



## Planning and Zoning Commission

Summary of Commission Action

Hearing Date: None

<b>CASE NUMBER:</b>	Z 2014-9		
<b>ACTION REQUESTED:</b>	Petition to Rezone Property from Agricultural to Commercial		
<b>PURPOSE:</b>	To permit the operation of commercial enterprise [Flea Market]		
<b>PETITIONER:</b>	Bernice Juarez		
<b>PROPERTY LOCATION:</b>	6416 Old Dexter Highway		
<b>COMPLIANCE WITH COMPREHENSIVE PLAN:</b>	Partially	<b>COMPLIANCE WITH CHAVES COUNTY ZONING ORDINANCE:</b>	No, unless rezoning petition is approved
<b>STAFF RECOMMENDATION:</b>	Denial		
<b>PLANNING COMMISSION ACTION</b>	This petition was not heard by the Chaves County Planning Commission due to a lack of a quorum at its November meeting		
<b>KEY ISSUES:</b>	<ol style="list-style-type: none"> <li>1. The property is a large parcel located in a predominantly rural residential area. The nearest commercial land use is located ¼ mile and 6 parcels removed to the south. Rezoning this parcel from Agricultural to Commercial would represent spot zoning. Spot zoning refers to the rezoning of a parcel of land to permit a land use which fails to comply with either the Comprehensive Plan or is inconsistent with the surrounding land uses in the area. Spot zoning may also be construed as the granting of a discriminatory benefit to the property owner and/or harms neighboring properties or the community welfare.</li> <li>2. The Comprehensive Plan identifies lands located on either side of Old Dexter Highway for its entire length through Chaves County as being suitable for commercial development. The Comprehensive Plan does not recognize existing land use patterns that would deter the commercial development of many parcels along Old Dexter Highway that would be incompatible with existing land use patterns.</li> <li>3. The size of the parcel is a concern for future commercial development. It is one of the largest parcels in the immediate vicinity. Rezoning only a portion of the property is not a viable option, for several reasons; most notably the inability to enforce future development on the portion of the property that is zoned commercial, and the potential for incompatible land uses to occupy the balance of the property.</li> </ol>		

	<p>Rezoning only a portion of the property is also not in the best interest of the planning practices of the American Planning Association.</p> <p>4. One letter of protest has been received as of the publication date of this report, objecting to the rezoning request.</p>
<b>EXHIBITS:</b>	<p>Planning Department Staff Report, November 12, 2014</p> <p>Attachments a. through f.</p>

**CHAVES COUNTY  
PLANNING COMMISSION  
PLANNING AND ZONING REPORT**

**APPLICATION NO:**     Z 2014-9                          **DATE OF HEARING:**     November 12, 2014    

**NAME OF APPLICANT:**     Bernice Juarez    

**PROPOSED USE OF PROPERTY:**     Rezone property from Ag Agricultural District      
    to C-1 Commercial District    

**1. REQUEST**

To rezone a 4.64± acre developed parcel from AG Agricultural District to C-1, Commercial District.

The subject property is addressed as 6416 Old Dexter Highway. It contains a manufactured home which is used as a principal residence, a two-bay garage/storage building, a shed, a well/pump house, an older manufactured home measuring approximately 10' by 48' being used as a storage building (to store antiques), a horse walker, and a travel trailer.

The petitioner proposes to operate a commercial Flea Market on a full-time basis from the premises.

**2. RELATED CASES**

There are no related zoning cases for the subject property.

There is a previous zoning violation recorded for the property address. Zoning Violation Number V 1999-44 was opened on September 1, 1999 for outside storage violations. It was lodged against a former property owner, Amelia Mays. It was closed on March 17, 2000.

There was a zoning inquiry lodged with the Planning and Zoning Department on April 2, 2003, against a former property owner, Michael Martinez, for an outside storage violation.

The petitioner acquired the property on April 10, 2013. However, the manufactured home on the property is still owned by Michael Martinez. The petitioner is in the process of purchasing this manufactured home.

**3. BACKGROUND AND LAND USE HISTORY**

There is no land use history other than what is described in (2), above.

**4. COMMISSION DISTRICT**

The subject property is located in Commission District Number 2. This District is represented by Commissioner Kim Chesser.

**5. NATURE OF SURROUNDING LAND USE AND ZONING**

This property is zoned AG, Agricultural District. It is located within Area II. The subject property is located on the west side of Old Dexter Highway, midway between Tumbleweed Road and Lupton Road. Surrounding properties are zoned AG, Agricultural, and are developed with predominantly single family residences/manufactured home residences that are developed at a moderately low density. Parcels to the east across the railroad tracks are significantly larger in area and most are vacant.

**6. EXISTING PUBLIC ACCESS**

The existing property access is from Old Dexter Highway (State Road 2).

**7. KEY ISSUES**

There are several key issues associated with this petition:

1. The property is a large parcel located in a predominantly rural residential area. The nearest commercial land use is located ¼ mile and 6 parcels removed to the south. Rezoning this parcel from Agricultural to Commercial would represent spot zoning. Spot zoning refers to the rezoning of a parcel of land to permit a land use which fails to comply with either the Comprehensive Plan or is inconsistent with the surrounding land uses in the area. Spot zoning may also be construed as the granting of a discriminatory benefit to the property owner and/or harms neighboring properties or the community welfare.
2. The Comprehensive Plan identifies lands located on either side of Old Dexter Highway for its entire length through Chaves County as being suitable for commercial development. The Comprehensive Plan does not recognize existing land use patterns that would deter the commercial development of many parcels along Old Dexter Highway that would be incompatible with existing land use patterns.
3. The size of the parcel is a concern for future commercial development. It is one of the largest parcels in the immediate vicinity. Rezoning only a portion of the property is not a viable option, for several reasons; most notably the inability to enforce future development on the portion of the property that is zoned commercial, and the potential for incompatible land uses to occupy the balance of the property. Rezoning only a portion of the property is also not in the best interest of the planning practices of the American Planning Association.
4. One letter of protest has been received as of the publication date of this report, objecting to the rezoning request.

**8. CHAVES COUNTY COMPREHENSIVE PLAN**

Chapter 4, Land Use, of the Chaves County Comprehensive Plan, contains several Land Use Goals related to commercial land uses:

Land Use Goal 4.3: Direct commercial and industrial development to appropriate locations in Chaves County.

Land Use Goal 4.4: Ensure that future development in Chaves County protects property values by making new development attractive and compatible with existing uses.

The Comprehensive Plan Land Use Plan Map identifies the subject property and adjacent lands bordering on Old Dexter Highway (SR 2) as being suitable for development as commercial (neighborhood commercial) land uses.

Finding: The proposed zoning designation is in general conformance with Land Use Goal 4.3 of the Chaves County Comprehensive Plan.

The proposed zoning designation is not in general conformance with Land Use Goal 4.4 of the Chaves County Comprehensive Plan.

## 9. ZONING ORDINANCE AND COUNTY CODE REQUIREMENTS

### *Zoning District Regulations:*

The subject property is located in the Ag, Agricultural District. *Article VI* establishes zoning and land use regulations for lands located within this district:

### **ARTICLE VI AREA II, REGULATIONS – ZONED AGRICULTURAL**

#### **Section 1 AREA II, REGULATIONS – ZONED AGRICULTURAL**

- A.** *The existing uses in this area, as defined by the Chaves County Comprehensive Land Use Planning and Zoning Report (February 1973) are:*
  - 1. *Livestock grazing.*
  - 2. *Mineral Exploration and Production.*
  - 3. *Extensive recreation.*
  - 4. *Wildlife Habitat.*
  - 5. *Flood control structures and floodways.*
- B.** *The existing uses listed in "A" above shall be permitted in Area II without being rezoned and shall continue to be authorized in any district created by rezoning.*
  - 1. *Any new parcels created after date of adoption of this Ordinance shall be limited to a minimum of five acres.*
- C.** *Area II, Purposes*
  - 1. *This area covers an important part of the recharge area of the Roswell Artesian Basin.*
  - 2. *The ground waters in the San Andres Limestone is recharged by precipitation on its outcrops and by ground water moving down the water table gradient from the Hondo*

*Sandstone Member into the upper part of the San Andres Limestone and underlying formations. (This is from Technical Report 28 by New Mexico State Engineer, Santa Fe, New Mexico).*

3. *This area covers an "Outcrop" of the San Andres Limestone which is at or near the surface in this area.*
4. *The very fact that the basin is partly recharged by "Precipitation on its outcrops" also makes this recharge area susceptible to contamination from polluted waters.*
5. *Water from this aquifer is vital to the future of Roswell and Chaves County, therefore the purpose of this area is to safeguard the future water supply and to recognize the desirability of carrying on compatible agricultural operations and spacious home developments. Overdevelopment in this area by buildings, paved driveways, paved streets, etc., would increase runoff of surface water and decrease the amount of water absorbed into the recharge area.*
6. *This area also includes an area of severe depletion of the shallow water basin, as defined by the New Mexico Water Resources Division (where the life of this area is estimated by them to be less than forty (40) years).*

**D.** *Single family dwelling requires permit only.*

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The requested zoning is C-1, Commercial District. *Article XI* establishes regulations for lands located within the Commercial District:

**ARTICLE XI  
COMMERCIAL – GENERAL**

**Section 1 COMMERCIAL – GENERAL – ZONE C, TYPE 1 DISTRICT REGULATIONS**

- A. *The regulations set forth in this Article, or set forth elsewhere in this Ordinance when referred to in this Article, are "Zone C, Type 1" Commercial General District Regulations.*
- B. **Use Regulations.** *A building or premises shall be used only for the following purposes:*
  1. *Automobile sales and service and filling stations.*
  2. *Bakeries – retail.*
  3. *Banks.*
  4. *Barber and beauty shops.*
  5. *Business and commercial schools.*
  6. *Catering.*
  7. *Clothing repair – tailors, shoe repair, millinery, cleaners.*

8. *Cold storage lockers, meat processing being incidental thereto.*
  9. *Commercial recreation facilities – pool, bowling, theaters, games, golf.*
  10. *Florists.*
  11. *Veterinary hospitals, clinics, kennels.*
  12. *Hotels – motels.*
  13. *Mortuaries.*
  14. *Paint and decorator stores.*
  15. *Parking lots.*
  16. *Photography and artists supply.*
  17. *Plumbing shops.*
  18. *Private clubs and lodges.*
  19. *Commercial garages.*
  20. *Restaurants.*
  21. *Retail sales.*
  22. *Small appliance repair shops.*
  23. *Sign shops, excluding construction and storage of billboards.*
  24. *Sheet metals.*
  25. *Travel trailer park.*
  26. *Accessory living quarters for only one family may be allowed on each lot and may not be for sale or lease separated from the principle use or for use involving the conduct of a business.*
  27. *Similar type uses as indicated above as approved by the Chaves County Commissioners.*
  28. *Exploration – Oil and gas exploration as a special use as approved by the Ordinance Enforcement Officer.*
- C. *Shops for custom work manufacture to be sold at retail only on the premises; provided that in such manufacture the total mechanical power shall not exceed five horsepower for the operation in any one shop; and provided that the space occupied by the manufacturing use permitted herein shall not exceed fifty percent (50%) of the total floor area thereof; and provided further that such manufacturing use is not noxious or offensive by reason of vibration noise, odor, or dust as to be a nuisance or unsanitary.*
- D. *Veterinary hospitals, clinics, or kennels for animals are permitted in “Zone C, Type I” Commercial District, however, plans therefor must be submitted for approval by the Chaves*

County Commissioners, subject to such conditions and restrictions as they may impose. In the case of a mixed use proposal, each and every specified use must be approved.

