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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

5

Nora L. Barraza

Nora L. Barraza
Mayor

6

7

8

9 ATTEST:

10

Cynthia Stoeher-Hernandez

11

Cynthia Stoeher-Hernandez
Town Clerk/Treasurer

12

13

14

15



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

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.