



<p>CHAVES COUNTY ETZ Authority</p>		
<p>Date: December 14, 2021</p>	<p><i>Public Hearing Minutes</i></p>	<p>Created By: Julia A. Torres</p>

Members Present:

Commissioners:
 T Calder Ezzell
 Richard C. Taylor
 Jeff Bilberry

Councilwoman:
 Jeanine Best
 Margaret Kennard

Staff Present:

Louis Jaramillo
 Julia A. Torres
 Mac Rogers

Guests:

Ronald and Angela Martinez
 Ernest Ortega
 Gabriel Ortega
 Jon Fitzpatrick
 Jerrod and Melissa Higgins
 Bruce Haley
 Cathy Crossley
 Moises Chavez
 Ian Brumana
 Sergio Jimenez
 Nicholas Kadlik
 Gary Hartwick
 Peter Ambs

Shirley McIntosh
 Francisco and Cinda Olvera
 Stacy Askham
 Rita Doerhoefer

A public hearing before the Chaves County Extraterritorial Zoning Authority was held at the Chaves County Administrative Center, in the Commission Chambers, on December 14, 2021 beginning at 5:33PM.

I. MINUTES

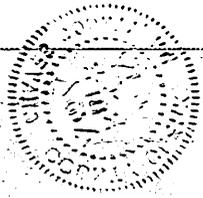
The minutes of the August 31, 2021 public hearing were approved unanimously as submitted.

II. NEW BUSINESS

1. **Per Section 2.1.4 of the Roswell-Chaves County Extraterritorial Zoning Ordinance 80-1. An Appeal of the Chaves County Planning Director's evaluation of a Home Occupation at 2709 W. 25th Street, Legal- Tract C of Block 2 of the Future Land Estates, owners- Ernest and Lorena Ortega. Appellant -Ronald Martinez of 2801 W. 25th Street, Legal-Tract H, Block 1, Future Land Estates.**

Louis Jaramillo gave a brief description of Mr. Martinez's appeal to the determination of a permissible home occupation at 2709 W. 25th St. He indicated that both Mr. Martinez and Mr. Ortega were present.

Ronald and Angela Martinez of 2801 W. 25th St., Roswell, read a statement describing their complaint. Mr. and Mrs. Martinez distributed a packet of 51 photographs of their view of Mr. Ortega's property.



UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM FOR THE ATTORNEY GENERAL
SUBJECT: [Illegible]

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Councilor Kennard asked Staff about Mr. Ortega's reply to Mr. Martinez's complaint. The Authority was given documentation of all communications including Mr. Ortega's response by Staff.

Chair Ezzell asked what the timeline of these pictures was. Mrs. Martinez responded that they were from March 2021 to the present. Mrs. Martinez stated that the photos were snapshots in time. She stated they moved here in 2017 because of her job. They bought their home with the understanding that it was a peaceful neighborhood. Mrs. Martinez wasn't sure what goes on at Mr. Ortega's property on Friday afternoons but did mention that there was an increase in traffic parked along Cherokee Avenue that day. She reiterated that they're not saying that Mr. Ortega shouldn't have a livelihood and run a business, just that they don't want it to be in front of their home.

Councilor Best wanted to know if the Martinez's have started a petition with any of their other neighbors that might feel the same way they do. Mrs. Martinez responded that they haven't because they wanted to come before the County to identify what a home occupation was and try to come up with a resolution. She did state that their neighbors are aware but have not formally started a petition.

Councilor Kennard asked Mrs. Martinez if she felt safe at her home. Mrs. Martinez responded that she doesn't especially when her husband was not home. She doesn't know who the people are at Mr. Ortega house.

Commissioner Taylor wanted to know if there has been any indication of any harm. Mrs. Martinez responded affirmatively and mentioned a physical altercation between her husband and Mr. Ortega in which law enforcement had to be called and a report filed.

Commissioner Bilberry asked staff if there had been any other complaints from other neighbors about Mr. Ortega. Mr. Jaramillo stated there has not.

