



THE BOARD OF TRUSTEES AND THE PLANNING, ZONING AND HISTORICAL APPROPRIATENESS COMMISSION OF THE TOWN OF MESILLA WILL HOLD A **WORK SESSION** ON MONDAY, FEBRUARY 22, 2021 AT 5:00 P.M., **VIA TELECONFERENCE 1-346-248-7799, MEETING ID 983-7900-0389 PASSWORD 971704.**

1. **DISCUSSION:** regarding placing a moratorium on the expansions of homes of non-conforming lots.
2. **DISCUSSION:** regarding revisions to the Historic Residential Ordinance 18.35.

THE BOARD OF TRUSTEES OF THE TOWN OF MESILLA WILL HOLD A **REGULAR MEETING** ON MONDAY, FEBRUARY 22, 2021 AT 6:00 P.M., **VIA TELECONFERENCE 1-346-248-7799, MEETING ID 983-7900-0389 PASSWORD 971704.**

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL & DETERMINATION OF A QUORUM**
3. **CHANGES TO THE AGENDA & APPROVAL**
4. **PUBLIC INPUT** – The public is invited to address the Board for up to 3 minutes.

**Public input in writing shall be received at [cynthias-h@mesillanm.gov](mailto:cynthias-h@mesillanm.gov) an hour before the meeting begins on the day of the meeting and will be read into the record. You will also be given an opportunity to speak during this time by pressing \*9 while in the teleconference. You will be prompted when to begin speaking.**

5. **APPROVAL OF CONSENT AGENDA:** (The Board will be asked to approve by one motion the following items of recurring or routine business. The Consent Agenda is marked with an asterisk \*)
  - a) **\*BOT MINUTES** – Minutes of a Special Meeting & Regular Meeting of February 8, 2021.
  - b) **\*PZHAC Case 061167 W/CONDITIONS** – 2160 Calle de Parian, submitted by Tom Hutchinson; a request for a zoning permit to replace two windows on a commercial structure at this address that were damaged. Zoned: Historic Commercial (HC).
6. **OLD BUSINESS:**
  - a) **Resolution 2021-04:** A Resolution denying an appeal for case 061139 for a special use permit for the construction of a wireless telecommunications tower at 1584 West Boutz Road submitted by Verizon Wireless. – **Board of Trustees.**
7. **NEW BUSINESS:**
  - a) **Resolution 2021-05:** A Resolution placing by the Board of Trustees placing a four-month moratorium on the expansions of homes of non-conforming lots. – **Board of Trustees.**
8. **BOARD OF TRUSTEE COMMITTEE REPORTS**
9. **BOARD OF TRUSTEE/STAFF COMMENTS**
10. **ADJOURNMENT**

#### **NOTICE:**

If you need an accommodation for a disability to enable you to fully participate in the hearing or meeting, please contact us at 524-3262 at least one week prior to the meeting. The Mayor and Trustees request that all cell phones be turned off or set to vibrate. A copy of the agenda packet can be found online at [www.mesillanm.gov](http://www.mesillanm.gov).

Posted 02/18/2021 at the following locations: Town Clerk's Office 2231 Avenida de Mesilla, Public Safety Building 2670 Calle de Parian, Mesilla Community Center 2251 Calle de Santiago, Shorty's Food Mart 2290 Avenida de Mesilla, Ristramn Chile Co., 2531 Avenida de Mesilla and the U.S. Post Office 2253 Calle de Parian.

## Chapter 18.35

### H-R – HISTORICAL RESIDENTIAL ZONE

#### Sections:

- 18.35.010 Purpose.
- 18.35.020 Uses permitted.
- 18.35.030 Exterior appearance.
- 18.35.040 Development standards.

#### **18.35.010 Purpose.**

The purpose of this zone is to provide for the protection of those residential sections of the town that are worth preserving because of historical, cultural and aesthetic or architectural interest. All remodeling or new structures must be compatible with established architectural styles and design elements as outlined in Chapter 18.33 MTC (Historic Preservation). [Ord. 2020-02 § 1; Ord. 94-06 § 1; prior code § 11-2-11.4.A]

#### **18.35.020 Uses permitted.**

Uses permitted in the H-R zone are as follows:

Single-family and multiple-family residences and related uses approved by the commission upon application and approval of a development plan in accordance with Chapter 18.33 MTC (Historic Preservation), this chapter (H-R Historical Residential Zone) and the comprehensive land use ordinance for the town. [Ord. 2020-02 § 1; Ord. 94-06 § 1; prior code § 11-2-11.4.B]

#### **18.35.030 Area requirements deemed met.**

Any lot or building site shall meet the minimum area requirements when:

A. It existed as an entire lot, or as an entire parcel, for which either a deed was on record in the office of the county recorder or a bona fide contract of sale was in effect prior to the effective date of the ordinance codified in this section.

B. It is legally subdivided after the effective date of the ordinance codified in this section. [Ord. 94-06 § 1; prior code § 11-2-5.18]

**18.35.030040 Exterior appearance.**

An application for a permit which would authorize construction, modification, moving or destruction, use or function which would affect the exterior appearance of any structure or sign must first be reviewed and approved by the PZHAC for compliance with Chapter 18.33 MTC (Historic Preservation), and receive final approval by the board of trustees. [Ord. 2020-02 § 1; Ord. 94-06 § 1; prior code § 11-2-11.4.C]

**18.35.0540 Development standards.**

A. Lot Area. Each lot or parcel to be developed in the H-R zone shall have a minimum of 80 feet of frontage on a public street and a minimum of 8,000 square feet of area.

B. Population Density. When lots or parcels in the H-R zone are to be developed to single-family or multiple single-family dwellings, each lot or parcel shall have sufficient area to provide 8,000 square feet of area for each family unit to be built. The maximum number of dwellings allowed on any property shall be two, providing density and parking requirements are met. A maximum of 40 percent impervious and 60 percent pervious shall be required unless otherwise noted by the development zone requirements of Chapter 18.33 MTC (Historic Preservation).

C. New Construction. New structures and modifications to existing structures may be built in this zone, providing the exterior appearance of the structure is approved by the PZHAC for compliance with Chapter 18.33 MTC (Historic Preservation) and the comprehensive land use ordinance for the town, with final approval by the BOT.

**Commented [CH1]:** Discussion regarding allowing more than two. Agreed to keep the two (main house and a shop/garage/shed)

1. New structures on properties containing existing structures shall be architecturally similar to the principal dwelling or structure on the property and shall ~~not exceed the height or size of the principal dwelling or structure on the property~~ meet the requirements in 18.35.050 C (23).

2. If a property is undeveloped, any new structure shall be architecturally similar to the dwellings or structures in the development zone immediately adjacent to the property and shall not exceed 15 feet in height including parapet, whichever is lower. The height of chimneys is to meet building code, but not be higher than 17 feet.

