

Town of Mesilla, New Mexico

THE PLANNING, ZONING AND HISTORICAL APPROPRIATENESS COMMISSION
(PZHAC) WILL HOLD A SPECIAL USE PERMIT (SUP) HEARING AT THE COMMUNITY CENTER AT
2251 CALLE DE SANTIAGO.
MONDAY, FEBRUARY 5, 2024, AT 5:00 PM

MINUTES

ATTENDEES:

COMMISSIONERS

Commissioner Yolanda Lucero, Chairperson
Commissioner Davie Salas, Vice-Chairperson
Commissioner David Rockstraw (phone)
Commissioner Carlos Arzabal - Secretary
Commissioner Eric Gallegos

STAFF

Eddie Salazar, Community Development Coordinator (CDC)
Thomas Maese – CID Chief Inspector

PUBLIC

Ana Willem	Celia Holguin	Susan Steinhans
Mary F. Lucero	Debra Fietze	Ken & Laurie McLiennan
Edward Gil	Oscar & Cleo Fietze	Steve Robinson
Nora L Barraza	Catherine Walkinshaw	Trina Witter
Rudy Tirre	Ken & Terry Dickson	Justin Kirkness
Ruben Quintana	Darrell & Arlene Veitch	Pat Taylor
Richard Paul Moreno	Juan Padilla	Susan Krueger
Marytt Ratje	Cecilia Vigil	Lynn Rushe
Dasa Bausova	Graham Chapman	Greg Uranga
Stevie Paz		

1. PLEDGE OF ALLEGIANCE

Chair Lucero – started the meeting by leading us in the pledge of allegiance.

2. ROLL CALL AND DETERMINATION OF QUORUM

Commissioner Arzabal conducted roll call

Commissioner Gallegos – present
Commissioner Salas – present
Commissioner Rockstraw – absent (joined meeting at later time)
Commissioner Lucero – present
Commissioner Arzabal – present

Quorum 4 out of 5

Chair Lucero – stated date, February 5, 2024. Request for special use permit (SUP) case 061759.

Commissioner Rockstraw joined the meeting via cellphone.

Community Development Coordinator (CDC) – Salazar identified himself and briefly identified the request from Sun State Towers to erect a wireless telecommunication facility at 2800 Calle del Sur.

Chair Lucero – asked the public with a show of hands, how many were in support and how many were opposed to the request. She then continued to explain how the hearing will be conducted, allowing 20 minutes to each party, support/oppose. Also, chance to rebuttal.

Public who wished to give testimony during the case were asked to stand up and were sworn in, including applicant and his guest.

CDC Salazar – gave description of request, to install a wireless communication facility at 2800 Calle de Sur. Verizon wireless will be the anchor carrier that has contracted Pinnacle Consulting and Sun State Towers IV LLC, to erect facility.

In 2020-21, Verizon did request to install a wireless communications facility. It was denied by Planning and Zoning Historical Appropriateness Commission (PZHAC) on November 16, 2020. Verizon then appealed decision to Board of Trustees (BOT) on February 8, 2021, in which appeal decision was upheld.

Was determined that the place of the tower would cause negative visual impact within the surrounding area and would be out of character within the historic district. Also, rural farm zone does not allow commercial use other than agricultural.

Case was then appealed to NM District Court on August 30, 2021. NM District Court decided that the case falls outside “the majority of cases.” Case was placed on remand due to the applicant failing to submit an inventory of sites within the proposed location. Not enough evidence supporting negative impact within the area. The town of Mesilla will then give opportunity to applicant to resubmit missing documentation without prejudice according to our town code.

CDC Salazar directed commission to a checklist put together for the purpose of reviewing code requirements.

Height of the proposed tower is 60 feet for the antenna and a total of 65 feet to include monopine screening. Request meets code standards.

Lot size of facility is approximately 40 feet by 40 feet, meeting code requirement.

Measurements/ distances of setbacks and separation distances between towers are being calculated via Dona Ana County Assessor’s Office records.

Public notices were adhered to, to include;

- More than 15 days public posting before hearing

- Local newspaper, The Bulletin ran notice ad.

- Property owners within 1500 feet were notified by certified mail.

- Postings/signs were posted on property every 300 feet or less.

Minimum wind speed of 90 miles per hour is met according to specs.

Building Codes will be discussed during our zoning permit application approval process which, will be regulated by NM Construction Industries Division.