Finding: The land use proposed by the petitioner is addressed in No. 21, above (retail sales).

## 10. STAFF ANALYSIS AND FINDINGS

### *General Findings:*

- A. The property is zoned **AG Agricultural District**. The property is currently developed with a single family manufactured home residence and related appurtenant structures. The petitioner proposes to operate a Flea Market from the subject property. The petition seeks to rezone the subject property from AG Agricultural, to C-1 Commercial District, to permit the proposed business operation. This land use requires a Commercial zoning designation.

Finding: The subject property is currently located within the AG Agricultural District. It must be rezoned to C-1 Commercial District to accommodate the land use proposed. The rezoning of the property shall be accomplished prior to operating commercially-related land uses from the premises.

- B. The proposed land uses require **Commercial** zoning, and all affiliated land uses to be in conformance with the Chaves County Zoning Ordinance.

Finding: The petition seeks to rezone the property from AG Agricultural to C-1, Commercial District, in order to accommodate the requested Flea Market commercial enterprise.

Finding: The petitioner proposes to utilize the storage building as the principal structure to conduct the proposed commercial land use from. The proposed land use will also be conducted from an outdoor area, located near the driveway (which provides access to Old Dexter Highway).

- C. **Article XV, Additional Height, Area and Use Requirements.** There are no specified setback requirements for commercial land uses specified within this Article.

Finding: Article XV does not impose minimum setback requirements for most commercial land uses, including structures being utilized to house retail sales. The existing structures on the subject property meet all required setbacks, or are considered non-conforming (“grandfathered”) structures.

- E. **Article XVI, Off-Street Parking and Loading, Provision for Parking Spaces,** contains the following regulations for industrial land uses:

- f. furniture or appliance store, hardware store, wholesale establishments, machinery or equipment sales and service, clothing or service shop: two (2) parking spaces, plus one (1) additional parking space for each 300 square feet of floor area over 1,000 square feet.

Finding: The site is partially developed. The site plan submitted illustrates a 1984 manufactured home, measuring 14' by 80' (1,120 ft<sup>2</sup>). Assessor’s office records also



illustrates a 600 ft<sup>2</sup> shed structure on the subject property. The petitioner has designated an outside area measuring 56' by 83' (4,648 ft<sup>2</sup>) that will be utilized for the Flea Market. The site plan submitted does not illustrate the driveway access, number or location of parking spaces, ADA-parking spaces, or loading space. Therefore, a Condition of Approval shall require the submittal of a fully-dimensioned site plan that illustrates these items, should the petition be approved.

- F. **Section D, Loading Space Requirements**, states, *"1. Any business or industrial building, hospital, institution, or hotel hereafter erected, converted, or extended in any district, shall provide adequate off-street facilities for the loading and unloading of merchandise and goods within or adjacent to the building, in such a manner as not to obstruct freedom of traffic movement on the public streets or alleys, provided that each loading and unloading space shall have a minimum width of twelve (12) feet, a minimum length of thirty-five (35) feet and a minimum height clearance of fifteen (15) feet, and shall not reduce the required off-street parking area required by the section."*

**Finding:** The site plan does not illustrate the location of loading spaces. Therefore, a Condition of Approval shall require the submittal of a fully-dimensioned site plan that illustrates this item, should the petition be approved.

- G. **Section E, Construction and Maintenance of Parking Areas**, states, *"1. All open parking areas provided in compliance with this Ordinance shall be surfaced with a durable, dust-proof surface consisting of concrete, bituminous concrete, or compacted gravel or crushed stone, properly sealed and surface treated as approved. The parking areas shall be maintained in a usable dust-proof condition and graded and drained to dispose of all surface water. Whenever lighting is provided, it shall be so hooded or shielding as to reflect the light away from abutting or neighboring property, including public right-of-way."*

**Finding:** The site plan does not illustrate the materials proposed to be used to meet this requirement. Therefore, a Condition of Approval shall require the submittal of a site plan that illustrates this item, should the petition be approved.

- H. **Article XVIII, Land Use Permits, Section 1, A**, states, *"No buildings or structures shall be erected, constructed, reconstructed, or structurally altered, nor shall any building, structure, or land be used for any purpose other than those permitted in the district in which such building, structure, or land is situated."*

**Finding:** The uses proposed require Commercial zoning to comply with the requirements of the Chaves County Zoning Ordinance. Upon approval of this rezoning petition, the Planning and Zoning Department will be able to complete processing of the required Building Permit application.

- I. **Section 1, C. Plans, 1**, states, *"Application for permit shall be accompanied by such drawings of the proposed work, drawn to scale, including such flood plains, sections, elevations, and structural details as the Ordinance Officer may require."*

**Section 1, D. Plot Diagrams**, states, “There shall also be filed a plot diagram showing the lot in a form and size suitable for filing permanently within the permit record, drawn to scale, with all dimension figures, showing accurately the size and exact location of all proposed new construction or, in the case of demolition, of such construction as is to be demolished and of all existing buildings and structures that are to remain.”

**Finding:** Although a site plan was submitted that illustrates the location of the area to be used for the operation of the proposed commercial land use outdoors, there are a number of items that are outstanding that shall be illustrated on the site plan. Therefore, as a Condition of Approval, the petitioner shall submit a fully-dimensioned site plan that illustrates the items that are identified as being required, outlining all future construction, including all contemplated land uses, for staff review and approval, should the petition be approved.

***Floodplain:***

**Finding:** The subject property is not located within a FEMA floodplain.

***Compatibility with Surrounding Land Uses:***

**Finding:** Lot sizes in the immediate area typically range from ¾ acre to 75 acres in size. Most of the parcels are developed with single family residential land uses. All adjacent land uses are single-family residential in nature. The nearest commercial land use is located approximately ¼ mile to the southeast. Staff finds that the proposed commercial land use may have a detrimental impact on the character of the immediate area, traffic conditions or public utility facilities, and will likely continue to have an impact in the future.

***Public Participation:***

**Finding:** Staff has received a letter of protest from Robert and Terri Mitzel. The Mitzel’s own the property located immediately north of and adjacent to the subject property.

***Permits:***

**Chaves County Ordinances** identify several permits that an applicant must obtain prior to establishing a commercial enterprise on this parcel.

**Finding:** All required permits shall be obtained by the petitioner.

**11. RECOMMENDATION**

Although the proposed rezoning appears to be in general conformance with the Land Use Map of the Chaves County Comprehensive Plan, staff is concerned that this petition represents spot zoning of land to a commercial land use within an area of predominantly residential land uses. Staff feels that such a land use is incompatible with the nature of the adjacent land uses and with the character of the neighborhood. Compatibility is important, not only because it enhances rational land use planning, but because of the potential detrimental effect the incompatible land use may impose on the adjacent residentially-built neighborhood.

Therefore, staff recommends denial of the rezoning petition for property located at 6416 Old Dexter Highway, from AG, Agricultural District to C-1, Commercial District.

If substantial evidence is submitted that would support the rezoning petition, then staff respectfully requests that approval of the rezoning petition be subject to the following Conditions of Approval:

1. All requirements of the *Chaves County Zoning Ordinance* be adhered to during the construction of all structures and related improvements of the subject property;
2. A fully-dimensioned site plan meeting the requirements of the *Chaves County Zoning Ordinance* shall be submitted illustrating all land uses and improvements contemplated for the subject property prior to commencing any further construction and improvement activities;
3. All permits required by Chaves County and all other agencies be obtained by the petitioner prior to commencing construction and improvement activities;
4. The proposed land use development shall comply with all provisions of the International Building Code, 2009 Edition; and
5. Any on-site lighting which may be needed for security or other purposes be shielded from surrounding uses and be developed in accordance with the New Mexico Night Skies Act; and
6. A City of Roswell Business License shall be obtained prior to commencing operation of the business.

## 12. ATTACHMENTS

- a. Petition for Case Review, Chaves County Planning & Zoning Department
- b. Vicinity Map
- c. Assessor's Aerial Map
- d. Petitioner's Preliminary Site Plan
- e. Letter of protest from Robert and Terri Mitzel, dated November 3, 2014
- f. Photos of subject property (to be presented at the public hearing)



1 2



# CHAVES COUNTY APPLICATION CHAVES COUNTY ZONING ORDINANCE

Case Number: Z2014-9 Date Received: Oct 3, 2014 Fee: \$150.00

Type of Request:  Rezoning     Special Use     Variance     Change of Use

Name of Property Owner: Bernice Juarez Phone Number: 623-0253

Mailing Address: 6416 Old Dexter Hwy 317-7850

Name of Applicant: Bernice Juarez

Mailing Address: 6416 Old Dexter Hwy Home Phone Number: \_\_\_\_\_

Business Phone Number: \_\_\_\_\_

Applicant Status:  Owner     Agent     Tenant     Other \_\_\_\_\_

Case Address, Legal Description, and Parcel Number: REZONE PROPERTY OF 4.64 ± ACRES  
FROM AGRICULTURAL TO COMMERCIAL 4-141-069-332-086  
SEC 9 T12S R25E; W2NE4 BK 715 PG 1490 REC

Present Land Use: SINGLE FAMILY RESIDENCE, TWO SHEDS (ACCESSORY STRUCTURES)  
14 x 84 TRAILER USED TO STORE ANTIQUES

Intended Use: OPERATE A COMMERCIAL FLEA MARKET

Present Zoning: AGRICULTURAL Requested Zoning: COMMERCIAL

Applicant's Reason for Requested Change: (Use back if more space is needed) CONDUCT A  
COMMERCIAL FLEA MARKET

I ACKNOWLEDGE THAT I HAVE BEEN INFORMED OF THE DATES, TIMES, AND LOCATIONS OF THE PUBLIC MEETINGS WHICH I OR MY AGENT MUST ATTEND IN ORDER TO FULFILL THE REQUIREMENTS OF THIS APPLICATION.