~~3. Any structure within the Historic Residential Zone shall be architecturally similar to the dwellings or structures in the development zone immediately adjacent (a block radius as discussed in 18.33 MTC Historic Preservation) to the property and shall not exceed 15 feet in height including parapet. unless an applicant can prove that a majority of adjacent properties demonstrate a higher roof. The height of chimneys is to meet building code, but not be higher than 17 feet.~~

- Commented [CH2]:** VSG What is adjacent? 2 blocks, frontward, backward? A block radius.
- Commented [CH3]:** Discussion on which height is best – not to exceed height  
Trustee JB & Com. Nevarez says to keep it at 15 ft.
- Commented [CH4]:** Com. NEVAREZ suggested removing the language regarding demonstrating higher roofs.  
\_Deleted\_  
Com. Salas – do we want wiggle room or not? It's do able to include vent work in 15 feet.

D. Yards. For all new buildings, front, side and rear yard must be at least seven feet from the property line.

1. Any repairs of structures that have been legally built on a property line or new construction of fences shall require a right-of-entry agreement signed by all property owners of all applicable properties for construction and maintenance that is recorded in Dona Ana County records and filed with the town clerk; and

2. This document must be acquired prior to planning, zoning, and historical appropriateness commission approval; and

3. This document shall be permanent and remain with all properties regardless of ownership; and

4. In the event that a mutual agreement cannot be acquired, the applicant may:

a. Meet the required setback of seven feet.

E. **Utilities.** All new installations of utility lines shall be underground unless a utility service provider demonstrates the inability to provide service. A demonstrated hardship of inability to obtain easement for a new installation from an existing pole will be reviewed on a case by case basis.

**Commented [CH5]:** Com. Salas – Issues with other property owners not allowing easements to run line from an existing pole.

F. **Flagpole Lots (Existing).** Lots substandard of 80-foot fronts:

1. Shall be limited to only one single-family home.

2. Must meet the height requirement in section (C)(2) of this section.

3. Must meet the size requirements in subsection (B) of this section. [Ord. 2020-02 § 1; Ord. 2006-03 § 1; Ord. 2004-7 § 6; Ord. 2001-04 § 2; Ord. 94-06 § 1; Ord. 92-07 § 1; prior code §§ 11-2-11.4.D – 11-2-11.4.G. Formerly 18.35.070]



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**BOARD OF TRUSTEES  
TOWN OF MESILLA  
SPECIAL MEETING  
MONDAY, FEBRUARY 8, 2021  
5:00 P.M.**

**VIA TELECONFERENCE 1-346-248-7799, MEETING ID 983-7900-0389 PASSWORD 971704**

**TRUSTEES:** Nora L. Barraza, Mayor  
Stephanie Johnson-Burick, Mayor Pro Tem  
Carlos Arzabal, Trustee (arrived at 6:20 p.m.)  
Jesus Caro, Trustee  
Veronica Garcia, Trustee

**STAFF:** Cynthia Stoechner-Hernandez, Town Clerk  
Kevin Hoban, Fire Chief  
Eddie Lerma, Marshal  
Rod McGillivray, Public Works Director  
Larry Shannon, Community Development Coordinator  
Gloria Maya, Recorder

**1. PLEDGE OF ALLEGIANCE**

Mayor Barraza led the Pledge of Allegiance.

**2. ROLL CALL & DETERMINATION OF A QUORUM**

**Roll Call.**

**Present:** Mayor Barraza, Mayor Pro Tem Johnson-Burick, Trustee Arzabal (arrived at 6:20 p.m.), Trustee Caro, Trustee Garcia.

**3. CHANGES TO THE AGENDA & APPROVAL**

**Motion: To approve agenda, Moved by Mayor Pro Tem Johnson-Burick, Seconded by Trustee Garcia.**

**Roll Call Vote:** Motion passed (summary: Yes =3).

Mayor Pro Tem Johnson-Burick Yes

Trustee Caro Yes

Trustee Garcia Yes

**4. AN APPEAL OF A DECISION OF THE PLANNING, ZONING AND HISTORICAL APPROPRIATENESS COMMISSION:**

- a) **A Public Hearing:** 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

1 construction of a 65-foot high “mono pine” cell tower on a property at this address. Zoned:  
2 Rural Farm (RF).

3 Mayor Barraza stated Mr. Joseph Cervantes, Town attorney and Ms. Bonnie Merket, Verizon attorney,  
4 will participate in the hearing.

5  
6 **Motion: To open a Public Hearing: Case 061139 -1584 West Boutz Road, submitted by Verizon**  
7 **Wireless for Susan Krueger (property owner); a request for a Special Use Permit to allow the**  
8 **construction of a 65-foot high “mono pine” cell tower on a property at this address. Zoned: Rural**  
9 **Farm (RF), Moved by Mayor Pro Tem Johnson-Burick, Seconded by Trustee Garcia.**

10  
11 **Roll Call Vote:** Motion passed (summary: Yes =3).

12 Mayor Pro Tem Johnson-Burick Yes

13 Trustee Caro Yes

14 Trustee Garcia Yes

15  
16 Public Hearing opened at 5:09 p.m.

17  
18 Ms. Stoechner-Hernandez read correspondence from Ms. Susan Krueger (attachment A).

19  
20 Ms. Stoechner-Hernandez read correspondence forwarded to Mr. David Binns from Ms. Ramona  
21 Martinez-Salopek of the Law Office of Martinez-Salopek (attachment B).

22  
23 Ms. Stoechner-Hernandez shared the warning sign photos (attachment C).

24  
25 Mr. Binns – 1400 W Boutz stated his concerns regarding the protective covenant amendment which is  
26 illegal; protective covenants have a 30-year life. He described the issues that come forth with cell towers.

27  
28 Mrs. Binns – 1400 W Boutz stated her concerns with safety issues.

29  
30 Mr. Xavier Jurado – 1401 W Boutz stated his concerns with safety issues and location of proposed cell  
31 tower. The cell tower installed at the gin is different since there are no neighbors. Covenants protect the  
32 people who own property but especially the ones that are living in the area.

33  
34 Ms. Velasquez – 1660 W Boutz stated covenants are still in place; they were not aware of any  
35 amendments brought forth. The tower will impact the homeowners in the area. She addressed the  
36 possibility of additional antennas.

37  
38 Mr. Schmitt – 1176 Papillon Way stated his concerns with appearance of tower, the closeness it will be to  
39 the schools and the possibility of additional antennas, etc.

40  
41 Ms. Poloner – 431 Bason stated her concerns with the affects that come off the tower. She did not  
42 received information from Ms. Boldt.

43  
44 Mr. Arturo Jurado – 2949 Camino Castillo stated we have always been told to get the area agricultural.  
45 The trustees should worry about the health of our residents.

46  
47 Ms. Velasquez – 1660 W Boutz stated the height of a tower can raise other issues and/or problems.

48  
49 Mr. Flamm – 1166 Papillon Lane stated his concerns with the tower and the affect they have on property  
50 value.

1  
2 Ms. Krueger – 2912 Snow Rd stated section 18.85 addresses the concerns and questions raised. The  
3 towers at the gin have been there for 18 years; she asked have property values decreased, noise  
4 complaints raised, fire issues, or the tower possibly falling. Telecommunication Act 1986 states that a  
5 town cannot ban tower but can regulated them. The Town of Mesilla and the New Mexico Municipal  
6 League drafted an ordinance to consider cell towers.

