



# Town of Mesilla, New Mexico

## PZHAC PUBLIC HEARING & MEETING AGENDA NOVEMBER 16, 2020

**THE PLANNING, ZONING AND HISTORICAL APPROPRIATENESS COMMISSION (PZHAC) WILL HOLD A REGULAR MEETING VIA TELECONFERENCE ON MONDAY, NOVEMBER 16, 2020 AT 2:30 P.M. TO JOIN THE MEETING BY PHONE DIAL 1-346-248-7799, THEN ENTER Meeting ID 603-754-4231 PASSWORD 193857.**

### I. PLEDGE OF ALLEGIANCE

### II. ROLL CALL AND DETERMINATION OF A QUORUM

*All commissioners were present. (Commissioner Prieto arrived late.) There was a quorum.*

### III. CHANGES/APPROVAL OF THE AGENDA

*There were no changes to the agenda. A motion to approve the Agenda was made by Commissioner Houston, seconded by Commissioner Salas, and approved by a vote of 4 – 0.*

### IV. \*ACCEPTANCE OF THE CONSENT AGENDA

*Note: Items on the agenda indicated by an asterisk (\*) are on the consent agenda and will be voted on with one motion unless a Commissioner requests that a specific item be removed for discussion.*

*There were no changes to the Consent Agenda. A motion to approve the Consent Agenda was made by Commissioner Salas, seconded by Commissioner Lucero, and approved by a vote of 4 - 0.*

#### A. \*PZHAC MINUTES – PZHAC Workshop and Meeting of November 2, 2020.

*Approved as part of the Consent Agenda*

#### B. \*ADMINISTRATIVE APPROVALS

##### Zoning Permit:

1. Case 061141– 2391 Calle de Parian, submitted by Robert Reynolds, a request for a zoning permit to restucco a storage building on a residential property at this address. Zoned: Historic Residential (HR)

*Approved as part of the Consent Agenda*

### V. PZHAC NEW BUSINESS:

#### A. PUBLIC INPUT ON CASES

**Public input shall be received at [larrys@mesillanm.gov](mailto:larrys@mesillanm.gov) at least one hour prior to the meeting and will be read into the record. You will also be given an opportunity to speak during this time by joining the meeting by phone and pressing \*9 while in the teleconference. This will let the host know that you wish to speak. You will be prompted by the host or the Commission Chair when to begin speaking.**

*Four letters were received after the packet was written. All the letter writers were present electronically and chose to speak at the public hearing. (The letters were e-mailed to the commissioners prior to the meeting and are included as part of these minutes.)*

#### B. PUBLIC HEARING AND REGULAR MEETING

*A vote was taken by the PZHAC to close the regular meeting and open the public hearing for Case 061139, a Special Use Permit request requiring a public hearing. Discussion was closed to the PZHAC and opened to the public.*

## Special Use Permit

1. **Case 061139** – 1584 West Boutz Road, submitted by Verizon Wireless for Susan Krueger (property owner); a request for a Special Use Permit to allow the construction of a 65 foot high “mono pine” cell tower on a property at this address. Zoned: Rural Farm (RF)

*Staff provided a brief description of the case, explaining that the map provided with the application showed the accurate location of the proposed tower as being adjacent to the property owned by David Binns. Staff also mentioned that the MTC required notification of all property within fifteen hundred feet of the tower (62 property owners), and that this had been done. Based on the responses, which included phone calls as well as the letters previously mentioned during public input, the main issues stated were: 1. The tower will violate restrictive covenants placed on the properties; 2. The fact that the tower can be seen from an entryway into Mesilla; 3. Possible health issues caused by the tower. Staff referenced a letter by Mr. Les Gutierrez, representative for Verizon Wireless, in which he states that Federal regulations do not allow towers to be prohibited for health reasons. Staff also mentioned the fact that a letter, written by Debbie Boldt as the sole remaining member of the administrative control committee for the Mesilla Greens Subdivision, had been provided with the application and that this letter released the covenants from the properties. Staff stated that the property owners involved as part of the Mesilla Greens Subdivision do not believe that covenants can be legally removed in this manner and explained that the Town cannot legally get involved in this dispute. Staff did mention that although the Town cannot enforce covenants and deed restrictions, the Town has referred to them in the past as indicators of how residents wanted to see their part of Town develop. That concluded staff’s presentation and the hearing was opened to public input.*