Bernice Juarez Date 9-26-14  
 Owner's Signature Date

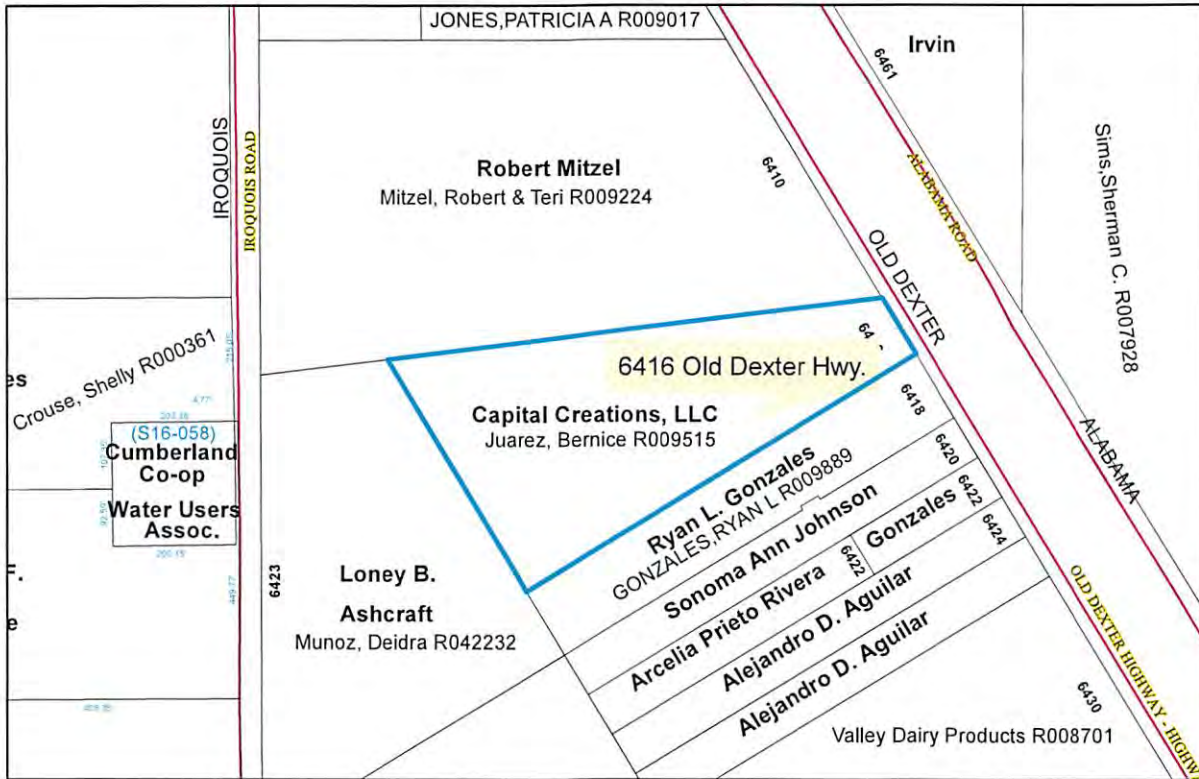
HEARING DATES P+Z Nov 12  
BOCC Nov 20

RO09515

a.



# VICINITY MAP



CASE Z 2014-9

b.





# AERIAL MAP



Case Z 2014-9



C.



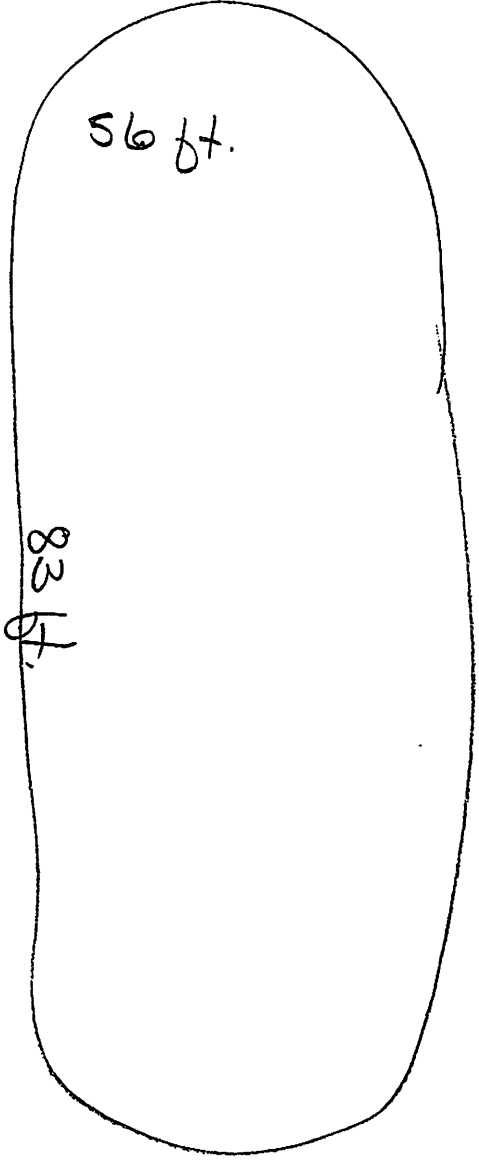
155 sq ft.

14 x 84  
Trailer

30 ft.

SHED  
10 x 12

GARAGE  
25 x 25



21 ft  
Entrance

171 ft.



**Julia Torres**

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**From:** Bob <rrcm852@msn.com>  
**Sent:** Monday, November 03, 2014 12:39 PM  
**To:** Julia Torres  
**Subject:** Rezoning application

Julia A. Torres  
Chaves County Planning and Zoning

I received a letter from you regarding Case # Z 2014-9 requesting a zoning change to put a Flea Market next to a property I own at 6410 and 6412 Old Dexter Highway.

I wish to have my objection to the above noted request for this variance. We are all aware that the real estate market is doing extremely poorly at this time, and the average time to sell a property at this time is 4 – 18 months. If this matter is allowed to proceed, the property value of my property and all those properties in the near vicinity will be even more negatively impacted.

My property is currently on the market and has been for over 8 months. I cannot stress enough, the real estate market in Roswell and Chaves county has taken a severe hit the last couple of years and I for one do not need my property devalued even more because a flea market is next door to it. Thank you for your time.

Sincerely Robert and Terri Mitzel

e.





Main Entrance to Property



Location of Proposed Flea Market





Main Residence



Storage Shed





Planning and Zoning Commission

Summary of Commission Action

Hearing Date: None

<b>CASE NUMBER:</b>	Z 2014-10		
<b>ACTION REQUESTED:</b>	Petition for the Issuance of a Special Use Permit		
<b>PURPOSE:</b>	To permit the use of a Wireless Telecommunications Facility (Cell Tower)		
<b>PETITIONER:</b>	Benjamin Orgel, representing Tower Ventures, Inc.		
<b>PROPERTY LOCATION:</b>	One mile north of US 70 [Clovis Highway] on Isleta Road, 45 miles NE of Roswell		
<b>COMPLIANCE WITH COMPREHENSIVE PLAN:</b>	Yes	<b>COMPLIANCE WITH CHAVES COUNTY ZONING ORDINANCE:</b>	Upon Approval of Special Use Permit
<b>STAFF RECOMMENDATION:</b>	Approval, subject to 8 Conditions of Approval		
<b>PLANNING COMMISSION ACTION</b>	This petition was not heard by the Chaves County Planning Commission due to a lack of a quorum at its November meeting		
<b>CONDITIONS OF APPROVAL:</b>	<ol style="list-style-type: none"> <li>1. Current and future development of the site shall be in substantial conformance with the information supplied on the site plan submitted with the Special Use Permit petition;</li> <li>2. A Building Permit and all inspections required by the Building Official shall be accomplished;</li> <li>3. The tower constructed shall accommodate co-location of at least two other wireless communications antenna arrays, including, if needed, access from public service providers;</li> <li>4. Access to the site (via the private unpaved driveway easement) be designed and constructed to accommodate appropriate maintenance service vehicle traffic;</li> <li>5. Legal descriptions for the lease area and all access easements shall be recorded with the Chaves County Clerk;</li> <li>6. Any lighting which may be needed for security or other purposes be shielded from surrounding uses and be developed in accordance with the New Mexico Night Skies Act;</li> </ol>		

	<ol style="list-style-type: none"><li>7. The Special Use Permit be granted for a period of thirty (30) years, and will expire on November 1, 2044, unless Condition No. 8 applies; and</li><li>8. If the facility remains inoperative for a period of 12 consecutive months, it shall be removed by the owner or petitioner, unless a non-use permit for a prescribed period is granted by Chaves County.</li></ol>
<b>EXHIBITS:</b>	Planning Department Staff Report, November 12, 2014 Attachments a. through i.

**CHAVES COUNTY  
PLANNING COMMISSION  
PLANNING AND ZONING REPORT**

**APPLICATION NO:**     Z 2014-010          **DATE OF HEARING:**     November 12, 2014    

**NAME OF APPLICANT:**     Benjamin Orgel/Tower Ventures, Inc.    

**REASON FOR HEARING:**     Special Use Permit, to erect a new Wireless    

    Telecommunications Facility (Cell Tower)    

**1. REQUEST:**

Issuance of a Special Use Permit to erect a Wireless Telecommunications Facility (Cellular Tower), construct a related equipment shelter, and provide a (maintenance) vehicle and utility access easement to the Lease Area.

**2. LOCATION OF PROPERTY:**

On vacant land located in far northeastern Chaves County, approximately one and one-third mile north of US 70 (Clovis Highway). The subject property is located just east of (397.96') and adjacent to Isleta Road (CR 77). The site is 45 air miles northeast of Roswell.

The UPN is 4-167-035-136-529-000000.

An address will need to be assigned to this facility lease area during the site/building plan review process.

The wireless telecommunications facility is physically located in the SE¼ SW¼ of Section 27, Township 6 South, Range 29 East. The proposed facility will be sited on a 100' by 100' (10,000 square foot) lease area located at Latitude 33° 45' 37.7" and Longitude 103° 58' 26.2". The subject property is owned by Webb and Hutto, of Benton, Arkansas, and contains 320± acres of land.

**3. NATURE OF REQUEST:**

The petitioner (Benjamin Orgel, TV 6-W, LLC) proposes to erect a Wireless Telecommunications Facility, which consists of a guyed cell tower measuring 340' in height, and a related equipment shelter. The tower will be designed to support cellular communications and wireless data services. Each of the (3) supporting guy wires will measure 272' in length and the anchoring apparatus will be surrounded by a secure enclosure with a 4' high chain link fence. The tower will be designed to accommodate 4 antenna arrays and one microwave dish measuring up to 6' in diameter. The equipment shelter will be contained within an area surrounded by a 6' high chain link fence, and be secured.

4. **COMMISSION DISTRICT:**

The subject property is located in Commission District Number 3. This District is represented by Commissioner Kyle Wooton.

5. **NATURE OF SURROUNDING LAND USE AND ZONING:**

In accordance with *Article V* of the *Chaves County Zoning Ordinance*, this parcel and all adjacent properties are zoned Agricultural. The subject property is located in Area I. The site is in a relatively isolated portion of Chaves County, and the vast majority of the adjacent properties are vacant. The nearest residential dwelling unit is located approximately 3 miles to the southeast of the subject property.

The closest cellular towers are located 7 miles to the southeast, adjacent to Railroad Mountain Road (CR 38), and 6.8 miles to the southwest, alongside US 70.

6. **KEY ISSUES:**

Staff has not identified any significant key issues related to this request.

7. **EXISTING SITE ACCESS:**

Access to the site will be via a proposed 30' wide privately owned unpaved driveway which will have direct access to Isleta Road. This driveway will also house underground utility service to the lease area.

Isleta Road has a locked gate at its entrance off of US 70.

A 30' wide utility easement is proposed to run from the proposed lease area west to Isleta Road, then south to existing power infrastructure, located along the Clovis Highway (US 70) right of way. This easement will tie into existing electrical utility service located along the Clovis Highway right-of-way to power the proposed wireless telecommunications facility.

8. **LAND USE HISTORY:**

There are no records of past land use petitions or zoning violations on the subject property.

9. **CHAVES COUNTY COMPREHENSIVE PLAN:**

The proposed land use is in general conformance with the Chaves County Comprehensive Plan, Agricultural Land Use Goals and Policies.