Councilwoman Best wanted to know from Mr. Martinez if he had asked Mr. Ortega to provide any home repairs. Mr. Martinez responded that he had not. Councilwoman Best noted that in Mr. Ortega's response to the complaint, he did mention that that was the reason there was a problem between them.

Mrs. Martinez explained that when they had extensive hail damage to their roof, they had to have their entire roof repaired. The insurance company asked for two quotes from roofing companies. Mr. and Mrs. Martinez contacted the original installer, Do-Right-Roofing and asked Mr. Ortega for another recommendation. Mr. Ortega provided them with a Mr. Marquez to provide them with an estimate. Since Mr. Marquez was predominantly Spanish speaking and they did not speak Spanish, Mr. Ortega did go up on the roof along with Mr. Martinez and Mr. Marquez so he could provide an estimate. Mrs. Martinez stated that they did not hire Mr. Marquez to do the roof repairs but instead hired Do-Right-Roofing.

Chair Ezzell wanted to make sure that the Martinez's understood the difference between restrictive covenants and the zoning ordinance. Mr. Martinez responded that they do understand the difference. Initially, they were not aware of the ETZ nor its ordinance. He did research the ETZ ordinance recently to see if there was anything that could be done about the issue at hand. Mrs. Martinez commented that their restrictive covenants prohibit home businesses and thus is more restrictive than the ETZ ordinance.

Chair Ezzell informed the Martinez's that if they feel there is a violation of their covenants, that they would have to take the issue to District Court and not Chaves County. Mrs. Martinez indicated that they were aware of that.

Councilor Kennard asked staff to explain why Mr. Ortega received a letter of violation. Mr. Jaramillo explained that usually property owners don't respond to a code enforcement letter of inquiry. In order to

increase the chances of getting a response from them, a letter of Violation is sent with a 10-day response period. He stated that there was no violation at the time the letter was sent to Mr. Ortega.

Councilor Kennard asked Mr. Jaramillo if he had seen the pictures that Mr. Martinez provided earlier. Mr. Jaramillo responded that he had not.

Mrs. Martinez stated that Mr. Jaramillo was asked if he wanted to see any photographs during their conversations for which he stated no.

Nobody spoke in support of the Martinez's appeal.

Ernest Ortega at 2709 W. 25th St., Roswell, introduced himself as the owner of G O Design and Ernest Ortega Inc. He also introduced his son Gabriel Ortega.

Chair Ezzell asked Mr. Ortega if he was running his business from his home. Mr. Ortega responded that he writes checks and completes paperwork from his office. He does store his business equipment/ tools at his home behind closed doors. He does haul a tool trailer to and from job sites on a daily basis. Mr. Ortega indicated that he had four (4) employees but that one was out due to COVID and another was not able to come to the meeting due to childcare issues. His other two (2) employees were present. He did state that he has had his employees work on his garage for a couple of weeks in order to provide wages for them during the holiday season. Mr. Ortega indicated that he was being filmed by Mr. Martinez constantly and did not like that.

Chair Ezzell wanted to know how long Mr. Ortega had lived at his current property. Mr. Ortega responded that he had lived there 15 years.

Councilor Best asked if Mr. Ortega had a warehouse elsewhere. Mr. Ortega indicated that he has a 30x40 shop behind his house in which he stores his tools. Nothing was exposed, everything was enclosed. He commented about the stuff on Mr. Martinez's yard including old trailers, shipping containers, wood pile and other debris.

Mr. Jaramillo commented that there are no current violations on Mr. Martinez's property.

Councilor Best wanted to know if Mr. Ortega had contacted the neighborhood's Home Owners Association (HOA) about the debris on Mr. Martinez's property. Mr. Ortega responded that there was no HOA. Chair Ezzell stated that since there is no HOA, any complaints regarding the debris would have to be taken to District Court.