Applicant will be held to safety standards to be in compliance with local government, state and federal regulating agencies.

All state and federal regulations will be expected to be adhered to at all times of operation.

Business license(s) has been submitted by Sunstate Towers IV LLC whom will manage and operate the antenna and Pinnacle Consulting Inc will be constructing the facility.

Inventory of existing sites have been submitted to meet code.

Aesthetics to the facility was proposed to screen antenna with a mono-pine. A 6-foot cinder block wall will be built around perimeter and painted an earth brown color.

No lighting is anticipated at this time. Will have one sign in front of the facility 24"x30" without any lighting.

There will be no building on the property. The 6-foot wall will screen all auxiliary equipment within its walls.

Health and Safety are heavily regulated by the Federal Communications Commission (FCC). According to the Telecommunications Act of 1996, under preservation of local zoning authority, no state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the commission's regulations.

Cell tower is not being proposed in a view corridor.

Historical Preservation Review requirement was met by an assessment of the location according to the National Environmental Policy Act. Research was conducted by Trileaf. A firm that specializes in environmental, architectural and engineering. No findings were available at the conclusion of their research. Proposed location is in the rural farm zone.

Visual model and photo simulations were requested by the commission. Photos and a height model were conducted to fulfill the requirements.

All utilities will be underground.

All applicants for a WTF or any modification to an existing WTF should develop their plans to allow reasonable requests from the town to use space on its towers and space within the existing or planned compound for deploying and operating public service radio facilities at no cost to the town. Provisions for adequate advance notice regarding town access to the WTF for routine activities will be arranged with the applicant.

The required tower shall meet the required setback from property line established by our code. Antenna setback is equal to height of antenna plus 10%. Antenna will be 66 feet from the edge of the property.

Tower is not being proposed adjacent to residential zone or a residential structure. Calle del Sur separates proposed location from Residential Agriculture zone, which is more than 20 feet.

Application has been submitted and requirements for the SUP have been met.

The PZHAC is recommending approval to the Board of Trustees (BOT). The BOT will determine if request will be granted and can set conditions with such approval to minimize any adverse effect of the proposed facility and adjoining properties.

Engineering/site plans have been submitted along with the special use permit documents.

Special use permit submission requirements have been met by applicant.

Applicant is requesting the landscape requirement be met as the proposed location is in pecan orchard and no additional landscape should be necessary.

Applicant does not have any plans to erect any additional towers within the area, in the near future. A notarized document was submitted stating it will accommodate co-location of additional antennas for the future users.

The applicant does have legal right of the property being proposed. A lease agreement has been signed by both parties allowing construction of facility. The owner of the property does not hold any mortgages on the property.

A copy of the tax map was submitted.

Separation of distance was met. No towers are outside the proposed area, therefore requirement was met.

A site plan was submitted showing all properties within 1500 feet of proposed property. A list of property owners and mailing addresses was also submitted.

No review letter from the State of New Mexico Historic Preservation Division necessary as proposed location is not within a historic zone or significant landmark(s).

The facility will be secured by a 6-foot cinder block wall.

Chair Lucero advised Mr. Salazar his presentation time has expired and need to conclude.

CDC Salazar concluded his presentation by advising the commission that the information not covered is in the packet that was submitted to them. Encouraged to review before a decision is made.

Chair Lucero made sure there was no members from the Board of Trustees in the audience.

Graham Chapman with Pinnacle Consulting, on behalf of Sun State Towers and Verizon wireless. Presented a presentation using power point software. Introduced a guest he brought with him, Steve Kennedy, a radio frequency engineer to answer any technical questions.

Discussed history of project previously proposed. One being at Susan Krueger property and other at the town hall park location. There is mention in the town code that certain requirements to code regulations may be waived.

There is already a 30-foot emergency respond tower at the town hall park location in which we would of removed that communication antenna, erect our own 60 foot antenna in its place and reinstall public safety back up on our newly erected antenna. Negative feedback from community because it is still in the historic zone. Wanted to respect that so, we looked for a new location.

New location, proposed at parcel 4005138527140, which has an address of 2800 Calle del Sur, Mesilla NM. Indicated where the antenna is being proposed to be on the 57-acre parcel.

Would like to explain briefly how we abide by every zoning regulation. Are in the correct zone for a tower, allowing between 65 to 100 feet. Depending on the number of carriers. Asking to allow construct a 60-foot antenna as only one carrier, Verizon, is being used. This location was previously recommended on our previous attempt by members of the community.