10. **ZONING ORDINANCE AND COUNTY CODE REQUIREMENTS:**

*Special Use Permits*

Special Use Permits are governed by *Article XVIII* of the *Chaves County Zoning Ordinance*. The Ordinance permits the Planning Commission and the Board of Chaves County Commissioners

to impose appropriate conditions and safeguards, which may include a specified period of time for the Special Use Permit to protect the general plan to conserve and protect the property values in the neighborhood.

**Section 2, Supplemental Regulations, 11.** states, “*Before issuance of any special permit for any of the above buildings or uses, the Board of Chaves County Commissioners shall refer the proposed application to the Planning and Zoning Commission, which commission shall be given sixty (60) days in which to make a report regarding the effect of such proposed building or use upon the character of the neighborhood traffic conditions, public utility facilities, and other matters pertaining to the general welfare. No action shall be taken upon the application for the proposed building or use above referred to until and unless the report to the Chaves County Planning and Zoning Commission has been filed. Provided, however, that if no report is received from the Chaves County Planning and Zoning Commission within sixty (60) days, it shall be assumed that approval of the application has been given by said Commission.*”

### **Appeals**

**Section 2, Supplemental Regulations, 12.** states, “*Any aggrieved persons or any officer, department, board, or bureau of the Zoning Authority affected by the decision of approval, disapproval, or any conditions required of the Ordinance Enforcement Officer may appeal to the Zoning Authority. The appeal procedure will be in accordance with Article 1, Section 5.H.9.*”

**Article I, General Statements, Section 5, Zoning Ordinance – Mode of Determination, Establishment, Official Zoning Map, Enforcement, Amendment, Supplementation, Repeal or Appeal, H. Amendment, Supplementation or Repeal 9. Appeals to Zoning Authority – Grounds – Stay of proceedings.** states, in part,

- b. “*Any aggrieved persons or any officer, department, board, or bureau of the zoning authority affected by a decision of an administrative officer, commission, or committee in the enforcement of Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation, or ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the zoning authority. An appeal shall stay all proceedings in furtherance of the action appealed unless the Ordinance Enforcement Officer, commission, or committee from whom the appeal is taken, certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of district court after notice to the official, commission, or committee from whom the appeal is taken and due cause shown.*”
- c. “*When an appeal alleges that there is error in any order, requirement, decision, or determination by an administrative official, commission, or committee in the enforcement of Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation, or any ordinance, resolution, rule, or regulation adopted pursuant to these sections, the Board of Chaves County Commissioners by a two-thirds (2/3) vote of all its members may:*
  1. *authorize, in appropriate cases and subject to appropriate conditions and safeguard, special conditions to the terms of the zoning ordinance or resolution;*
    - (a) *which are not contrary to the public interest;*



- (b) where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship; and
  - (c) so that the spirit of the zoning ordinance is observed and substantial justice done; or
2. In conformity with Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation;
- (a) reverse any order, requirement, decision, or determination of an administrative official, commission, or committee;
  - (b) decide in favor of the appellant; or
  - (c) make any change in any order, requirement, decision, or determination of an administrative official, commission or committee.”

**Article XIV, Wireless Telecommunications Facilities, Section 2, Application:** “All new and modified wireless telecommunications facilities must apply for a Special Use Permit pursuant to Section 2.5 of this Ordinance and be scheduled for public hearing and approved by the Commission. Special Use Permits for wireless telecommunications facilities will be 30 year permits unless special conditions arise during the application and approval process. In addition to the information already required by this Ordinance, applications must include:

- A. Documentation that demonstrates the need for the wireless telecommunications facility to provide service within the County including propagation studies of the proposed site and all surrounding and existing sites.

**Finding:** The information supplied by the petitioner demonstrates the need to establish improved wireless communications service in this area. The tower is designed at a height to provide enhanced E911 service and to effectively extend the coverage area. This efficiency effectively reduces the number of additional towers in this area needed to serve the anticipated future wireless need.

- B. Description of the proposed tower and antennas and all related fixtures, structures, and appurtenances, including height above pre-existing grade, materials, colors and lighting.

**Finding:** The siting of this facility is at a significant distance from residential dwelling units and other potentially incompatible land uses.

- C. The design of the tower and antennas showing the calculations of the tower’s capacity to accommodate multiple users. Applications for new wireless telecommunications facilities shall examine the feasibility of designing a proposed tower to accommodate at least 2 additional antenna arrays equal to those proposed by the applicant. This requirement may be waived if the applicant can demonstrate, in writing, that future shared usage of the tower is not technologically feasible, is commercially impracticable, or creates an unnecessary hardship or practical difficulty.

**Finding:** The tower is designed to accommodate up to 4 future co-locates.

**D.** *Site plan of the site showing the location of the tower, equipment structures, driveways, fences, etc.*

**Finding:** The petitioner has submitted a detailed site and elevation plan for public review in support of the Special Use Permit petition.

**E.** *A written statement from the owner of the proposed tower that he/she and his/her successors in interest will negotiate in good faith for the shared use of the proposed tower.*

**Finding:** The petitioner indicates that the facility is designed to accommodate up to four future co-locators.

**Section 3. Location. A.** *Wireless telecommunications facilities shall locate in accordance with the following priorities:*

- 1. On existing towers or other structures without increasing the height of the tower or structure.*
- 2. Along major traffic corridors*
- 3. In Agricultural areas*
- 4. In Residential areas*

**Finding:** The proposed facility will be a new facility, as there are no existing facilities within 5 miles to accommodate a co-locate. The proposed site is located along Isleta Road, a rural road with a very low ADT (average daily traffic count). US 70 (Clovis Highway), a major traffic corridor, is located 1½ miles to the southeast. The land use of adjacent properties is predominantly non-irrigated agricultural. The proposed site is located some distance (several miles) from residential areas, which is the least desirable area to site wireless telecommunications facilities.

**B.** *The applicant shall submit a written report demonstrating the applicant's review of sites in the vicinity of the proposed location demonstrating the technological reason for the site selection, and a detailed, written explanation why sites of higher priority were not selected.*

**Finding:** A report has been submitted with the petition, and is included within this report as an attachment [Attachment e].

**C.** *An applicant may not by-pass sites of higher priority by stating the proposed site is the only site leased or selected. If co-location is not an option, the applicant must explain why co-location is commercially, or otherwise, impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.*

**Finding:** There are no existing wireless telecommunications facilities located a reasonable distance of this site. Therefore, preparing an agreement between providers is not applicable.

**D.** *The Commission may approve any site located within an area in the above list of priorities, provided that the Findings indicate that the proposed site is in the best interest of the health,*

*safety and welfare of the residents of Chaves County and will not have a detrimental effect on the nature and character of the community and neighborhood.*

**Finding:** Staff finds that the site selected for the wireless telecommunications facility is appropriate.

**E.** *The Commission may disapprove the action requested for any of the following reasons:*

- 1. A conflict with safety and safety-related codes and requirements.*
- 2. A conflict with the historic nature or character of a neighborhood or historic district.*
- 3. The use or construction of a facility is contrary to an already stated purpose of a specific zoning or land use designation.*
- 4. A conflict with the provisions of the Chaves County Zoning Ordinance or any other County ordinances.*

**Finding:** Staff finds that there are no issues that have arisen during the review of this petition for a wireless telecommunications facility that may create or have created any conflict with any of the above criteria.

#### **Section 4. Colocation**

All new or modified wireless telecommunications facilities should develop their plans to allow reasonable requests by the County to use space on the tower and compound for public service radio facilities such as police, fire, emergency, homeland security, etc., at a reasonable charge. The County should have access to their equipment on a 24/7 basis for maintenance and operating purposes. Condition of Approval Number 3 addresses the Colocation requirement.

#### **Section 5. Height, Lot Size, and Setbacks**

Wireless telecommunication facility towers are exempt from height requirements. The facility is proposed to stand at 340' above ground level. Minimum setbacks are as follows:

	Required:	Proposed to tower:	Proposed to Lease Area:
Front Yard:	50'	357.96'	307.96'
Rear Yard:	50'	>1,000'	>1,000'
Side yard (north):	20'	>1,000'	>1,000'
Side yard (south):	20'	1,081.02'	1,031.02'

#### **Section 6. Appearance and Visibility**

The site is situated on land that is predominantly flat with little vertical relief. Visual impacts to traffic driving on Clovis Highway will be mitigated somewhat by the distance (1½ miles) the tower will be set back from this major roadway. Land in this area is open and contains native grasses and vegetation. The nearest residential dwelling unit is located approximately 3 miles to the southeast of the subject property.

The only artificial lighting that will be attached to the tower that staff is aware of is that which is required by the Federal Communications Commission and the Federal Aviation Administration.

### **Section 7. Security**

The existing facility appears to have been designed to meet industry standards and appears to be in compliance with all federal and local safety requirements. The wireless antenna and equipment shelter “lease area” will be surrounded by a 6’ high chain link fence to prevent unauthorized access.

Finding: Staff finds that the site incorporates adequate security measures.

### **Section 8. Signs**

No new signs are proposed.

Finding: Staff finds that the petition meets this requirement.

### **Section 9. Abandonment**

Condition of Approval 8 addresses this requirement.

### **Section 10. State and Federal Regulations**

The applicant acknowledges this requirement via a letter submitted with the Special Use Permit petition.

### **Section 11. Exemptions**

No exemptions are applicable to this application.

## **11. STAFF ANALYSIS AND FINDINGS:**

### ***General Findings:***

Staff finds that there are no wireless telecommunications facilities located within several miles of the subject property.

Staff finds that communication towers are an essential component of life for health and safety purposes, as well as their ability to provide day to day convenience for Chaves County residents. Cell towers also provide an economic benefit to the County.

Staff further finds that the use of existing cellular facilities have not been injurious to the public health, safety, morals and general welfare of the community, and likely will not be so in the foreseeable future. The use or value of the area adjacent to the property does not appear to be affected substantially in an adverse manner by incorporating the proposed land use.

Staff further finds that the site is suitable for the proposed land use and the surrounding properties seem compatible with the proposed land use.

***Special Use Permits:***

Finding: The land use proposed requires issuance of a Special Use Permit upon a duly noticed public hearing.

***Floodplain:***

Finding: The subject property is not located within a FEMA floodplain.

***Setbacks:***

Findings: All required yard setbacks and building separation requirements will be met by the proposal.

***Compatibility with the Chaves County Comprehensive Plan:***

Finding: Although not regulatory in its scope of authority, the Chaves County Comprehensive Plan contains narrative that supports agricultural and related land uses in this area of Chaves County. Ranching is the predominant land use in this portion of northeastern Chaves County. Wireless Telecommunications Facilities are land uses typically located along major traffic corridors, and as such, are generally in conformance with the goals and objectives of the Chaves County Comprehensive Plan.

***Compatibility with Surrounding Land Uses:***

Finding: Lot sizes in the immediate area typically range from several hundred to several thousand acres in size. Most of the parcels are undeveloped and consist of open range. Many parcels are owned by governmental entities. Staff finds that the proposed facility will not have a detrimental impact on the character of the immediate area, traffic conditions or public utility facilities, and will likely not have an impact in the future.

***Public Participation:***

Finding: No comments or protests have been received from the adjacent property owners as a result of public notification and legal advertising of the Special Use Permit petition, as of October 27, 2014.

A “Determination of No Hazard to Air Navigation” letter was received from the Federal Aviation Administration (FAA), as part of the Special Use Permit application.