Councilor Best made some comments about Mr. Ortega running a business from his property but for the most part, keeps his property clean. She suggested that Mr. Ortega provide his employees' background checks information to Mrs. Martinez's for her peace of mind. She addressed the Martinez's and stated that they should probably clean up their property to match the neighborhood.

Councilor Kennard stated that she had looked at the Martinez's home in 2012 when it was for sale and does remember that the bedroom faces Mr. Ortega's garage, so she understands their concern. Her opinion on this was that it was a quarrel between 2 neighbors over issues and wondered how all of this could be resolved.

Commissioner Bilberry made a comment about Mr. Ortega's property being very clean based on the satellite picture he was looking at.

Gabriel Ortega stated that Cherokee Avenue was a non-county-maintained road and that West 25th Street was a county-maintained road.

Commissioner Taylor asked Mr. Ortega if he had any signs advertising his business on the property or have any customers come by and if the only thing he did was store his equipment on the property and have his employees come to pick up their paycheck. Mr. Ortega responded that no customers come by and there were no business signs. He responded affirmatively to Commissioner Taylor's other two comments.

Chair Ezzell asked if there was anyone wishing to speak in favor of Mr. Ortega.

Charlene Campbell at 310 Old YO Crossing Rd. has been an employee of Mr. Ortega for about 30 years off and on. She commented that Mr. Martinez did ask her to go work for him in the past.

Chair Ezzell commented that although she appreciated Ms. Campbell's comments, they were irrelevant to the issue at hand.

Commissioner Taylor made a motion to deny the appeal of Ronald Martinez at West 25th St. regarding his concern that Mr. Ortega was operating a commercial business. There was no evidence of a business violation of the zoning law. Councilor Best seconded the motion. The motion passed unanimously.

Chair Ezzell informed Mr. and Mrs. Martinez that this issue will continue to be monitored by staff.

2. APPEAL- the decision of the Extraterritorial Zoning Commission (ETZ) to DENY Case No. ETZ 2021-06, a Special Use Permit for a Community Solar Array Facility in the Rural Suburban District; being 25.58 acres located in the NE/4NW/4 Sec.18, T10S, R24E; agent - Chaves Solar 2 LLC; land owners - Jerrod and Melissa Higgins.

Louis Jaramillo stated Pivot Energy has appealed the decision of the ETZ Commission to deny this case. He noted the options and the requirements for overturning the denial and then read the Staff Report summary. He noted Pivot Energy wished to present a slide show that was presented to the ETZ Commission.

For transparency purposes, **Chair Ezzell** informed everyone that he was a lawyer and had represented landowners in their negotiations with solar companies on options and leases. He stated that he had never represented neither the Higgins nor Pivot Energy. If anyone thought this might be a conflict of interest, he would conduct the meeting but would refrain from voting. Nobody spoke in response.

Jon Fitzpatrick, Pivot Energy, at 1750 15th St., Denver, Colorado introduced himself. He clarified that the slide show was updated since the last ETZ Commission meeting in October.

Chair Ezzell asked Mr. Fitzpatrick to explain the difference between Chaves Solar II and Pivot Energy. Mr. Fitzpatrick explained that Chaves Solar II was the project company that Pivot Energy wholly owns and operates.

Mr. Fitzpatrick before presenting the slide show, he stated that at the ETZ Commission meeting in October, Commissioner Doerhoefer exerted significant influence over the proceedings, showing her support to the opposition. Mr. Fitzpatrick commented that they believe that Commissioner Doerhoefer's behavior influenced the outcome of the meeting.

The slide show was twenty-five minutes long and described Pivot Energy, the development plan and community benefits of solar.

Councilor Best asked Mr. Fitzpatrick if he had met with the property owners who had signed the petition against the case. Mr. Fitzpatrick responded that it was his understanding, that most of the people who signed the petition lived in a subdivision that was at least 1/3 mile away from the subject property. He stated Pivot Energy had not made any contact with those property owners since they were not close enough to the proposed solar facility.