7  
8 Mr. Binns stated he would not put a tower on his property, next to a school or where people must look at  
9 it every day. He stated that no other property owner, but Ms. Krueger knew about the amendment which  
10 would remove our protective covenant.

11  
12 Ms. Kruger stated the property owners who were apart of the Well Sharing Agreement were informed of  
13 the amendment to the covenant.

14  
15 Ms. Velasquez stated why were the property owners not given a written notice of the change coming into  
16 play. She feels it was not legally done.

17  
18 Mr. Binns stated the Well Sharing Agreement would not have anything to do with the protective  
19 covenant, the towers or the illegal amendment done to remove our protective covenant.

20  
21 Mayor Barraza stated we are not here to discuss the Well Sharing Agreement.

22  
23 Ms. Poloner stated she concurs with Ms. Velasquez and Mr. Binns.

24  
25 **Motion: To close Public Hearing and open Regular meeting: Case 061139 -1584 West Boutz Road,**  
26 **submitted by Verizon Wireless for Susan Krueger (property owner); a request for a Special Use**  
27 **Permit to allow the construction of a 65-foot high “mono pine” cell tower on a property at this**  
28 **address. Zoned: Rural Farm (RF), Moved by Trustee Caro, Seconded by Mayor Pro Tem**  
29 **Johnson-Burick.**

30  
31 **Roll Call Vote:** Motion passed (summary: Yes =4).

32 Mayor Pro Tem Johnson-Burick Yes

33 Trustee Arzabal Yes

34 Trustee Caro Yes

35 Trustee Garcia Yes

36  
37 Open Regular Meeting at 6:00 p.m.

- 38  
39 **b) For Approval/Disapproval:** Case 061139 – 1584 West Boutz Road, submitted by Verizon  
40 Wireless for Susan Krueger (property owner); a request for a Special Use Permit to allow  
41 the construction of a 65-foot high “mono pine” cell tower on a property at this address.  
42 Zoned: Rural Farm (RF). **\*\*After a roll call vote of the above appeal, a resolution**  
43 **stating the board’s decision and justification shall be approved at the next Board of**  
44 **Trustee meeting\*\***

45 Mayor Barraza explain the process that would be followed.

46  
47 Mr. Les Gutierrez read Verizon’s correspondence.

48  
49 Mr. Shannon gave summary of the case and why it was denied (0-5) by PZHAC (available in packet).



1 Ms. Stoechner-Hernandez swore in the speakers.  
2  
3 Mayor Pro Tem Johnson-Burick asked if the red line on page 69 identifies the property owners that  
4 needed to be notified.  
5  
6 Ms. Stoechner-Hernandez responded that is correct.  
7  
8 Mayor Pro Tem Johnson-Burick stated she did not see the documentation that was required to be  
9 provided pursuant to Section 18.54 c or the documentation supporting the proposed cell tower site.  
10  
11 Mr. Gutierrez responded that documentation was part of the original application. A thorough engineering  
12 analysis was done that showed the areas I was referencing. Towers are given a name at each location they  
13 are placed.  
14  
15 Mayor Pro Tem Johnson-Burick stated explicit detail was given but not included in the packet.  
16  
17 Mr. Gutierrez reiterated it was included in the original application to the PZHAC.  
18  
19 Trustee Garcia stated she understood residents were sent letters but is hearing that residents did not  
20 receive information.  
21  
22 Mayor Barraza stated Mr. Shannon sent certified letters to the residents affected. She asked Mr. Shannon  
23 if he received the return receipt for the mailings.  
24  
25 Mr. Shannon responded the letters are sent out by the applicant, Verizon, in this case. The packet has  
26 documentation of who was mailed the information but not who received the letters.  
27  
28 Mr. Gutierrez stated out of the 66 letters mailed there was around 4 that were not delivered.  
29  
30 Trustee Garcia asked why the trustees only got partial of what was given to PZHAC.  
31  
32 Mr. Shannon responded what he forwarded to the PZHAC, he forwarded to the Board of Trustees.  
33  
34 Ms. Stoechner-Hernandez confirmed that everything received from Verizon Wireless along with any  
35 correspondence to the PZHAC was included in the board's packet.  
36  
37 Trustee Arzabal stated that information is not in their packet.  
38  
39 Mayor Barraza stated she believes that it has been provided to the board.  
40  
41 Mr. Cervantes stated the board should not consider anything regarding the covenants which have no play  
42 in municipality zoning laws. The Town of Mesilla with the assistance of the New Mexico Municipal  
43 League adopted comprehensive ordinance requirements under Section 18.54 which comply with federal  
44 law.  
45  
46 Trustee Arzabal stated he is understanding our ordinances allows towers in Mesilla.  
47  
48 Mr. Cervantes responded the town's ordinances allow approval of a Special Use Permit for cell towers,  
49 but the ordinances have an exhausted set of criteria requirements. It is up to the board as elected officials  
50 to approve or disapprove the Special Use Permit provided it is done on legitimate and lawful grounds.  
51

1 Mayor Barraza stated the trustees have always tried to do what is best for Mesilla. We need to see how  
2 we present the town to tourism which is so important to Mesilla.

3  
4 Mayor Pro Tem Johnson-Burick referenced Ordinance Sections 18.85.090, 18.20.040, 18.20.50. She  
5 believes there are other areas that could have been considered.

6  
7 Mr. Gutierrez stated the ordinance they have been referencing is Section 18.6.210. The  
8 reason for a Special Use Permit application is that the proposed tower will be 65 ft. in height; the  
9 ordinance only allows for a 50 ft. structure.

10  
11 Mayor Pro Tem Johnson-Burick asked why they applied for a Special Use Permit without doing the  
12 research.

13  
14 Mr. Gutierrez responded they applied for a Special Use Permit since the tower would be higher than 50 ft.  
15 in height.

16  
17 Mayor Pro Tem Johnson-Burick stated the application would have come to the board for approval. The  
18 commercial use is defined in the ordinance and asked how they went around it.

19  
20 Mr. Gutierrez read the definition on page 22. We are allowed to, under RF Zone, to apply for a  
21 commercial tower through a Special Use Permit.

22  
23 Mayor Pro Tem Johnson stated the rules for a Special Use Permit and RF were not followed.

24  
25 Mr. Gutierrez responded they worked with Mr. Shannon and followed Section 18.6.210 very closely.

26  
27 Trustee Arzabal asked why this Special Use Permit did not go to the Board of Adjustments for a variance.

28  
29 Mr. Shannon referenced and read Sections 18.54 and 1.05; Mayor Pro Tem Johnson-Burick referenced  
30 18.85 and 18.55. The trustees would need to interpret since some section conflict.

31  
32 **Motion: To disapprove: Case 061139 – West Boutz Road, submitted by Verizon Wireless for Susan**  
33 **Krueger (property owner); a request for a Special Use Permit to allow the construction of a 65-foot**  
34 **high “mono pine” cell tower on a property at this address. Zone: Rural Farm (RF). Moved by**  
35 **Mayor Pro Tem Johnson-Burick, Seconded by Trustee Caro.**

36  
37 **Roll Call Vote:** Motion passed (summary: Yes =4).

38 Mayor Pro Tem Johnson-Burick Yes - Based on Ordinances 18.20.040,18.85.090, 18.54, lack of  
39 documents and in support of the residents’ concerns.