No comments were received from the Federal Communications Commission (FCC).

***Permits:***

A Building Permit application will be required, and all required inspections, including an electrical inspection, shall be accomplished prior to the facility becoming operational.

**12. RECOMMENDATION:**

Staff believes that approving a Special Use Permit for the land use on the subject property is appropriate, given its general location.

Staff recommends approval of this Special Use Permit petition, Case No. Z 2014-10, subject to eight Conditions of Approval that are designed to ensure compliance with the Wireless Telecommunications Facilities Ordinance, and to mitigate potential negative impacts on surrounding land uses:

1. Current and future development of the site shall be in substantial conformance with the information supplied on the site plan submitted with the Special Use Permit petition;
2. A Building Permit and all inspections required by the Building Official shall be accomplished;
3. The tower constructed shall accommodate co-location of at least two other wireless communications antenna arrays, including, if needed, access from public service providers;
4. Access to the site (via the private unpaved driveway easement) be designed and constructed to accommodate appropriate maintenance service vehicle traffic;
5. Legal descriptions for the lease area and all access easements shall be recorded with the Chaves County Clerk;
6. Any lighting which may be needed for security or other purposes be shielded from surrounding uses and be developed in accordance with the New Mexico Night Skies Act;
7. The Special Use Permit be granted for a period of thirty (30) years, and will expire on November 1, 2044, unless Condition No. 8 applies; and
8. If the facility remains inoperative for a period of 12 consecutive months, it shall be removed by the owner or petitioner, unless a non-use permit for a prescribed period is granted by Chaves County.

**13. BOARD OF CHAVES COUNTY COMMISSIONERS PUBLIC HEARING:**

The recommendation of the Planning and Zoning Commission will be presented for public review and action at the **November 20, 2014** regular meeting of the Board of Chaves County Commissioners. This public hearing will begin at 9:00AM Mountain Standard Time.

14. **ATTACHMENTS:**

- a. Petition for Case Review, Chaves County Planning & Zoning Department
- b. Vicinity Map
- c. Assessor's Aerial Map
- d. Site Development Plan
- e. Detailed Reports, Leaco Management, and TV6-W, LLC, dated September 16, 2014
- f. Profile Elevation of the Wireless Telecommunications Facility (cellular tower)
- g. Letter of "Determination of No Hazard to Air Navigation" from the Federal Aviation Administration
- h. Photos of site
- i. [Letter of protest from Eleanor Beltz Perez, dated November 3, 2014](#)



# CHAVES COUNTY APPLICATION CHAVES COUNTY ZONING ORDINANCE

Case Number: Z 2014-10 Date Received: OCT 10, 2014 Fee: \$150.00

Type of Request:  Rezoning  Special Use  Variance  Change of Use

Name of Property Owner: TVG-W, LLC Phone Number: 901.244.4001

Mailing Address: 4091 Viscount Avenue Memphis TN 38118

Name of Applicant: Benjamin Otsel

Mailing Address: 4091 Viscount Avenue Memphis, TN 38118 Home Phone Number: 901.428.3381  
Business Phone Number: 901.244.4001

Applicant Status:  Owner  Agent  Tenant  Other \_\_\_\_\_

Case Address, Legal Description, and Parcel Number: Section - 27, Township - 6 South  
Range - 29 E ; parcel # - 4-167-035-136-  
529-000000

Present Land Use: ~~AGRICULTURAL~~ Non residential land

Intended Use: cellular communication tower

Present Zoning: AGRICULTURAL Requested Zoning: AGRICULTURAL (NO CHANGE)

Applicant's Reason for Requested Change: (Use back if more space is needed) \_\_\_\_\_

I ACKNOWLEDGE THAT I HAVE BEEN INFORMED OF THE DATES, TIMES, AND LOCATIONS OF THE PUBLIC MEETINGS WHICH I OR MY AGENT MUST ATTEND IN ORDER TO FULFILL THE REQUIREMENTS OF THIS APPLICATION.

[Signature] Date: 9/16/14

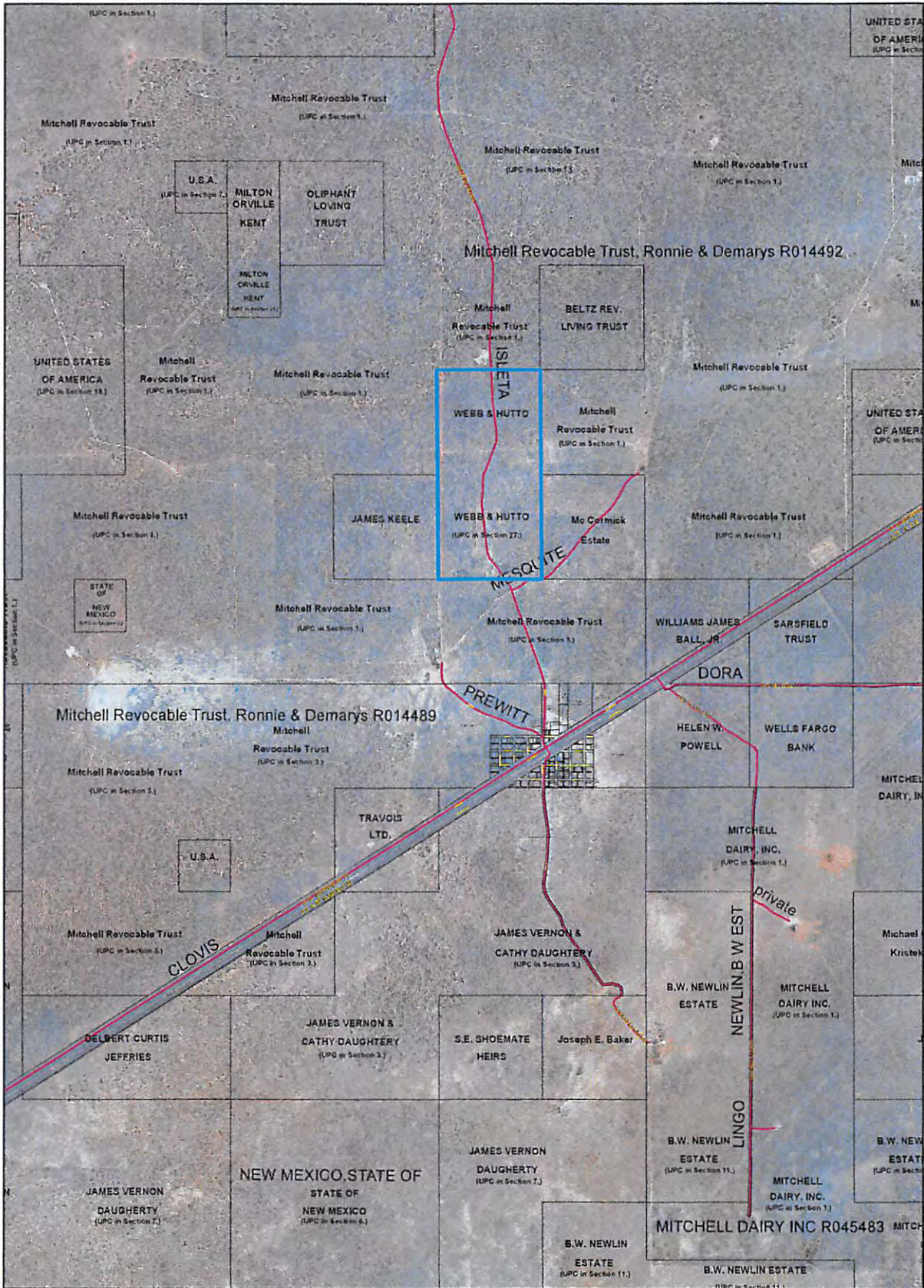
Owner's Signature Date







# AERIAL MAP



Case Z 2014-10



C.

**PETTIGREW & ASSOCIATES PA**  
 ENGINEERING | SURVEYING | TESTING  
 DEFINING QUALITY SINCE 1965  
 100 E. Navajo - Suite 100 Hobbs New Mexico 88240  
 T 575 393 9527 F 575 393 1543  
 Pettigrew.us

PROJECT SURVEYOR: J. Baker  
 DRAWN BY: C. Johnson



**INDEXING INFORMATION FOR COUNTY CLERK**  
 OWNER: Lance Webb, Jewel Webb Hutto, Delta Elizabeth Touchton Halverson, and Mary Jewel Touchton Atkins  
 LOCATION: SW1/4 Section 27, T8S, R29E, N.M.P.M., Chaves County, New Mexico

**REVISIONS**

No.	DATE	DESCRIPTION

State of New Mexico, County of \_\_\_\_\_  
 I hereby certify that this instrument was filed for record on  
 The \_\_\_\_\_ Day of \_\_\_\_\_  
 20\_\_\_\_ A.D.  
 At \_\_\_\_\_ O'Clock \_\_\_\_\_ M.  
 Cabinet \_\_\_\_\_ Side \_\_\_\_\_  
 Book \_\_\_\_\_ Page \_\_\_\_\_  
 By \_\_\_\_\_  
 County Clerk  
 By \_\_\_\_\_  
 Deputy

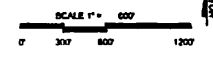
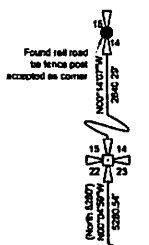
**CLAIM OF EXEMPTION OF BOAZ TOWER FOR TV6-W, LLC**