*Public input followed (all speakers were sworn in and limited to three minutes):*

*For:*

*Susan Krueger (applicant and owner of the subject property)*

*Explained that Les Gutierrez for Verizon Wireless would present the case and that she would just be listening.*

*Les Gutierrez (applicant for Verizon Wireless)*

*Explained the need for the tower and described what a “mono-pine” tower is.*

*Against:*

*Tara Binns (Part of Mesilla Greens subdivision Block 17, 1400 West Boutz Road, adjacent to tower)*

*Stated that the tower would be right next door and that she was concerned with health issues and the fact that the tower would be an eyesore.*

*Nancy Clayshulte (1850 Avenida de Mesilla)*

*Said that the tower would be an eyesore (she can see the tower location from her property) and a health issue, and that the tower would not be historical and would be out of character with Mesilla.*

*Javier Jurado (1401 West Boutz Road, across West Boutz Road from the subject property)*

*Stated that the tower would be visible from his property and that it would be an eyesore that would negatively affect his property value.*

*Bonnie Poloner (Part of Mesilla Greens Subdivision Block 17, West Boutz Road)*

*Concerned that radiation from the tower could be a health issue, and that the tower will be an eyesore.*

*Ella Franzoy (owns property on Calle de Alvarez)*

*Purchased her property because of the view and the deed restrictions on her property and the others around her, and that the tower would ruin the view.*

*Monica Valesquez (Mesilla Greens Subdivision, Replat 1; 1660 West Boutz Road)*

*Concerned with the length of time the tower will be on the property and the fact that it will remain there long after the use of the tower is discontinued; noise from the operating systems for the tower; bought the property because of the protective covenants and is concerned with their removal; also concerned with the possibility of fire and the fact that the tower may be added to, increasing its size.*

*Scott Kelsie (2680 Boldt Street)*

*Bought his property because of the view and would not have purchased it otherwise, likes Mesilla the way it is, the Town does not need cell towers or other modern conveniences; the Town does not need a “,,65 foot fake Christmas tree.”*

*David Binns (Part of Mesilla Greens subdivision Block 17, 1400 West Boutz Road, adjacent to tower)*

*Having the tower next door will devalue the property due to the view; if the tower falls it will hit his house; concerned with the covenants and the fact that only the property owners can remove covenants; closed by agreeing with the others who spoke against the tower.*

*A vote was taken by the PZHAC to close the public hearing for Case 061139 and reopen the regular meeting. Discussion was opened to the PZHAC members.*

**Decision:**

**Special Use Permit**

1. **Case 061139** – 1584 West Boutz Road, submitted by Verizon Wireless for Susan Krueger (property owner); a request for a Special Use Permit to allow the construction of a 65 foot high “mono pine” cell tower on a property at this address. Zoned: Rural Farm (RF)

*Commissioner Nevarez*

*Stated that he believed that only property owners could remove covenants on their property. The covenants provided in the packet do not have provisions for how the covenants can be removed,*

*Commissioner Salas*

*Believes the covenants are still in force and that Ms. Boldt does not have the authority to remove the covenants.*

*Commission Chair*

*Felt that the proposal is not appropriate for the area homes.*

*Commissioner Nevarez*

*Stated that the homeowners bought in good faith based on the covenants*

*Commissioner Prieto*

*Stated that the PZHAC has been restrictive throughout Town and a 65 foot tower would not fit in with the character of the Town.*

*Les Gutierrez (Representative for Verizon Wireless)*

*Stated that health reasons could not be used as a reason to deny the tower. He also stated that the height of the tower could possibly be lowered 5 – 10 feet.*

*David Binns*

*Stated that we already have towers in the area and that we do not need any more.*

*Susan Krueger (given the opportunity to speak by the PZHAC)*

*Stated that Verizon has been looking for a location near here for the past fifteen years, and that staff had told Verizon that towers re allowed in the RF zone by the MTC.*

*A motion was made by the PZHAC to recommend approval of the Special Use Permit to the Board of Trustees. The motion failed by a vote of 0 – 5 as follows:*

*Commission Chair Lucero: No, out of respect to the covenants and the residents of the area.*

*Commissioner Nevarez: No, concerned that the height will detract from Mesilla and out of deference to the property owners*

*Commissioner Prieto: No, concerned with the covenants and the height of the tower*