After watching the presentation by Mr. Fitzpatrick, **Councilwoman Best** stated that she was ok with the solar project and thought it was the best use of the land.

Chair Ezzell asked Mr. Fitzpatrick if they had an option or a lease on the subject property. He responded that they had executed a full lease and that they must break ground in less than five (5) years.

Chair Ezzell wanted to know if Mr. Fitzpatrick knew how many community solar projects would be in New Mexico under the existing Solar Act. He calculated about 40.

Commissioner Bilberry wanted to know if Pivot Energy had any agreements already in place to transmit the electricity to a substation. Mr. Fitzpatrick responded that they didn't because the program rules for the community solar arrays have not been approved by the Public Regulations Commission (PRC) yet.

Commissioner Taylor asked how many households would be potentially served by the community solar array and if the project would all be privately funded. Mr. Fitzpatrick responded that 1200 households would be served and that it would all be privately funded.

Councilor Best wondered what would happen if Pivot Energy doesn't obtain the RFP at the Higgins' property. Mr. Fitzpatrick responded that they would look at their options at that time and work with the property owners to find other solutions or release them from their contract.

Chair Ezzell asked if anyone wished to speak in favor of the appeal.

Jerrod and Melissa Higgins at 201 La Fonda Dr., Roswell introduced themselves as the property owners. They stated that they had originally planned an RV Park at this location but decided on the community solar array because it was less intrusive. Mr. Higgins commented that the property was bought as an investment property.

Councilor Kennard asked the Higgins how long they have owned the property. They stated approximately 2 ½ years.

Chair Ezzell asked if an RV park was appropriate on that land. Mr. Jaramillo responded it would require a special use permit or a rezone for that use. He also mentioned the difficulty with the subject property because of its extremely limited access.

Bruce Haley at 5034 W. Country Club Rd., Roswell, owner of Haley Farms, spoke in favor of the case. He built and commissioned a solar field next to his pecan orchard in 2010. This project supplies 100% of the electricity for irrigation for 250 acres of pecan trees. Mr. Haley stated that the solar arrays have not increased the temperature in his orchard nor affected the wildlife.

Cathy Crossley at 4700 Zuni Drive, Roswell spoke in favor of the case. She stated that this was a good business idea.

Moises Chavez at 1401 S. Lea Ave., Roswell spoke in favor of the case. Mr. Chavez was the District Manager for NM Solar Group.

Ian Brumana at 2932 N. Brown Rd., Roswell spoke in favor of the case. He works for NM Solar Group. He stated that he has not encountered glare nor traffic problems from the Haley Farms solar array.

Sergio Jimenez at 106 E. Ballard St., Roswell spoke in favor of the case. He works for NM Solar Group as well. Mr. Jimenez indicated that he has solar panels on his property.

Nicholas Kadlik, at 5804 Tierra Viva Place, NW Albuquerque, spoke in favor of the case. He was the CEO of NM Solar Group.

Chair Ezzell asked if anyone wished to speak against the appeal.

Gary Hartwick at 2710 Sydney St., Roswell spoke against the appeal. He would like to protect the aesthetics of the environment.

Peter Ambs at 511 Twin Diamond Rd., Roswell spoke against the appeal. He was concerned with the property values and neighborhood aesthetics.

Shirley McIntosh at 3710 N. Aspen Ave., Roswell spoke against the appeal. She stated that she doesn't want to look at the solar arrays from her backyard.

Francisco and Cinda Olvera at 3801 N. Cedar Ave., Roswell spoke against the appeal. Their property is adjacent to the proposed community solar farm. They stated that they don't want this solar array in the middle of a residential neighborhood.

Stacy Askham of 2002 W. Pine Lodge Rd., Roswell, spoke against the appeal. She stated possible health implications with solar panels, especially for cardiac patients.