PROJECT NUMBER: 2014.1234

SHEET: 1 of 2  
**SU - 101**

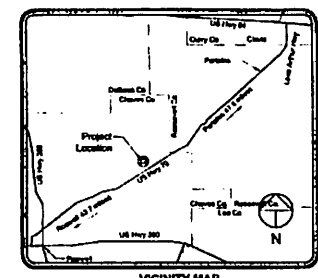
# BOAZ TOWER BOUNDARY SURVEY FOR CLAIM OF EXEMPTION

SW1/4, SECTION 27, T6S, R29E, N.M.P.M., CHAVES COUNTY,  
 NEW MEXICO



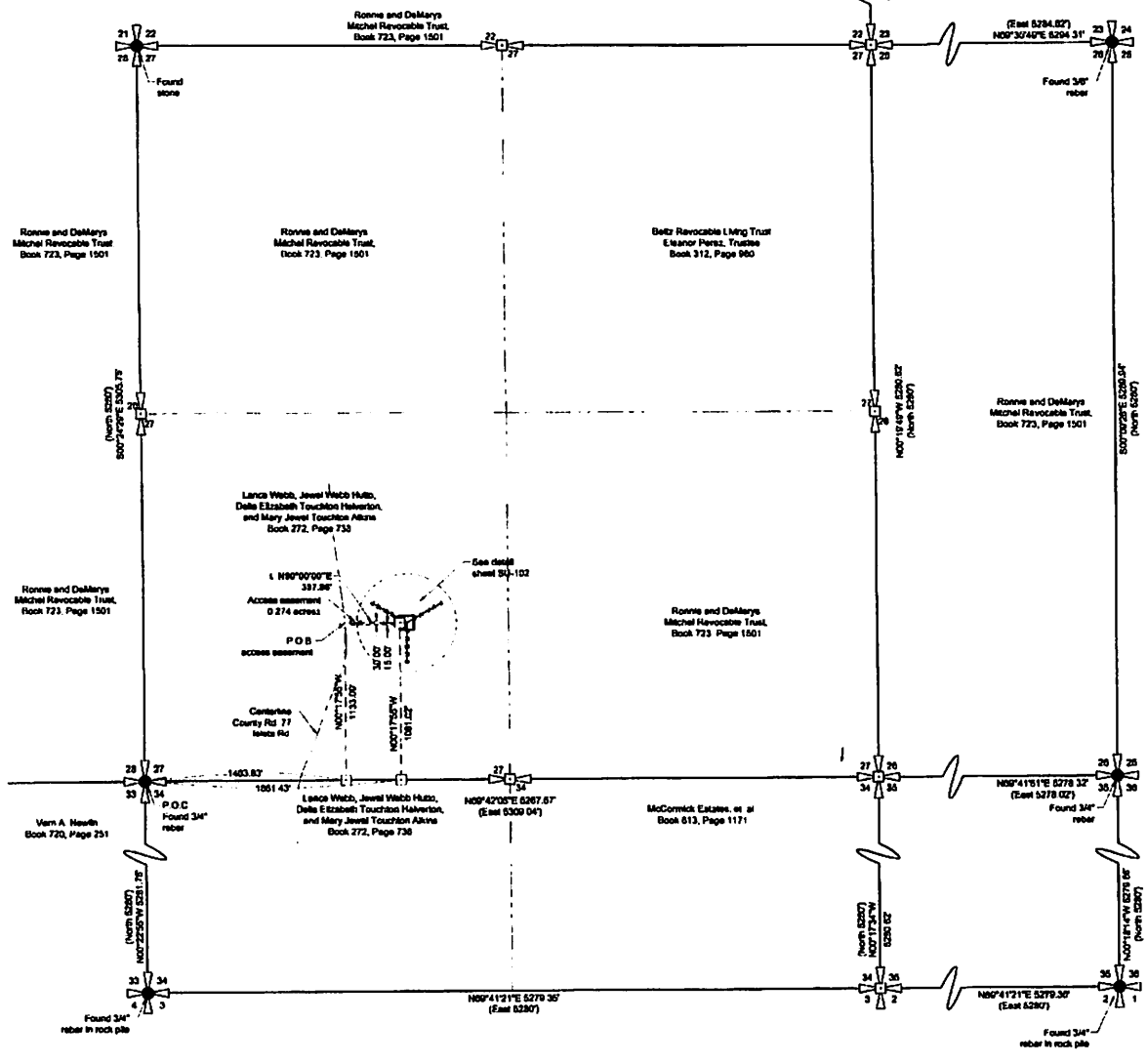
**BASIS OF BEARING**  
 The basis of bearing for this survey is Grid North based on the New Mexico State Plane Coordinate System, East Zone, as determined by GPS/GNSS observations. Ground coordinates are modified by scaling about a control point located at N633°45'26.51", W103°58'46.79" by a combined scale factor of 0.999726391. True north can be obtained by applying a convergence angle of -00°11'46" at the Point of Commencement.

**NOTE**  
 According to the Federal Emergency Management Agency, Flood Insurance Rate Map, Community Map Number 35005C0626D, with an effective date of September 25, 2009 this property lies within Zone X. Zone X is defined as an area determined to be outside the 0.2% annual chance floodplain.



**LEGEND**

- Found as noted
- Set 3/4" rebar with red plastic cap marked "BCKS M&P'S 12348"
- Calculated point
- ⊕ Calculated section corner
- ⊞ Calculated quarter section corner
- ⊗ Found section corner
- ⊙ Found quarter section corner
- ⊕ Well
- Easement centerline
- - - Easement line
- - - Section line
- - - Section quarter line
- Fence
- Existing Contours
- XXXXX Easement
- XXXXXX Measured bearing and distance
- XXXXXXX Record bearing and distance



2 pages  
 d.p.



**RECORD DESCRIPTION - PER QUITCLAIM DEED BOOK 272, PAGE 738**

Lots 9 and 10, Block 5, Mila Addition to Boaz, N.M.; The SW1/4 of Sec. 27, and the NW1/4 of Sec. 34, Twp. 6 South, Range 29 East, N.M.P.M., Surface only to W1/2NE1/4 Sec. 35, and SW1/4 and W1/2SE1/4 Sec. 28, Twp. 6 South, Range 28 East, N.M.P.M.

**NEW DESCRIPTION - LANCE WEBB, JEWEL WEBB HUTTO, DELIA ELIZABETH TOUCHTON HALVERTON, AND MARY JEWEL TOUCHTON ATKINS**

Lots 9 and 10, Block 5, Mila Addition to Boaz, N.M.; The SW1/4 of Sec. 27, and the NW1/4 of Sec. 34, Twp. 6 South, Range 29 East, N.M.P.M.; Surface only to W1/2NE1/4 Sec. 35, and SW1/4 and W1/2SE1/4 Sec. 28, Twp. 6 South, Range 28 East, N.M.P.M.

Less and except A tract of land located in the SW1/4 of Section 27, T8S, R29E, N.M.P.M., Chaves County, New Mexico and being more particularly described by metes and bounds as follows:

Commencing at a found 3/4" rebar being used as the southwest corner of Section 27; thence N89°42'05"E 1861.43 feet along the south line of Section 27, and N00°17'55"W 1061.02 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348" for a Point of Beginning; thence N00°00'00"E 100.00 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348"; thence N90°00'00"E 100.00 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348"; thence S00°00'00"W 100.00 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348"; thence N90°00'00"W 100.00 feet to the Point of Beginning and containing 0.230 acres more or less.

**NEW DESCRIPTION - TOWER SITE**

A tract of land located in the SW1/4 of Section 27, T8S, R29E, N.M.P.M., Chaves County, New Mexico and being more particularly described by metes and bounds as follows:

Commencing at a found 3/4" rebar being used as the southwest corner of Section 27; thence N89°42'05"E 1861.43 feet along the south line of Section 27, and N00°17'55"W 1061.02 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348" for a Point of Beginning; thence N00°00'00"E 100.00 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348"; thence N90°00'00"E 100.00 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348"; thence S00°00'00"W 100.00 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348"; thence N90°00'00"W 100.00 feet to the Point of Beginning and containing 0.230 acres more or less.

**NEW DESCRIPTION - ACCESS AND UTILITY EASEMENT**

A STRIP OF LAND traversing a portion of a tract of land deeded to Lance Webb, Jewel Webb Hutto, Delia Elizabeth Touchton Halverson, and Mary Jewel Touchton Atkins located in the SW1/4 of Section 27, T8S, R29E, N.M.P.M., Chaves County, New Mexico, being 30.00 feet wide and extending at right angles 15.00 feet on each side of the centerline herein described with the easement lines lengthening and shortening to eliminate gaps and overlaps at angle points and points where the centerline intersects section lines, property boundaries, right-of-ways and other easements, the centerline being more particularly described as follows:

Commencing at a found 3/4" rebar being used as the southwest corner of Section 27; thence N89°42'05"E 1861.43 feet along the south line of Section 27 and N00°17'55"W 1133.09 feet to a calculated point, for a Point of Beginning; thence N90°00'00"E 387.89 feet along centerline to a point on the west line of the Boaz Tower Site tract, the Point of Ending and containing 0.274 acres more or less.

**DESCRIPTION GUY EASEMENT NO. 1**

A STRIP OF LAND traversing property of Lance Webb, Jewel Webb Hutto, Delia Elizabeth Touchton Halverson, and Mary Jewel Touchton Atkins, as recorded in Book 272, Page 738, in the SW1/4 of Section 27, T8S, R29E, N.M.P.M., Chaves County, New Mexico, being 25.00 feet wide and extending at right angles 12.50 feet on each side of the centerline herein described with the easement lines lengthening and shortening to eliminate gaps and overlaps at angle points and points where the centerline intersects section lines, property boundaries, right-of-ways and other easements, the centerline being more particularly described as follows:

Commencing at a found 3/4" rebar being used as the southwest corner of Section 27; thence N89°42'05"E 1861.43 feet along the south line of Section 27, N00°17'55"W 1131.02 and N90°00'00"E 50.00 feet for a Point of Beginning; thence N90°00'00"W 292.00 feet along centerline to the point of ending, and containing 0.168 acres more or less.

**DESCRIPTION GUY EASEMENT NO. 2**

A STRIP OF LAND traversing property of Lance Webb, Jewel Webb Hutto, Delia Elizabeth Touchton Halverson, and Mary Jewel Touchton Atkins, as recorded in Book 272, Page 738, in the SW1/4 of Section 27, T8S, R29E, N.M.P.M., Chaves County, New Mexico, being 25.00 feet wide and extending at right angles 12.50 feet on each side of the centerline herein described with the easement lines lengthening and shortening to eliminate gaps and overlaps at angle points and points where the centerline intersects section lines, property boundaries, right-of-ways and other easements, the centerline being more particularly described as follows:

Commencing at a found 3/4" rebar being used as the southwest corner of Section 27; thence N89°42'05"E 1861.43 feet along the south line of Section 27, N00°17'55"W 1131.02 and N90°00'00"E 50.00 feet for a Point of Beginning; thence N60°00'00"E 292.00 feet along centerline to the point of ending, and containing 0.168 acres more or less.

**DESCRIPTION GUY EASEMENT NO. 3**

A STRIP OF LAND traversing property of Lance Webb, Jewel Webb Hutto, Delia Elizabeth Touchton Halverson, and Mary Jewel Touchton Atkins, as recorded in Book 272, Page 738, in the SW1/4 of Section 27, T8S, R29E, N.M.P.M., Chaves County, New Mexico, being 25.00 feet wide and extending at right angles 12.50 feet on each side of the centerline herein described with the easement lines lengthening and shortening to eliminate gaps and overlaps at angle points and points where the centerline intersects section lines, property boundaries, right-of-ways and other easements, the centerline being more particularly described as follows:

Commencing at a found 3/4" rebar being used as the southwest corner of Section 27; thence N89°42'05"E 1861.43 feet along the south line of Section 27, N00°17'55"W 1131.02 and N90°00'00"E 50.00 feet for a Point of Beginning; thence S00°00'00"E 292.00 feet along centerline to the point of ending, and containing 0.168 acres more or less.

**CERTIFICATE OF SURVEY**

I, William M. Hicks, III New Mexico Professional Surveyor, hereby certify that this Claim of Exemption Plat was prepared using the record description and from an actual ground survey performed by me or under my supervision, that this survey is true and correct to the best of my knowledge and belief. That this Claim of Exemption Plat and the field survey upon which it is based meet the Minimum Standards for Surveying in New Mexico. This certification is made to TV6-W, LLC and Fidelity National Title Insurance Company.

*William M. Hicks*  
 William M. Hicks, III NMPS #12348 Date 10-3-2014



**OWNERS STATEMENT AND AFFIDAVIT**

The undersigned first duly sworn on oath, state: As the owners and proprietors we have of our own free will and consent caused this plat with its tracts to be plotted. The property described on this plat lies within the plotting jurisdiction of Chaves County, New Mexico

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

By: \_\_\_\_\_  
Lance Webb

By: \_\_\_\_\_  
Jewel Webb Hutto

By: \_\_\_\_\_  
Delia Elizabeth Touchton Halverson

By: \_\_\_\_\_  
Mary Jewel Touchton Atkins

**ACKNOWLEDGMENT**

State of \_\_\_\_\_  
 County of \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, Lance Webb, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Witness my hand and official seal the day and year last above written

My Commission Expires \_\_\_\_\_

Notary Public \_\_\_\_\_

**ACKNOWLEDGMENT**

State of \_\_\_\_\_  
 County of \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, Jewel Webb Hutto, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Witness my hand and official seal the day and year last above written.