40 Trustee Arzabal Yes – Based on Ordinances 18.20, 18.85, 18.54, lack of documents and in support of  
41 the residents’ concerns.

42 Trustee Caro Yes – Based on Ordinances 18.20, 18.85, 18.54 and with his experience of long term  
43 electric magnetic affects.

44 Trustee Garcia Yes – Based on Ordinances 18.54, 18.20, 18.85, lack of documents and in support of the  
45 residents.

46  
47 **5. ADJOURNMENT**

48 **The Town of Mesilla Trustees unanimously agreed to adjourn the meeting. (Summary: Yes-**  
49 **4)**

1 **MEETING ADJOURNED AT 7:01 P.M.**

2

3 **APPROVED THIS 22nd DAY OF February, 2021.**

4

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\_\_\_\_\_  
Nora L. Barraza  
Mayor

9 **ATTEST:**

10

11

12 \_\_\_\_\_  
Cynthia Stoeher-Hernandez  
13 Town Clerk/Treasurer

14

15

DRAFT

Case 061139 (SUP20-001), February 8, 2021, comments submitted by Susan Krueger, Thanks

**Lesser concerns:**

November 16, 2020, sometime after the PZHAC meeting and not recorded as part of the meeting, the Chairperson signed PZHAC Resolution 2020-001, stating the PZHAC of the Town of Mesilla denies the request for a special use permit for a Cellular Telephone tower with findings of fact for said denial stated in Attachment A. To the best of our knowledge there is no public record that this resolution was approved by the PZHAC Commissioners. Plus, according to MTC section 18.54.070 A.1. Wireless Telecommunications Facilities (WTF), the PZHAC acts as a recommending body rather than as a decision making body. Therefore no appeal was necessary since the case would go automatically to the Board of Trustees.

**Significant concerns:**

Section 18.85.170, in Chapter 18.85, Variances and Special Use Permits (V&SUP), is titled "Investigations" and it is a mandatory section. However, the PZHAC did not act on it, which leaves the investigations up to the Board of Trustees. The section says the planning commission or board of trustees shall require its own members or staff to investigate the facts about an application set for hearing, including an analysis of precedent cases to provide all necessary information on each case. A fact to look at is that on September 8, 2014, Verizon made a presentation to the BOT about placing a cell tower on town land. What was the outcome?

For precedent cases, there are two existing cell towers on land owned by the Jurado family at Four Points Cotton Gin on Avenida de Mesilla and Union Ave., in place for at least 18 years. An analysis of those cases, including required annual reports and business registrations, would potentially provide staff, the PZHAC Commissioners, BOT Members, and those attending the public hearing with some or all of the following:

1. The history of the town's WTF ordinance and the Telecommunication Act of 1996, which says a town, city, etc., cannot ban cell towers but may regulate them;
2. Information on the permitting process for the two cell towers on Jurado land, the first a 75' tower and the second a 65' tower which was approved in 2004, with two variances, one of which was for the setback from Highway 28, a scenic byway;
3. Further, with two cell towers in place for at least 18 years, there is the opportunity to examine matters raised at the November 16, 2020, PZHAC public hearing, such as:
  - how health concerns were addressed then, and, if any, are being addressed today;
  - have property values decreased;
  - were there questions then and are there questions now about height, appearance (an eye sore), and view blocking;
  - were there concerns, then and are there concerns now, about noise, potential of fire from a tower, and a tower falling down;
  - what public benefits to the Town were identified then and what public benefits can be identified now with the proposed cell tower; and
  - how were variances used in 2004, and what is their potential use now by the BOT regarding imposing conditions and limitations on the proposed tower to address public concerns.

Townpeople have an honest expectation that as trustees you will enforce all parts of the town's ordinances. I know each of you understands this; I just needed to say it here.

February 8, 2021

**VIA EMAIL to [davebinns@msn.com](mailto:davebinns@msn.com)**

Mr. Dave Binns  
1400 West Boutz  
Las Cruces, NM 88005

RE: Enforceability of Protective Covenants of Mesilla Greens Subdivision

Dear Mr. Binns:

You asked my office to give you a legal opinion with regards the issue of whether, Ms. Betty Boldt, had unilateral authority to amend the Protective Covenants of Mesilla Greens Subdivision "Protective Covenant." I have reviewed the amendment that was filed by Ms. Boldt which was filed on October 31, 2018 with the Dona Ana County Clerk and the Protective Covenants. My further understanding is that neither you, and upon information and belief, the other property owners within the subdivision had any notice of this amendment until the issue of the installation of the Verizon cell tower came about.

Pursuant to the Protective Covenants (I)(1), the deed restrictions were to be in full force for a period of thirty (30) years from the date of the recording of the restrictions, which occurred on or about December 23, 1991. The Protective Covenants also put in a place a governing structure called the Administrative Control Committee ("Committee"). See Protective Covenants (I)(4). The Committee was originally composed of the two original property owners, Ms. Boldt and Mr. Benjamin Boldt. In the event of either's death or resignation the Protective Covenants states that the other shall full authority to designate a successor or successors. It is my understanding based on the information you gave to me and from the contents of the Amendment, that a successor was never designated after Mr. Boldt's death.

Additionally, the amendment procedures of the restrictive covenants are ambiguous in that it fails to lay out how the restrictive covenants are to be amended. Generally, amendment of restrictive covenants require notice and a vote of either the governing structure and/or property owners.

It appears that Ms. Boldt unilaterally attempted to extinguish the restrictive covenants prior to its term of expiration with an amendment of which you and most likely other property owners had no notice of. This simple unilateral action by Ms. Boldt creates a basis for several claims, including but not limited to, claims of breach by Ms. Boldt of her duties as a governing member and breach of the restrictive covenants, enforceability of the restrictive covenants as they relate to its intent of the length of term, the failure to appoint a successor, thereby creating questions of the validity and enforceability of the amendment, and whether the restrictive covenants were successfully extinguished.

It is my opinion that you have a legal basis to move forward with such claims and any claims to enforce the restrictive covenants as they relate to the restrictions of towers, i.e. Verizon cell tower. This would also include filing an injunction against Verizon, the Town of Mesilla, and all other interested parties.

Please feel free to contact my office with any questions.