Councilor Kennard asked staff if a condition could be added to make sure that the zoning for the property remain as is if the solar project deal fell through. Mr. Jaramillo responded that the Authority can add to the Conditions of Approval. He continued by commenting that the ETZ Commission added a 9th Condition of Approval at their last meeting in October stating that an opaque fence be installed along the southern property line between the community solar farm and all private property residential areas.

Chair Ezzell clarified that this was not a rezone but a special use permit request.

Rita Doerhoefer of 28 Mark Rd, speaking as a resident of Chaves County, spoke against the application. One of her main concerns was the number of neighbors speaking against the proposed solar project.

Ms. Askham approached the podium once more and spoke about the conflicting comments from the solar company regarding whether or not the panels would rotate and how the hydraulics would affect the ground water. Another comment she made was that nobody knows how people will be able to subscribe to the community solar array nor how much it would cost. Chair Ezzell responded that this was because the PRC hasn't promulgated the regulations yet to allow for subscriptions.

Chair Ezzell asked Mr. Fitzpatrick if the contract/option contained surety for cleanup and decommissioning via bonding. Mr. Fitzpatrick responded that they did not have bonding in their lease but do have a requirement for decommissioning and removal of all equipment, above and below ground.

If the county ordinances were amended to require bonding, would Mr. Fitzpatrick's company comply with the requirement? Mr. Fitzpatrick responded that they would.

Commissioner Taylor stated that the solar company did not provide a detailed business plan and if there was an actual study done showing that households would actually subscribe to the solar farm. Mr. Fitzpatrick provided only anecdotal evidence that community solar was the fastest growing segment of solar in the U.S. He continued by stating that they currently have thousands of subscribers across multiple states. Commissioner Taylor commented that he has seen property owners get solar panels and sign long term mortgages that will take 15-20 years for it to pay out. Mr. Fitzpatrick responded that what Commissioner Taylor was bringing up was a different product, which was customer owned that would go on their house. Mr. Fitzpatrick continued by stating that the proposed community solar farm business plan does not require the subscribers to pay to sign up or for an energy usage evaluation. Subscribers never get an invoice until they get a credit on their bill and a fixed guaranteed discount.

Chair Ezzell stated that the Solar Act prohibits entities from owning more than a specific percentage of the subscriptions. It also requires that at least 30% of the power generated go towards low-income housing.

Councilor Best made a motion to reverse the decision of the ETZ Commission to deny and APPROVE Case ETZ 2021-06 with the 8 Conditions of Approval listed in Staff Report, and a #9 Conditions that requires an opaque fence be installed along the southern property line between the community solar farm and all private property residential areas and Finding of Fact #1 listed on the Staff Report and an additional one stating that the decommissioning surety would comply with any future ordinances enacted by the Chaves County Board of Commissioners. Councilor Kennard seconded the motion. After a roll call vote, the motion failed by a 2-3 vote, with Commissioner Taylor, Commissioner Bilberry and Chair Ezzell voting against the motion. Chair Ezzell noted the following Findings of Fact in denying the case: Not in the best interest of the surrounding community; would affect the adjacent properties in an adverse manner; not compatible with the existing neighboring land use.

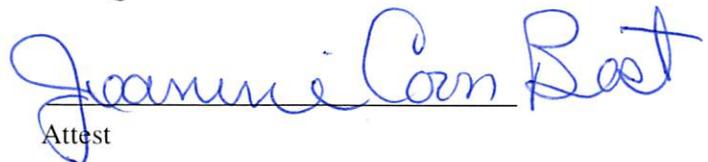
Mr. Higgins expressed his concern with not being able to access the subject property and asked for assistance from the county and the neighbors.

Chair Ezzell advised Mr. and Mrs. Higgins to contact staff and promised that the county would continue to work with them.

There being no other business listed on the agenda or to come before the ETZ Authority, the meeting adjourned at 8:21PM.

Approved this 4th day of August, 2022


Chairman


Attest

Note: The recorded minutes of this meeting are on file in the Chaves County Planning and Zoning office for review.