*Commissioner Salas: No, concerned with the covenants and the height of the tower*

*Commissioner Houston: No, did not see any benefits to Mesilla of a new cell tower, also concerned with the covenants.*

*Commission Chair Lucero stated that the applicant has a right to appeal the decision of the PZHAC to the BOT and briefly explained the appeal process.*

*A vote was taken by the PZHAC to close the regular meeting and open the public hearing for Case 061139, a Zone Change request requiring a public hearing, Discussion was closed to the PZHAC and opened to the public.*

**Zone Change**

2. **Case 061140** – 2424 West Union Avenue, submitted by Dominic Licon for David and Eleanor Bustos (property owners); a request for a Zone Change from Rural Farm (RF) to Single Family Residential (R-1) for a four acre parcel located at this address.

*Staff provided a brief description of the case, describing the property as four one-acre tracts located in the Rural Farm (RF) zone (this zone requires new lots to five acres in size). Staff also explained that the reason for the request zone change was to allow the applicant to receive one acre of the four acres from the applicant's grandfather so that the applicant could be build a dwelling on the property and live there. This is not possible under the RF zoning of the property since the RF zone does not allow one acre lots to be created, and the Town does not recognize the parcel as consisting of four separate legal non-conforming one acre parcels that were created before the zoning code existed (1972). Staff also stated that, although there are similar small lots zoned RF or RA (Rural/Agricultural) that exist in the area, the proposed zone change to R-1 could constitute "spot zoning" since there is no other R-1 zoning in the immediate area. Staff also explained that if the zone change were to be approved, that applicant would need to complete the subdivision process in order to create separate one acre lots.*

*Public input followed (all speakers were sworn in and limited to three minutes):  
For:*

*Dominic Licon (applicant)*

*Explained that he needed to live on the property due to care for his grandfather due to the grandfathers age and health. He addressed the Mayor's concern with preserving agriculture in Mesilla by stating that trees on the property would be saved. He also stated that the Town does not have a zone that addresses four acre properties, and that a zone change is necessary because the Dona Ana County Assessor's office does not recognize the creation of the four one acre parcels.*

*Dave Bustos (2424 Union Avenue, grandfather of the applicant and owner of the subject property)*

*Stated that he bought the property in 1975 as separate lots and that the property has room for more trees.*

*Bill Lutz (2110 Main Street, Las Cruces; Attorney for the applicant)*

*Neighboring lots are non-conforming, and the Town has no information as to how the lots were created or zoned. There are subdivisions all over the area that have small lots, therefore this is not spot zoning. The property was purchased from Nall as one acre lots.*

*There was no further input.*

*A vote was taken by the PZHAC to close the public hearing for Case 061139 and reopen the regular meeting. Discussion was opened to the PZHAC members.*

**Decision:**

**Zone Change**

2. **Case 061140** – 2424 West Union Avenue, submitted by Dominic Licon for David and Eleanor Bustos (property owners); a request for a Zone Change from Rural Farm (RF) to Single Family Residential (R-1) for a four acre parcel located at this address.

*Commissioner Salas*

*Stated that Dona Ana County records shows the subject property as only one property*

*Commission Chair Lucero*

*Stated that although she feels for the Bustos as grandparents, the Town is trying to preserve the "Greenbelt" around the core area, and the Town Code and the Comprehensive Plan will not allow this zone change. The request is inconsistent with the Plan or the interpretation of the Ordinance.*

*Commissioner Salas*

*Referencing the legal opinion by the Town attorney in April of this year, certain areas may need to be looked at and rezoned.*

*A motion was made by the PZHAC to recommend approval of the zone change to the Board of Trustees. The motion failed by a vote of 1 – 3 as follows (Commissioner Prieto recused himself from voting):*

*Commissioner Houston: No, within the framework of the legal opinion.*

*Commissioner Salas: No, although there are areas that need to be rezoned.*

*Commissioner Nevarez: Yes, as a symbolic gesture*

*Commissioner Salas: No, concerned with the covenants and the height of the tower*

*Commission Chair Lucero: No, with a heavy heart because the rezoning would be inconsistent with the Comprehensive Plan.*

## **VI. PZHAC/STAFF COMMENTS**

*None*

## **VII. ADJOURNMENT**

*The meeting was adjourned at 4:10 pm.*