Sincerely,

**LAW OFFICE OF MARTINEZ-SALOPEK, LLC.**

*/s/ Ramona J. Martinez-Salopek*

\_\_\_\_\_  
Ramona J. Martinez-Salopek

Attorney at Law

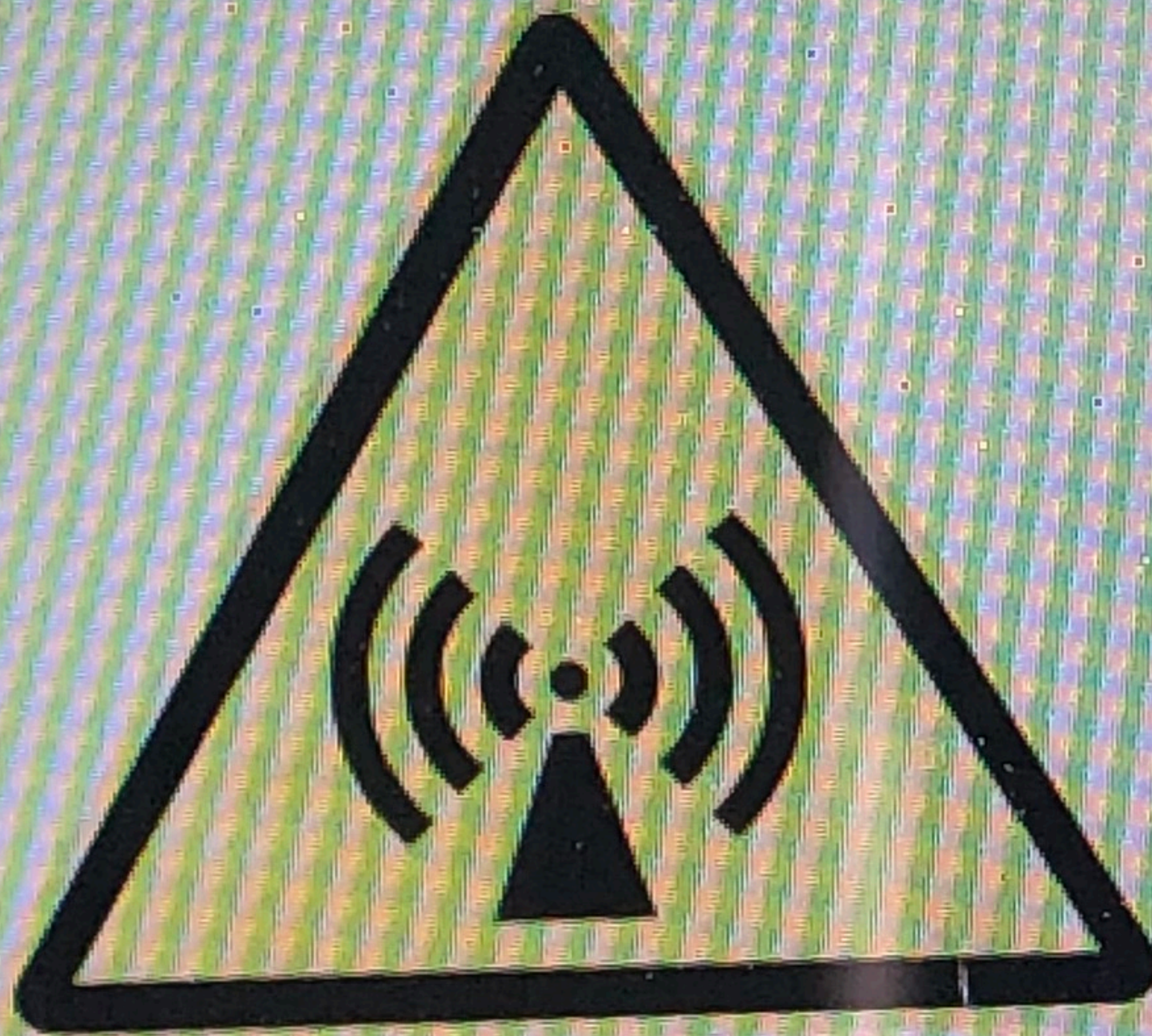
Attachment C - photo from Mr. David Binns



FULL HD 20.3 MEGA PIXELS



**CAUTION**



**CAUTION**

**RADIO FREQUENCY ENVIRONMENT AREA**

**AUTHORIZED PERSONNEL ONLY BEYOND THIS POINT! RADIO FREQUENCY EMISSIONS AT THIS SITE MAY EXCEED THE FEDERAL OCCUPATIONAL CONTROLLED EXPOSURE LIMITS.**

Personnel proceeding beyond this point must obey all posted signs, site guidelines and Federal Regulations for working in radio frequency environments.

In accordance with Federal Regulations on radio frequency emissions.





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7 **BOARD OF TRUSTEES**  
8 **TOWN OF MESILLA**  
9 **REGULAR MEETING**  
10 **MONDAY, FEBRUARY 8, 2021**  
11 **6:00 P.M.**

12 **VIA TELECONFERENCE 1-346-248-7799, MEETING ID 983-7900-0389 PASSWORD 971704.**

13  
14  
15 **TRUSTEES:** Nora L. Barraza, Mayor  
16 Stephanie Johnson-Burick, Mayor Pro Tem  
17 Carlos Arzabal, Trustee (arrived at 6:20 p.m.)  
18 Jesus Caro, Trustee  
19 Veronica Garcia, Trustee  
20

21 **STAFF:** Cynthia Stoechner-Hernandez, Town Clerk  
22 Larry Shannon, Community Development Coordinator  
23 Gloria Maya, Recorder  
24

25 *Mayor Barraza called the meeting to order at 7:02 p.m.*

26  
27 **1. PLEDGE OF ALLEGIANCE**

28 Mayor Barraza led the Pledge of Allegiance.

29 Mayor Barraza held a Moment of Silence for Mrs. Caro, Mr. Perez, Officer Jarrott and former Mayor  
30 Cadena.

31  
32 **2. ROLL CALL & DETERMINATION OF A QUORUM**

33 **Roll Call.**

34 **Present:** Mayor Barraza, Mayor Pro Tem Johnson-Burick, Trustee Arzabal, Trustee Caro, Trustee  
35 Garcia.  
36

37 **3. CHANGES TO THE AGENDA & APPROVAL**

38 Mayor Barraza removed under Consent Agenda item a.

39 **Motion: To approve agenda as amended, Moved by Mayor Pro Tem Johnson-Burick, Seconded by**  
40 **Trustee Arzabal.**

41  
42 **Roll Call Vote:** Motion passed (summary: Yes =4).

43 Mayor Pro Tem Johnson-Burick Yes  
44 Trustee Arzabal Yes  
45 Trustee Caro Yes  
46 Trustee Garcia Yes

1  
2 4. **PUBLIC INPUT** – The public is invited to address the Board for up to 3 minutes.

3 **Public input in writing shall be received at [cynthias-h@mesillanm.gov](mailto:cynthias-h@mesillanm.gov) an**  
4 **hour before the meeting begins on the day of the meeting and will be read**  
5 **into the record. You will also be given an opportunity to speak during this**  
6 **time by pressing \*9 while in the teleconference. You will be prompted**  
7 **when to begin speaking.**

8 No Public Input

9 5. **APPROVAL OF CONSENT AGENDA:** (The Board will be asked to approve by one  
10 motion the following items of recurring or routine business. The Consent Agenda is  
11 marked with an asterisk \*)

12 Trustee Arzabal requested placing under New Business item A on the consent agenda.

13 **Motion: To approve consent agenda as amended, Moved by Trustee Arzabal, Seconded by Mayor**  
14 **Pro Tem Johnson-Burick.**

15  
16 **Roll Call Vote:** Motion passed (summary: Yes =4).

17 Mayor Pro Tem Johnson-Burick Yes

18 Trustee Arzabal Yes

19 Trustee Caro Yes

20 Trustee Garcia Yes

21  
22 a) **\*BOT MINUTES** – Minutes of a Joint Work Session & Regular Meeting on January  
23 25, 2021. **Approved by consent agenda.**

24  
25 b) **\*ACKNOWLEDGEMENT** – MPO Resolution 21-02 A resolution to promote safety  
26 for pedestrians and bicyclists on the roadways of the Mesilla Valley MPO.

