doing it but it is highly frowned upon.

Commissioner Townsend said but the ER3 would be doing it, correct?

Chairman Villescas said correct. This way we are consistent with the adjacent neighborhood right there. Even the first gentleman that came and spoke to us said that he’s got a half acre, and they gave him two years to get a septic in.

Commissioner Hearn said I sure don’t see this going to 3M as spot zoning. If we were doing it industrial or commercial, then we’re talking spot zoning. This is just a minor change in keeping the whole place uniformly residential.

Commissioner Sanders said the Nakayama’s appear to be asking for zoning on the 3.17 acre parcel only. The neighborhood seems to want zoning on that parcel only and both parties come away from this thing successfully with 3M zoning.

Jonathan Kesler said creating that as an island without the finger as it has been referred to, the .93 acres, is definitely to the spot zone category because it is an island.

Daniel Hortert said I think one of the issues is that it somewhat sets a precedent if it were to be zoned in a fashion that’s not in the same zoning categories or classifications as the surrounding zoning.

Commissioner Hoffman said clearly from the professional zoning perspective and from the defensive perspective of creating any sort of precedent, we might wish that this was somehow different. But, the reality on the ground is number one, we have a solution that makes both sides happy and that in my experience, it has never happened before. Number two; we are very much meeting the spirit of what we want zoning to do. We are not down-zoning this piece of property so that it is very dense and an eyesore or commercial or creating problems. We are making sure that the impact on the community is minimal. Now that, to me, is not spot zoning. Yes, the numbers don't add up exactly as we would like. It's not a two or a four, it's a three. However, the impact on the community is minimized by this and making it the 3M means that it is most in character with the surrounding area and that is what we want to accomplish. That minimizes spot zoning.

Roll call was taken and the vote was 4-3-0 to **APPROVE** the motion.

Chairman Villescas said we have changed the main motion. The main motion before us now is based on the request meeting the Miller Criteria, the ETZ Comprehensive Plan, the 2.1.D Evaluation Criteria, is not considered a spot zone and the above proposed findings staff recommends conditional approval of Zone Change Request Case Z13-001/Nakayama with the following condition: the zoning shall be changed on the smaller parcel and only that part of the larger that is not in agricultural production and which is located in the northeast corner of the parcel and east of the irrigation ditch which contains the barn and shop building, approximately 0.93 acres, map attached.

Commissioner Hoffman said this then is a change to ER4M for the entire piece fronting the road? Is that correct?

Chairman Villescas nodded yes and said exactly like it is in the map.

Roll call was taken and the vote was 4-3-0 to **APPROVE** the motion.

Chairman Villescas said no change to the ER2M and the only change is that we're splitting that, as indicated on the map proposed ER4M for those two houses up there in front and then the little fingernail as it has been referred to for the barn

Chairman Villescas said for the information of the public this will be heard again in front of the ETA next month.

8. NOTICE OF CLERICAL CORRECTIONS TO THE ETZ ORDINANCE PER SECTION 2.5.C

Jonathan Kesler, Planner, presented clerical corrections to the ETZ Ordinance per Section 2.5.C. for their information.

9. ADMINISTRATIVE APPROVALS

Dan Hortert, Director, Community Development, reported for the month of July. Permits were issued for 10 new single-family residences, 3 new commercial projects, 18 additions to single-family residences, and 29 installations of mobile homes.

10. PUBLIC INPUT

None.

11. STAFF INPUT

Dan Hortert, Director, Community Development, discussed a flyer for “Preserving Character, Promoting Opportunity”. Staff and Consultants will be going with “Codes on the Road” in September from the 17th through the 20th in eight locations in the county regarding the Unified Development Code and the Comprehensive Plan for Sustainable Development. Workshops will be held in Butterfield, Chaparral, Hatch, Sunland Park, La Union, Radium Springs, San Miguel, and Las Cruces.

12. COMMISSION INPUT

Chairman Villescas asked if the ETZ is going away? **Dan Hortert** replied that **Robert Kyle** and he presented to the joint session last week with staff’s proposals to eliminate the JPA as we know it and formulate a strategy for the county to become the subdivision administrator as well as the zoning administrator for the ETZ area.

13. ADJOURNMENT

Commissioner Acosta made a motion for adjournment, with **Commissioner Hearn** seconding the motion. The vote was 7-0-0 for **APPROVAL** to adjourn the meeting. The next meeting was scheduled for September 19, 2013 at 6:00 p.m. **Chairman Villescas** adjourned the meeting at 10:30 p.m.

Officer: Extra-Territorial Zoning Commission

Submitted by: Diane M. Duback, Recording Secretary