My Commission Expires \_\_\_\_\_

Notary Public \_\_\_\_\_

**ACKNOWLEDGMENT**

State of \_\_\_\_\_  
 County of \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, Delia Elizabeth Touchton Halverson, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Witness my hand and official seal the day and year last above written.

My Commission Expires \_\_\_\_\_

Notary Public \_\_\_\_\_

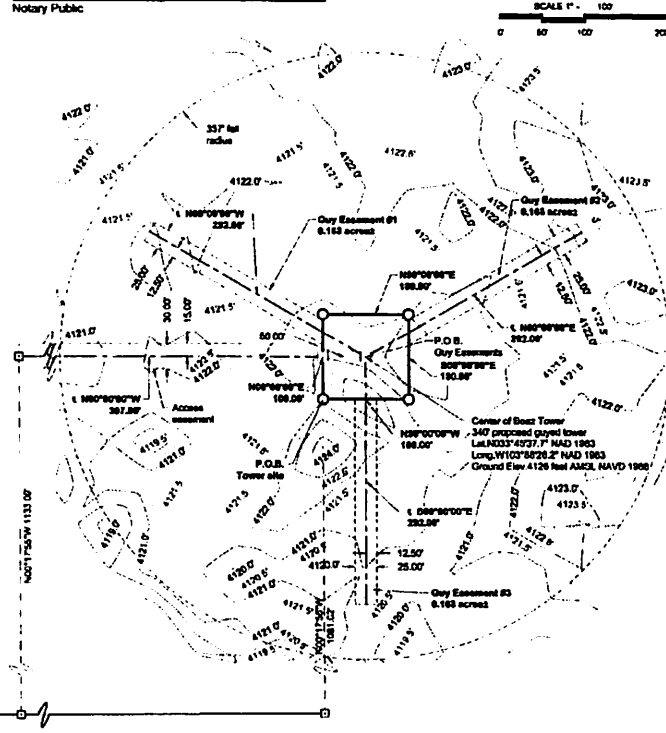
**ACKNOWLEDGMENT**

State of \_\_\_\_\_  
 County of \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, Mary Jewel Touchton Atkins, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Witness my hand and official seal the day and year last above written.

My Commission Expires \_\_\_\_\_

Notary Public \_\_\_\_\_



**PETTIGREW & ASSOCIATES PA**  
 ENGINEERING | SURVEYING | TESTING  
 DEFINING QUALITY SINCE 1965  
 100 E Navajo - Suite 100, Hobbs New Mexico 88240  
 T 575 383 9827 F 575 383 1543  
 Pettigrew.us

PROJECT SURVEYOR: J. Baker  
 DRAWN BY: C. Johnson

**INDEXING INFORMATION FOR COUNTY CLERK**  
 OWNER: Lance Webb, Jewel Webb Hutto, Delia Elizabeth Touchton Halverson, and Mary Jewel Touchton Atkins  
 LOCATION: SW1/4 Section 27, T8S, R29E, N.M.P.M., Chaves County, New Mexico

**REVISIONS**

No	DATE	DESCRIPTION

State of New Mexico, County of \_\_\_\_\_  
 I here by certify that this instrument was filed for record on  
 The \_\_\_\_\_ Day of \_\_\_\_\_  
 20\_\_\_\_ A.D.  
 At \_\_\_\_\_ O'Clock \_\_\_\_\_ M.  
 Cabinet \_\_\_\_\_ Side \_\_\_\_\_  
 Book \_\_\_\_\_ Page \_\_\_\_\_  
 By \_\_\_\_\_  
 County Clerk  
 By \_\_\_\_\_  
 Deputy

**CLAIM OF EXEMPTION OF BOAZ TOWER FOR TV6-W, LLC**

PROJECT NUMBER: 2014.1234

SHEET: 2 of 2  
**SU - 102**

**TV6-W, LLC**

4091 Viscount Ave Memphis, TN 38118-6106

Phone: 901 794-9494

Fax: 901 366-5736

September 16th, 2014

Mr. Anders Sheridan  
Planning and Zoning Director  
Chaves County, New Mexico Department of Planning and Zoning  
#1 St. Mary's Place, Suite # 180  
Roswell, NM 88203

RE: Letter of Intent and Requested Zoning Conditions for a Three Hundred Forty Foot  
(340') Guyed Tower Located on Parcel ID # ~~4-167-035-136-136-000000~~

4-167-035-136-529-000000

Mr. Sheridan:

TV6-W, LLC, of 4091 Viscount Avenue Memphis, TN 38118 proposes to construct a Three Hundred Forty Foot (340') guyed tower located on Parcel ID # 4-167-035-136-136-000000 . The tower it will be built to support cellular communications and wireless data services. The tower will be designed to support four (4) antenna arrays. In addition to the placement of the four (4) cellular antenna arrays, the tower approval needs to include one (1) microwave dish up to six feet (6') in diameter.

The equipment will be placed within a 60'x60' fenced area. TV6-W, LLC is proposing to construct a Six Foot (6') chain link fence to secure the ground base equipment and is proposing to construct a Four Foot (4') fence to secure and enclose the guy wire anchors.

There is a need for improved cellular coverage in this area of Chaves County. The CMCS equipment planned for the proposed tower cannot be accommodated on any existing structures because there are no appropriate existing structures or pending structures to accommodate the planned equipment, taking into account, among other factors, the licensees' system requirements. Therefore, the proposed tower is needed so that the licensees can provide better cellular coverage and can improve its E911 emergency services network. The citizens of Chaves County benefit each time a licensee expands its network coverage because each site enhances the licensee's ability to provide emergency response services.

TV6-W, LLC appreciates the Chaves County Department of Planning and Zoning's consideration of this application. Please contact me at (901) 428-3381 if you have any questions concerning this application.

Sincerely,



Benjamin Orgel

TV6-W, LLC

e.  
4 pages

TV6-W, LLC

4091 Viscount Ave Memphis, TN 38118-6106

Phone: 901 794-9494

Fax: 901 366-5736

September 16th, 2014

Mr. Anders Sheridan  
Planning and Zoning Director  
Chaves County, New Mexico Department of Planning and Zoning  
#1 St. Mary's Place, Suite # 180  
Roswell, NM 88203

RE: Governmental Compliance Letter for Communications Tower

Mr. Sheridan:

The proposed tower at will comply with all regulations administered by the Federal Aviation Administration, the Federal Communications Commission and all applicable governmental bodies.

Sincerely,



Benjamin Orgel  
TV6-W, LLC

TV6-W, LLC

4091 Viscount Ave Memphis, TN 38118-6106

Phone: 901 794-9494

Fax: 901 366-5736

September 16th, 2014

Mr. Anders Sheridan  
Planning and Zoning Director  
Chaves County, New Mexico Department of Planning and Zoning  
#1 St. Mary's Place, Suite # 180  
Roswell, NM 88203

RE: Collocation Letter for Communications Tower

Mr. Sheridan:

TV6-W, LLC commits to allow shared use of the proposed tower at in capacities based on existing and planned use, and if a future applicant agrees in writing to pay any reasonable charge for shared use, the potential use is technically compatible and the future applicant is in good standing.

Sincerely,



Benjamin Orgel  
TV6-W, LLC



Landline • Wireless • Internet • Paging

To whom it may concern,

Leaco is in the process of expanding data coverage in the rural to very rural areas of Southeastern New Mexico. Requests for data access to 3G and 4G speeds in these areas has been driven by the exponential growth in the gas and oil industry, and also by a push to cover as much of the rural areas as possible now that machine to machine (M2M) is experiencing growth and its requirements for quick and efficient data access is growing as well. Leaco's recent participation and acceptance of the FCC mandate under the 901 Mobility project has afforded Leaco and its served community the opportunity for access to these type of speeds. This can only be made possible through partnerships with tower building and leasing companies that are willing to invest the resources and tower real-estate in our rural areas.

In accordance with the FCC and after Leaco's due diligence search for candidate locations, it was determined that these are indeed under/non served areas. There are no existing towers in these locations. Leaco is building cell sites in rural Eddy county under the 901 Mobility program to provide rural data coverage in these un-served areas. When the areas being covered are extremely rural, the most financially responsible solution to the need is not necessarily more towers, but taller towers that will extend the coverage efficiently. Not providing this needed coverage will be detrimental to the needs of an aggressively growing industry and would negatively impact the ability to provide services for things such as energy automation and M2M solutions.

Regards,  
Leaco Management  
Leaco Rural Telephone, Coop., Inc.  
220 W Broadway  
Hobbs, NM 88240

---

**GREENFIELD**  
New Mexico 88230  
550 Camanche Road  
BUS: 575 734-3312  
FAX: 575 734-3326

**HOBBS**  
New Mexico 88240  
220 West Broadway  
BUS: 575 373-5011  
FAX: 575 433-4354

**LOVINGTON**  
New Mexico 88260  
1500 North Love  
BUS: 575 370-5010  
FAX: 575 433-4729

**TATUM**  
New Mexico 88267  
10 West First  
BUS: 575 398-2212  
FAX: 575 398-3297

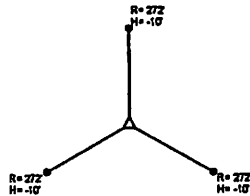
1-800-851-0554

[www.leaco.net](http://www.leaco.net)



Designed Appurtenance Loading

Elev	Description	Tx-Line
340	Leg Dish Mount	
340	3T-Boom(R) - 12ft Face - 3ft Standoff	
340	(1) 3' H.P. Dish	(1) LMR-400
340	(1) 12' x 12' x 6" Panel	(3) 1/4"
340	(8) BXA-185063/12CF_s	(12) 1/2"
340	(3) RRU3806s	(3) 1/2"
330	3T-Boom(R) - 12ft Face - 3ft Standoff	
330	(3) RRH 700MHz	
330	(8) QXW-80805016X-DP-EDWs	(12) 1 5/8"
320	3T-Boom(R) - 12ft Face - 3ft Standoff	
320	(12) 6' x 1' x 3in Panels	(12) 1 5/8"
310	3T-Boom(R) - 12ft Face - 3ft Standoff	
310	(12) 6' x 1' x 3in Panels	(12) 1 5/8"
170	Leg Dish Mount	
170	(1) 6' Solid Dish w/ Radome	(1) EW63



Base Reactions

Total Foundation		Guy Anchor	
Axial (kips)	149.9	Max Vertical (kips)	82.3
Shear (kips)	1.88	Max Horizontal (kips)	78.12