27 Ms. Stoechner-Hernandez read the MPO Resolution 21-02: A resolution to promote safety for  
28 pedestrians and bicyclists on the roadways of the Mesilla Valley MPO.

29  
30 6. **NEW BUSINESS:**

31 a) **For approval:** a grant agreement with DFA for project MES2020-09 Capital Outlay for  
32 Playground Equipment in the amount of \$100,000. – **Rod McGillivray, Public Works**  
33 **Director. Approved by consent agenda.**

34 b) **For approval:** a contract with Pure Operations to act as Town of Mesilla NMED Water  
35 Operator of record and provide other services as provided. – **Rod McGillivray, Public Works**  
36 **Director.**

37 Mr. McGillivray stated the company will be used until the foreman position is filled.

38  
39 Trustee Garcia asked for clarification that the monies from the foreman salary will be used to pay for the  
40 contract with Pure Operations.

41  
42 Mayor Barraza confirmed that was correct.

43  
44 **Motion: To approve a contract with Pure Operations to act as Town of Mesilla NMED Water**  
45 **Operator of record and provide other services as provided, Moved by Trustee Arzabal, Seconded**  
46 **by Trustee Garcia.**

1 **Roll Call Vote:** Motion passed (**summary:** Yes =4).

2 Mayor Pro Tem Johnson-Burick Yes

3 Trustee Arzabal Yes

4 Trustee Caro Yes

5 Trustee Garcia Yes

6

7 c) **For approval:** a contract with Danny Garcia to provide investigative services for the  
8 Marshal's Department for \$200/month. – **Edward Lerma, Marshal.**

9 Marshal Lerma gave the job history behind Mr. Garcia. Mr. Garcia has gone over and beyond performing  
10 the duties asked of him, so he requested that the town pay Mr. Garcia \$200/month instead of the original  
11 agreement of \$1/year.

12

13 **Motion: To approve a contract with Mr. Danny Garcia to provide investigative services for the**  
14 **Marshal's Department for \$200/month, Moved by Trustee Arzabal, Seconded by Trustee Caro.**

15

16 Mayor Pro Tem Johnson-Burick stated she feels Mr. Garcia can share his expertise with the officers.

17

18 Trustee Caro stated he feels this is positive move for the department.

19

20 Mayor Barraza responded she is impressed with Mr. Garcia and the difference he has made in the  
21 department.

22

23 **Roll Call Vote:** Motion passed (**summary:** Yes =4).

24 Mayor Pro Tem Johnson-Burick Yes

25 Trustee Arzabal Yes

26 Trustee Caro Yes

27 Trustee Garcia Yes

28

29 **7. BOARD OF TRUSTEE COMMITTEE REPORTS**

30 Trustee Arzabal: CEO will be held in March.

31

32 Mayor Pro Tem Johnson-Burick: MPO-February 10<sup>th</sup> at 1:00 p.m.

33

34 Mayor Barraza: Explained how Senate Bill 1 will work.

35

36 **8. BOARD OF TRUSTEE/STAFF COMMENTS**

37 Marshal Lerma stated after what happened on Friday, he will be working on a much-needed Response  
38 Plan for the Town of Mesilla.

39 Fire Chief Hoban stated the department lost Firefighter Edward Vasquez to COVID; thanked the board  
40 and the citizens for their support.

41

42 Mayor Pro Tem Johnson-Burick extended her condolences to everyone who has lost a family member.  
43 She supports everyone that puts their lives at risks every day. She asked if there is funding that could be  
44 used to pay Mr. Rivera.

45

46 Trustee Arzabal stated Mr. Perez was his Uncle. He commends Marshal Lerma for all the positive things  
47 he has done for the department.

48

1 Trustee Garcia stated the community loves the Marshal Department.  
2  
3 Trustee Caro thanked everyone for their prayers and support. He extended his condolences to all the  
4 local families.  
5  
6 Mayor Barraza stated the Las Cruces Public Schools is working on an agreement for the CSO and the  
7 SRO as they work on opening the schools. Mr. Rivera needs to make the best decision for his family.  
8 Thanked all the departments for what they do for the community. Town Hall will be closed on Monday.  
9

10 **9. ADJOURNMENT**

11 **The Town of Mesilla Trustees unanimously agreed to adjourn the meeting. (Summary: Yes-**  
12 **4)**  
13

14 **MEETING ADJOURNED AT 7:38 P.M.**  
15

16 **APPROVED THIS 22nd DAY OF February 2021.**  
17

18  
19  
20 \_\_\_\_\_  
21 Nora L. Barraza  
22 Mayor

23 **ATTEST:**  
24

25 \_\_\_\_\_  
26 Cynthia Stoeher-Hernandez  
27 Town Clerk/Treasurer

**BOT ACTION FORM**  
**BUILDING PERMIT 061167**  
**[PZHAC REVIEW – 2/16/2021]**  
**STAFF ANALYSIS**

**Item:**

**Case 061167** – 2410 Calle de Parian, submitted by Tom Hutchinson; a request for a zoning permit to replace two windows on a commercial structure at this address that were damaged in a burglary attempt on this structure. Zoned: Historic Commercial (HC)

**DESCRIPTION OF REQUEST:**

The windows that were broken are part of the La Posta restaurant that is occupied by “Matteo’s” a small jewelry store and gift shop. The windows were broken as part of a burglary attempt on a weekend around Christmas. The windows were repaired immediately afterward on that same weekend. According to the applicant a permit was not obtained for the repairs since the Town offices were not open, and the repairs to the windows could not wait. The applicant is now requesting a permit as the result of staff requiring that the windows meet code requirements for historical accuracy and appropriateness. In keeping with other window replacements in the Historical districts, the windows should reflect the style that is being replaced, and they should be consistent with each other since they are on the same wall of the same building. This means that the windows should be or appear to be multi-paned.

According to the applicant, only one of the windows that was replaced was multi-paned with glass panes and frame that was easily broken. The other window that was replaced had been broken before, and the replacement glass was a single pane of safety glass that was damaged but not broken in this latest burglary attempt. This is the same type of glass that has now been used on the other window.

The applicant or his representative will be present by “Zoom” at the work session to provide further details about the windows, and to answer any questions that may arise.

**ACTUAL REPLACEMENT COST: \$566.60**

**CONSISTENCY WITH THE CODE:**

The PZHAC will need to determine what the style of the windows should be, and how that style can be met while still protecting the integrity and security of the commercial operation they are on.

**Findings:**

- The PZHAC has jurisdiction to review and approve this request.
- The proposed work consists of replacing two windows on a commercial building that had been damaged during a burglary attempt.
- The PZHAC has determined that the proposed windows meet all applicable Code requirements.

**PZHAC ACTION:**

*The PZHAC determined that the proposed windows meet the requirements of the Code and voted 5 – 0 to recommend APPROVAL of the request to the BOT with the following CONDITION:*

- 1. A FRAMEWORK WILL BE INSTALLED OVER BOTH WINDOWS TO GIVE THE APPEARANCE OF MULTI-PANED GLASS.**

**BOT OPTIONS:**

- Approve the application as recommended by the PZHAC.
- Approve the application with conditions.
- Reject the application.