Met the setback requirements of 66 feet by proposing the tower be 70 feet from property line.

Met the distance requirement of 1/8 of a mile (660) feet away from a historic district.

Stealth design being proposed meets the requirement of the town code. Town code does not require the cell tower be screened unless it is in a commercial zone. However, considering the feedback received by the community, we are proposing the antenna screen.

Provided photo simulations to show what it would look like. No issues painting the antennas green and a sock will be used over the antennas to add additional foliage.

All visual model requests proposed by the commission was conducted on January 9th to the 12th for the full 72 hours.

Demonstrated the need for a cell tower by propagation maps supplied by Mr. Kennedy. Service will be provided for everyone.

Not able to put the antenna on another existing antenna. Existing antennas are too far away for areas requiring service.

Steve Kenney, radio frequency engineer having 30 plus years of experience. Mr. Kennedy explained in detail the need for the cell tower being proposed. Also covered ionizing limits concerning health and safety. Concluded limits are much lower than limits being proposed by Federal Communication Commission.

Alan Dahl, attorney for the town of Mesilla introduced himself and is present as legal counsel. Now that the applicant is done with presentation, he advised a 5-minute cross-examination by the opposing party. Then of course, once the opposing party presents, a 5-minute cross-examination should be allowed for applicants.

Advised that the decision being made at the subsequent meeting has to be made 100% by the facts heard during the hearing. Discussion is allowed in a subsequent meeting, but you will not be able to question anyone outside of the hearing we are having now. Testimony is being given under oath.

Chair Lucero asked attorney if the commission could ask questions during the hearing.

The attorney confirmed that questions can be asked. Questions should be asked while all individuals and applicants are under oath.

Chair Lucero enquired if the commission has participated in ex parte.

Commissioners were asked by Chair one at a time and all responded "no."

Chair Lucero then asked if any commissioner have any interest in the case that would need for them to recuse themselves.

All commissioners responded with a "no."

Chair Lucero invited opposing team to the podium. Explained there will be a time limit as well and one or two spokespersons should be elected to speak for the group. Comments should not be repetitive.

Dasa Bausova approached the podium and introduced herself. She then passed out documents regarding her concern.

Another member of the audience approached the microphone later identified as Ana Willem, asked if they were asking questions only or presenting. Chair Lucero stated to ask questions.

Member asked how is the relationship between cellphone carriers and smart meters. Also asked how the mapping and modeling research chose the proposed location.

Mrs. Bausova asked what are the impacts of the humming of the cell towers towards nearby residences as close as 60 feet.

Mr. Kennedy answered the questions asked.

Mrs. Willem addressed the commission again and asked similar questions and requested a more detailed answer.

Mr. Kennedy explained how smart meters worked and the load of apps on smartphones impacted cell towers.

Mrs. Witter approached the podium and asked if at this time, is it only for asking questions or can we address the PZHAC also.

Chair Lucero stated only for asking questions.

Mrs. Witter elected to keep her comments until time is allowed to comment and address the commission and not just to ask questions.

Attorney Alan Dahl approached and advised there should be a time allowed for the opposing party to give a presentation/fact. If there is no further cross-examination questions, he advised commission to entertain the opposing party to give their presentation if any.

Mrs. Bausova approached and commented that her question was not entertained by Mr. Kennedy.

Mr. Chapman explained that wireless facilities are essentially a noiseless operation. There will be no noise impact.

Chair Lucero confirmed no one else had any questions. She then invited Mrs. Witter to approach and state her comments. Chair Lucero also stated for the record all comments submitted by the residence are included in the packet they received and will be reviewed.

Mrs. Witter approached the stand and handed out pictures. She then read a letter written by her husband in which expressed concern for the location of the antenna.

Chair Lucero allowed applicant to rebuttal. Mr. Chapman explained and answered her concerns.

Dasa Buasova asked if it is not commercial use, then why are you applying for a business application.

Mr. Chapman explained town code requires a business application be submitted.

Dasa Bausova asked if she can read her comments now.

Chair Lucero explained the allowable time has expired. Comments can be given in our following regular meeting.