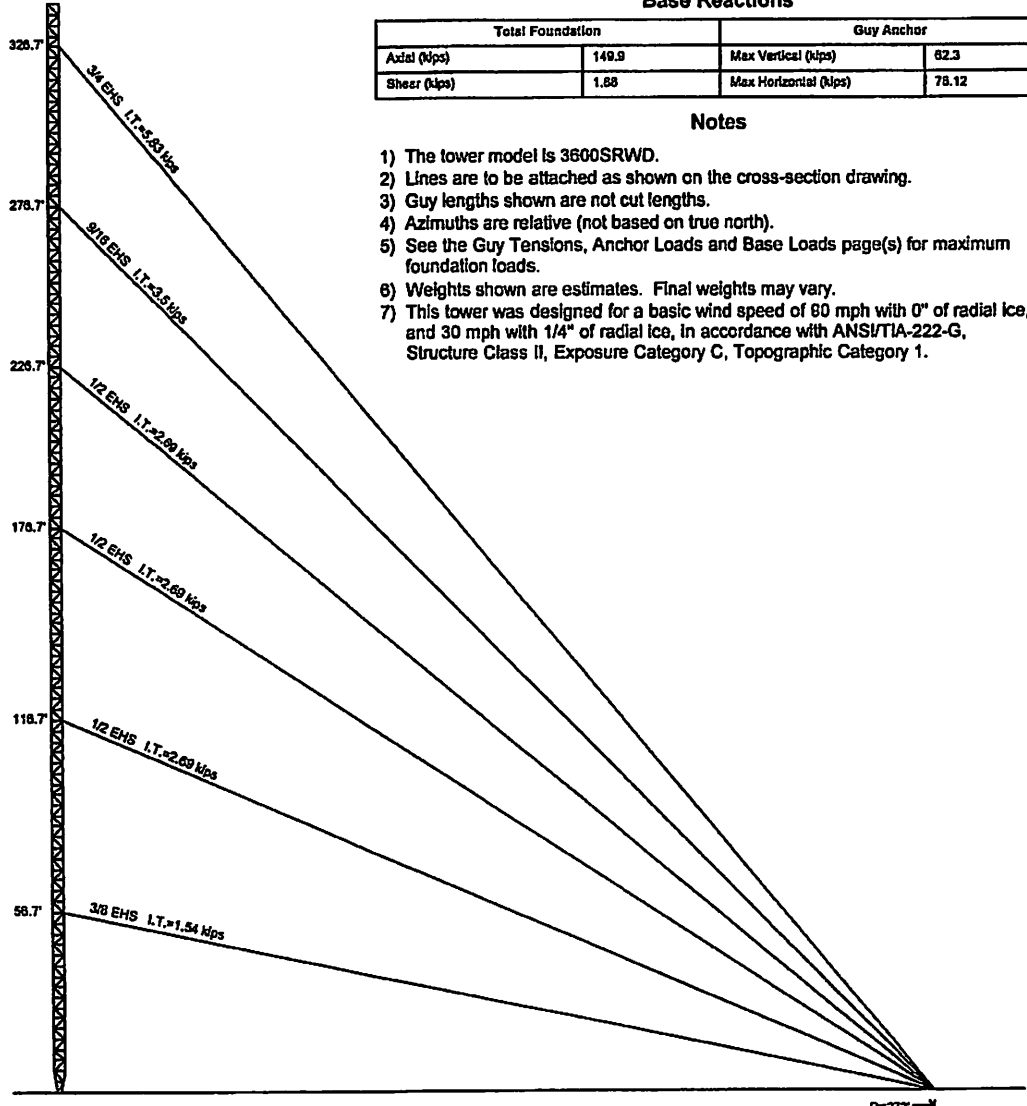
Notes

- 1) The tower model is 3600SRWD.
- 2) Lines are to be attached as shown on the cross-section drawing.
- 3) Guy lengths shown are not cut lengths.
- 4) Azimuths are relative (not based on true north).
- 5) See the Guy Tensions, Anchor Loads and Base Loads page(s) for maximum foundation loads.
- 6) Weights shown are estimates. Final weights may vary.
- 7) This tower was designed for a basic wind speed of 80 mph with 0" of radial ice, and 30 mph with 1/4" of radial ice, in accordance with ANSI/TIA-222-G, Structure Class II, Exposure Category C, Topographic Category 1.

SIZES ARE PRELIMINARY AND MAY CHANGE UPON FINAL DESIGN

Legs	2.0 S.R.	1.75 S.R.	2.0 S.R.	1.75 S.R.	1.0 S.R.	0.75 S.R.
Diagonals						
Horizontals						
Brace Bobs						
Face Width						
Panel Count/Height						
Section Weight						

Welded Sections  
3"  
102 @ 3.3333'



Sabre Communications Corporation  
7101 Southbridge Drive  
P.O. Box 658  
Stour City, IA 51102-0658  
Phone: (712) 258-6580  
Fax: (712) 279-0814

Quote:	15-2747-JDS
Customer:	Tower Ventures II LLC
Site Name:	Roswell, NM
Description:	340' 3600SRWD
Date:	7/24/2014
By:	JV
Page:	1

Information contained herein is the sole property of Sabre Communications Corporation, constitutes a trade secret as defined by Iowa Code Ch. 565 and shall not be reproduced, copied or used in whole or part for any purpose whatsoever without the prior written consent of Sabre Communications Corporation.

f.



Mail Processing Center  
 Federal Aviation Administration  
 Southwest Regional Office  
 Obstruction Evaluation Group  
 2601 Meacham Boulevard  
 Fort Worth, TX 76193

Aeronautical Study No.  
 2014-ASW-6228-OE

Issued Date: 09/17/2014

Billy Orgel  
 TV 6-W, LLC  
 4091 Viscount Avenue  
 Memphis, TN 38118

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Antenna Tower Boaz  
 Location: Elida, NM  
 Latitude: 33-45-37.70N NAD 83  
 Longitude: 103-58-26.20W  
 Heights: 4126 feet site elevation (SE)  
 348 feet above ground level (AGL)  
 4474 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

As a condition to this Determination, the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, a med-dual system - Chapters 4,8(M-Dual),&12.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)
- Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

This determination expires on 03/17/2016 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates , heights, frequency(ies) and power . Any changes in coordinates , heights, and frequencies or use of greater power will void this determination. Any future construction or alteration , including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (817) 321-7755. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2014-ASW-6228-OE.

**Signature Control No: 228219587-229540909**

( DNE )

Debbie Cardenas  
Technician

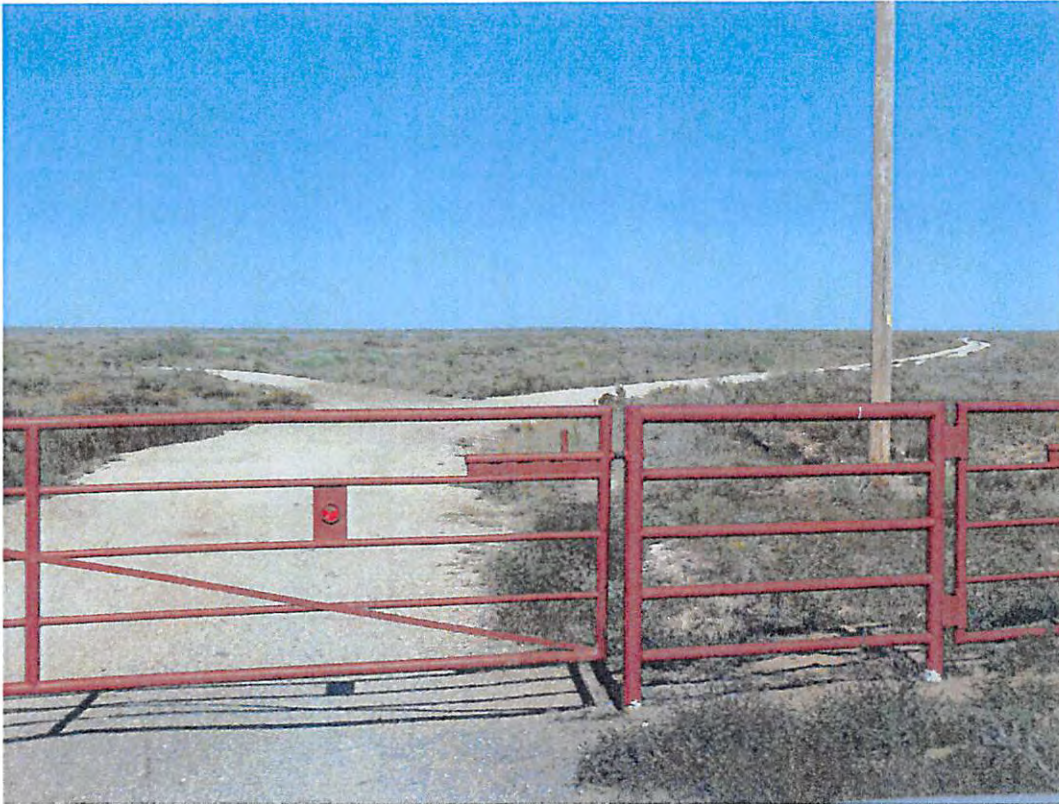
Attachment(s)  
Frequency Data

cc: FCC

Frequency Data for ASN 2014-ASW-6228

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
698	806	MHz	1000	W
806	824	MHz	500	W
824	849	MHz	500	W
851	866	MHz	500	W
869	894	MHz	500	W
896	901	MHz	500	W
901	902	MHz	7	W
930	931	MHz	3500	W
931	932	MHz	3500	W
932	932.5	MHz	17	dBW
935	940	MHz	1000	W
940	941	MHz	3500	W
1850	1910	MHz	1640	W
1930	1990	MHz	1640	W
2305	2310	MHz	2000	W
2345	2360	MHz	2000	W





Locked Gate Across Isleta Road (CR 77)



Isleta Road Looking Towards Subject Property (1½ Miles Distant)





Power Lines Alongside and North of Clovis Highway



Closest Cellular Tower, 7 Miles to the Southeast

## Anders Sheridan

---

**From:** Eleanor Perez <perezellie@att.net>  
**Sent:** Monday, November 03, 2014 12:17 PM  
**To:** Anders Sheridan  
**Subject:** Case #Z 2014-10 Petition for a Special Use Permit  
**Attachments:** New Mexico Zoning.docx

Eleanor Beltz Perez  
2825 Fresno Street  
Santa Cruz, CA95062

November 3, 2014

Mr. Anders M. Sheridan, Director  
Chaves County Planning & Zoning  
P. O. Box 1817  
Roswell, NM 88202-1817

RE: **CASE #Z 2014-10**

I would like to request a postponement to the hearing on this case, as I only received the letter making me aware of this Petition for a Special Use Permit last Friday, which does not give me enough time to seek legal counsel to form an appropriate objection to the petition.

I am the sole Trustee on my father's Revocable Living Trust. The land is 160 acres granted to my grandmother, Winifred Harney on a homestead deed from President Cleveland, which deed I have in my possession.

My father is deceased and my brother, Charles Beltz just died earlier this year. I recently had the legal work done to notify New Mexico of this status, and asking Superior Court to approve my status as sole Trustee so that I could legally make



decisions with regard to my father's trust. I am planning on listing this land for sale in the near future. Granting this petition will significantly decrease the value of the land, in my opinion. At the very least, I need to expose the land to the entire market so that all wireless tower businesses will have an opportunity to negotiate with me and I need to seek legal counsel and market information to make an informed decision.

Therefore, I am requesting that you grant a postponement of at least 90 days for presenting my objections to this Petition for a Special Use Permit.

Thank you.

Eleanor Beltz Perez

831-464-7924

cc: Charles A. Talpas, Atty