**BOT ACTION:**



# Doña Ana County, NM

General Reference Maps

2014 Aerial | Addresses | County Address Points

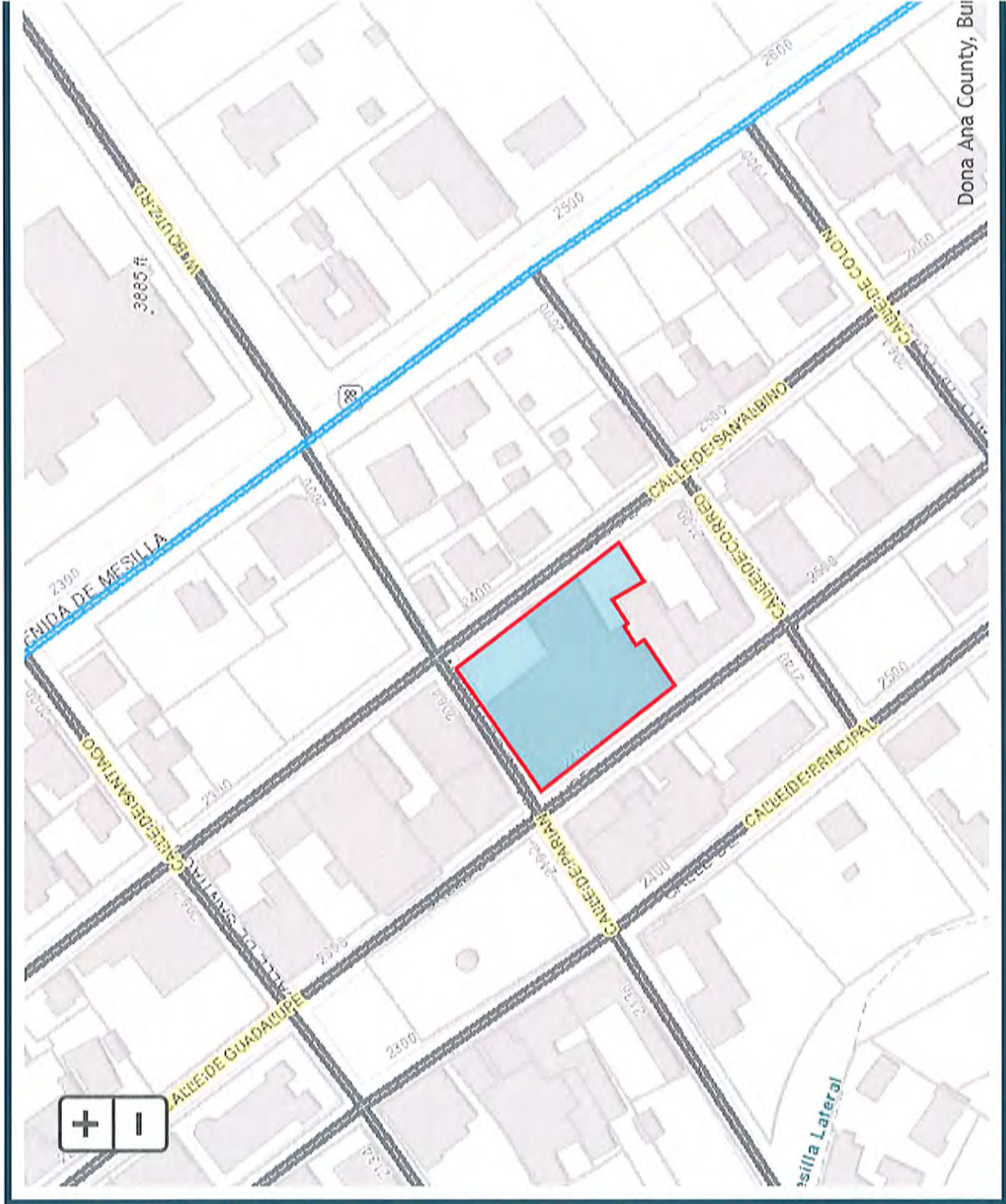
Select Search Type: Account Number | Enter Value:

Maps

Legend

|                             |
|-----------------------------|
| <b>Map Themes</b>           |
| Parcels                     |
| UDC Zoning                  |
| Roads and Transportation    |
| NM House Districts          |
| NM Senate Districts         |
| County Commission Districts |
| City Council Districts      |
| Median Household Income     |
| General Land Ownership      |

Account Number: **R0401621**  
 Parcel Number: 4006137249437  
 Owner: MCBE PARTNERS LTD  
 Mail Address: PO BOX 116  
 Subdivision: LA POSTA SUBDIVISION  
 (BK 23 PG 255 - 1201250)  
 Property Address: 2410 CALLE DE  
 PARIAN  
 Acres: 0



Doña Ana County, Bu



**INVOICE**  
No. 002942

851 N. SOLANO DR.  
LAS CRUCES, NM 88001  
575-888-7774  
laventanaglass@gmail.com

Date 12-14-20

Name La Posta De Mesilla

Address 2410 Calle de San Albino

Tom-635-6344 / Matt-621-5868 / 524-3524

| Quantity | Description                                   | Price     | Amount |
|----------|---|-----------|--------|
|          | 31 3/4 x 73 3/4<br>27 3/4 x 73 5/8 - 1/4 lami |           |        |
| 4        | 10 x 12 - SS Putty Hackcut                    |           |        |
|          | Labor   |           |        |
|          | Deposit of \$283.30<br>w/ CC 12-14-20         |           |        |
|          | Balance - \$283.30<br>Paid - w/ CC 12-14-20   |           |        |
|          | thutena@zianet.com                            |           |        |
|          |   | Sub Total | 523.08 |
|          |   | Tax       | 43.52  |
|          |   | Total     | 566.60 |

w/01991

Received in good condition by:

12/15/20 @ 10:30 am

**Thank You**

LA VENTANA GLASS LLC  
851 NORTH SOLANO DR  
LAS CRUCES, NM 88001

12/16/2020

MID: XXXXXXXXXXXX590

14:24:56

TID: XXXXX586

CREDIT CARD

VISA SALE

Card # Token XXXXXXXXXXXX9272  
SEQ #: 3  
Batch #: 359  
INVOICE: 3  
Approval Code: 03698D  
Entry Method: Manual  
Mode: Online  
Avs Code: YYY

SALE AMOUNT \$283.30

I agree to pay above total amount  
according to card issuer agreement.  
(Merchant agreement if Credit Voucher)

x 2942

MERCHANT COPY



**TOWN OF MESILLA  
ZONING APPROVAL**

OFFICIAL USE ONLY:

Case # 061163  
Fee \$ 50.00

**PERMISSION TO CONDUCT WORK  
OR  
OBTAIN A COMMERCIAL/RESIDENTIAL BUILDING PERMIT FROM CID**

2231 Avenida de Mesilla, P.O. Box 10, Mesilla, NM 88046 (575) 524-3262 ext. 104

CASE NO. 061163 ZONE: MC CODE: M1 APPLICATION DATE: 1/28/21

TOM HUTCHINSON 575 635 6344  
 Name of Property Owner Property Owner's Telephone Number  
PO BOX 116 Mesilla NM 88046  
 Property Owner's Mailing Address City State Zip Code  
THUTCH@ZIANET.COM  
 Property Owner's E-mail Address  
LA VENTANA GLASS  
 Contractor's Name & Address (If none, indicate Self)  
575 888 7774  
 Contractor's Telephone Number Contractor's Tax ID Number Contractor's License Number

Address of Proposed Work: 2410 CALE DE SAN ALBINO, MESILLA, NM 88046

Description of Proposed Work: TO REPLACE GLASS FROM BREAK-IN THAT OCCURRED ON DEC 13<sup>th</sup>. POLICE REPORT FILED. GLASS + WOOD TRIM REPLACED EXACTLY WHAT IT LOOKED LIKE PRIOR TO THE DAMAGE. TO INCLUDE EXISTING AND UNSAMAGED TRIM.