Attorney Mr. Dahl advised because a decision needs to be made based on what happens in this meeting while everyone is under oath, recommended if necessary to over run time on hearing and give opposition full 20 minutes of commentary presentation. Although there is an opportunity during the subsequential meeting, that should not be considered into evidence to base a decision on.

Chair Lucero proceeded and allowed opposition to approach and give comment.

Dasa Bausova explained she struggles in reading and would like to request Anna Willem to read her concerns off the document submitted into evidence. Mrs. Willem proceeded and read her concerns requesting the commission not to recommend approval.

Mr. Chapman was allowed to rebuttal.

CDC Salazar approached and addressed the commission. Reminded commission, facts regarding our town code are what needs to be address during the hearing, not concerns regarding opinion and technical operations of cell towers.

Regarding comments made by some members of the public, CDC Salazar asked the commission to review the board action form on the packet submitted. Rural farms do indeed state commercial use is prohibited. But also, in that specific section, it gives reference to 18.55.010 Sec D 11 & 12 as unspecified special use permit. Antennas and such are allowed in the RF zone.

Katherine Walkinshaw approached and addressed the commission. Asked the commission that if they do decide to recommend approval, that the tower be moved further back into the orchard to hide it between the trees a little better. Also, is against having it look like a monopine. It is made of microfiber and can be a health hazard.

Mr. Chapman rebuttal explained code requirements have been met.

Susan Krueger wanted to make a point of origin. The NM Municipal league created a telecommunication ordinance. Mesilla picked up the leagues ordinance and asked that we look to see if the municipal league has updated their ordinances.

Mrs. Krueger recommended staff explore other communities that have already addressed cell towers in their town/city.

Mr. Chapman rebuttal. Town of Mesilla adopted zoning ordinance from the municipal league. To change the ordinance midway of the application is completely unfair. We have abided by all the rules and regulations.

Mrs. Alvillar approached and addressed the commission that Mr. Salas has stated that our ordinance need to be revised before we proceed with any applications for cell towers.

Mrs. Alvillar read a letter with concerns strongly opposing the proposed request to install tower at that location. Needs to be further.

Mr. Chapman rebuttal stated code is being met at current location.

Lucas, approached and addressed the commission. He stated he is a remote worker and supported the cell tower being proposed. I wanted to ask, if the tower was approved where it was originally proposed, how much money is Mesilla missing out on.

Attorney Alan Dahl approached and recommended the opposing party first finish their comments and given their allowed 20 minutes first before letting in favor party give comment.

Commissioner Arzabal stated it has been already 30 minutes.

Attorney Alan Dahl then advised the chair to close that portion of the hearing to allow opposing team to give presentation. In favor party doesn't necessarily have to be allowed to give testimony.

Mike Taylor, approached and asked if approved, has the agency (Pinnacle Consulting) looked at the results would be if the tower was lowered. Secondly, like to confirm that there will not be a strobe of some sort at the top of the tower and a security light at the bottom.

Mr. Kennedy answered Mr. Taylors questions.

Steve Robinson approached and asked about co-location. Once Verizon is in place, would the antenna need to be raised once another carrier is brought on board.

Mr. Chapman stated the facility is designed to be capable of adding two additional carriers up to 10 feet taller.

Chair Lucero asked if commissioners had any questions.

Commissioner Salas asked how much further can the tower be pushed into the orchard.

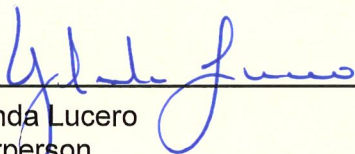
Mr. Chapman, the further the facility is moved into the orchard, the more trees would need to be removed. We are 70 feet away from the property line and that is as far as we are willing to go because we already meet that setback requirement.

Commissioner Salas asked about small antennas less conspicuous. Is that an option?

Mr. Kennedy approached and confirmed the question was regarding "small cells." They are used in hi density areas, would not work very well in meeting coverage needs.

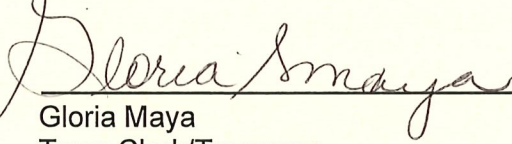
Commissioner Salas asked, how would it not work very well but yet it would work as you stated in high density areas such as college campuses.

Chair Lucero adjourned hearing.



Yolanda Lucero
Chairperson

ATTEST:



Gloria Maya
Town Clerk/Treasurer