\$ 5100.00 TRILL 8 JAN 21  
 Estimated Cost Signature of Applicant Date  
 Signature of property owner: TRILL

**With the exception of administrative approvals, all permit requests must undergo a review process from staff, PZHAC and/or BOT before issuance of a zoning permit. Plan sheets are to be no larger than 11 x 17 inches or shall be submitted electronically.**

**FOR OFFICIAL USE ONLY**

PZHAC  Administrative Approval BOT  Approved Date: \_\_\_\_\_  
 Approved Date: \_\_\_\_\_  Disapproved Date: \_\_\_\_\_  
 Disapproved Date: \_\_\_\_\_  Approved with Conditions  
 Approved with conditions

PZHAC APPROVAL REQUIRED:  YES  NO BOT APPROVAL REQUIRED:  YES  NO

CID PERMIT/INSPECTION REQUIRED:  YES  NO  SEE CONDITIONS

CONDITIONS: PZHAC REVIEW + BOT APPROVAL REQUIRED  
TL

PERMISSION ISSUED/DENIED BY: \_\_\_\_\_ ISSUE DATE: \_\_\_\_\_

THIS APPLICATION SHALL INCLUDE ALL OF THE FOLLOWING:

1. \_\_\_\_\_ Plot plan with legal description to show existing structures, adjoining streets, driveway(s), improvements & setbacks. Verification shall show that the lot was LEGALLY subdivided through the Town of Mesilla or that the lot has been in existence prior to February 1972.
2. \_\_\_\_\_ Site Plan with dimensions and details.
3. \_\_\_\_\_ Foundation plan with details.
4. \_\_\_\_\_ Floor plan showing rooms, their uses and dimensions.
5. \_\_\_\_\_ Cross section of walls
6. \_\_\_\_\_ Roof and floor framing plan
8. \_\_\_\_\_ Proof of legal access to the property.
9. \_\_\_\_\_ Drainage plan.
10. \_\_\_\_\_ Details of architectural style and color scheme (checklist included for Historical zones) – diagrams and elevations.
11. \_\_\_\_\_ Proof of sewer service or a copy of septic tank permit; proof of water service (well permit or statement from the Public Utility providing water services).
12. \_\_\_\_\_ Proof of legal access to the property.
13. \_\_\_\_\_ Other information as necessary or required by the City Code or Community Development Department (See other side.)





**RESOLUTION NO. 2021-04**

**A RESOLUTION DENYING AN APPEAL FOR CASE 061139 FOR A SPECIAL USE PERMIT FOR THE CONSTRUCTION OF A WIRELESS TELECOMMUNICATIONS TOWER AT 1584 WEST BOUTZ ROAD SUBMITTED BY VERIZON WIRELESS.**

**WHEREAS**, the Board of Trustees convened on February 8, 2021 at a regular meeting and considered an appeal of the Planning, Zoning and Historical Appropriateness Commission's (PZHAC) denial of a request to allow a special use permit to construct a wireless telecommunications tower at 1584 West Boutz Road; and

**WHEREAS**, the Board of Trustees were informed of the details of the case; and

**WHEREAS**, the Board of Trustees heard testimony from the appellant, Mr. Les Gutierrez, and staff regarding the appeal; and

**NOW THEREFORE, BE IT RESOLVED** the Board of Trustees of the Town of Mesilla hereby voted to deny the appeal related to Case 061139 to allow a Special Use Permit to construct a wireless telecommunications tower at 1584 West Boutz Road.

**BE IT FURTHER RESOLVED** that this decision was made based on the following findings at their February 8, 2021 meeting:

- a) The appellant failed to justify compliance with MTC 18.20.040(B) which states that Commercial uses other than the sale of agricultural products is a prohibited use in the Rural Farm (RF) zone.
- b) The appellant failed to justify compliance with MTC 18.20.050(D) which states that the maximum height of buildings or structures in the RF Zone shall be two stories or 30 feet, whichever is less.
- c) The appellant failed to justify compliance with MTC 18.85.090 which states that the PZHAC shall recommend or disapprove any special use permits for any use which can be specifically classified as a residential, commercial, or industrial use.

**PASSED, APPROVED AND ADOPTED** this 22nd day of February 2021.

---

Nora L. Barraza  
Mayor

**ATTEST:**

\_\_\_\_\_  
Cynthia Stoechner-Hernandez  
Town Clerk-Treasurer

**Roll Call Vote:**

Mayor Barraza \_\_\_\_\_  
Trustee Johnson-Burick \_\_\_\_\_  
Trustee Arzabal \_\_\_\_\_  
Trustee Caro \_\_\_\_\_  
Trustee Garcia \_\_\_\_\_



**RESOLUTION NO. 2021-05**

**A RESOLUTION BY THE BOARD OF TRUSTEES PLACING A FOUR-MONTH MORATORIUM ON THE EXPANSIONS OF HOMES OF NON-CONFORMING LOTS.**

**WHEREAS**, the Board of Trustees (BOT) and the Planning, Zoning and Historical Appropriateness Commission (PZHAC) have both stated that revisions are needed to the Town Ordinances; and

**WHEREAS**, the BOT and PZHAC held a joint work session on February 22, 2021 and found that a moratorium on the expansion of non-conforming lots is necessary; and

**WHEREAS**, changes to Mesilla Town Code as they relate to non-conforming lots benefit the Town of Mesilla residents by amending this Chapter in the Mesilla Town Code; and

**NOW THEREFORE, BE IT RESOLVED** by the Board of Trustees that a four-month Moratorium is imperative to revise certain sections of the Town Code to make it easier for Mesilla residents and builders to expand on homes of non-conforming lots.

**PASSED, ADOPTED AND APPROVED** on this 22nd day of February 2021.

**ATTEST:**

\_\_\_\_\_  
Nora L. Barraza  
Mayor

\_\_\_\_\_  
Cynthia Stoechner-Hernandez  
Town Clerk-Treasurer

**Roll Call Vote:**  
Mayor Barraza \_\_\_\_\_  
Trustee Johnson-Burick \_\_\_\_\_  
Trustee Arzabal \_\_\_\_\_  
Trustee Caro \_\_\_\_\_  
Trustee Garcia \_\_\_\_\_