

RESOLUTION OF THE LAS CRUCES EXTRA-TERRITORIAL ZONING AUTHORITY

ETZS  
RESOLUTION NO. 07-020

RESOLUTION REGARDING PROCEDURES  
FOR QUASI-JUDICIAL HEARINGS BEFORE THE EXTRA-TERRITORIAL ZONING  
AUTHORITY AND EXTRA-TERRITORIAL ZONING COMMISSION

WHEREAS, the New Mexico Court of Appeals decision in State ex rel. Battershell v. City of Albuquerque, 108 N.M. 658, sets forth several rules of procedural due process for quasi-judicial administrative hearings, and the Extra-territorial Zoning Authority (hereinafter "Authority") finds that the precise application of such rules to hearings before the Authority and the Extra-territorial Zoning Commission (hereinafter "Commission") has been the subject of considerable debate among Authority staff and the public; and,

WHEREAS, the Authority deems it necessary to clarify certain other procedures to be followed in quasi-judicial hearings before the Authority and the Commission, in addition to clarifying the application of the Battershell case to such hearings; and,

WHEREAS, the Amended Joint City/County Extra-territorial Zoning and Subdivision Agreement entered into between the City of Las Cruces and Doña Ana County on February 3, 1997, authorizes the Authority to establish rules of procedure by resolution.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Extra-territorial Zoning Authority that the following procedural rules shall apply in all quasi-judicial hearings before the Authority and the Extra-territorial Zoning Commission:

1. BATTERSHELL RULES

A. All persons giving oral testimony before the Authority or the Commission in quasi-judicial hearings, including County and City staff, shall be sworn, and testimony shall be taken on oath or affirmation.

B. Parties appearing before the Authority or the Commission shall be afforded a reasonable opportunity to present documentary and physical evidence, the testimony of witnesses, and argument, to cross-examine all persons testifying before the Authority or Commission, and to rebut evidence presented by opposing parties. In the interest of preserving an orderly and efficient hearing, the Authority or Commission may require that cross-examination of a witness be accomplished by directing questions of the witness through the Chair of the Authority or the Commission.

C. Persons appearing before the Authority and the Commission in quasi-judicial hearings shall not be required to affirmatively “invoke” the Battershell rules stated in this Resolution in order for such rules to apply.

D. Subject to the limitations set forth in section 2 below, persons desiring to present testimony to the Authority in quasi-judicial hearings may do so without having to establish an appearance on the record in the prior related hearing on the matter before the Commission.

E. So-called “statements” contained within documents offered as evidence shall not be excluded solely on grounds that such “statements” are not subject to cross-examination. However, the Authority or Commission may upon other grounds limit the introduction of, or the weight given to, such documents and the “statements” they contain.

## 2. EVIDENCE AND TESTIMONY

A. The formal rules of evidence applicable in civil judicial proceedings shall not apply to quasi-judicial hearings before the Authority or the Commission.

B. All relevant evidence and testimony having probative value, including hearsay, is admissible in quasi-judicial hearings if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs.

C. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

D. All persons desiring to submit documentary evidence to the Authority or Commission are strongly encouraged to present such evidence to the appropriate Planning Staff sufficiently in advance of the hearing for inclusion in the Authority Member or Commissioner Agenda Packets. If, during a hearing on a particular matter, a person offers documentary evidence that was not included in the Authority Member or Commissioner Agenda Packets for that matter, the Authority or Commission may recess, table, or postpone further action on the matter until the Authority or Commission has had sufficient opportunity to review the offered documentary evidence, or may take such other action as the interests of justice and due process may require.

E. All persons intending to submit documentary evidence to the Authority during a hearing shall provide a minimum of ten (10) copies of such documentary evidence at the time it is offered. All persons intending to submit documentary evidence to the Commission during a hearing shall provide a minimum of twelve (12) copies of such documentary evidence at the time it is offered.

F. For purposes of this Resolution, documentary evidence includes, but is not limited to, letters, written statements, spreadsheets, petitions, reports, diagrams, charts, photographs, computer discs, and presentations in printed or electronic form.

G. The Authority or Commission may place reasonable limitations on the number of persons to be heard and the amount of time for their testimony. Normally, more formal presentations by parties, such as those involving slide presentations, charts, handouts, or expert testimony, should be limited to fifteen (15) minutes. Less formal comments from members of the public should normally be limited to three (3) minutes. The Authority and Commission may grant or limit such time for presentations, testimony, and comments as justice and fairness under the circumstances may require.

H. The Authority and the Commission may determine the credibility of witnesses and the weight to be accorded to any testimony or evidence presented.

### **3. REPRESENTATION; LEGAL ARGUMENT; SPOKESPERSON DESIGNATION**

A. Individual parties, groups, and entities appearing at quasi-judicial hearings before the Authority or the Commission, and interested members of the public desiring to present public comment, are not required to be represented by an attorney although they may be represented by an attorney at their own expense and have that attorney speak on their behalf.

B. If any person, or their attorney, intends to present legal argument referencing specific ordinance sections, statutes, judicial decisions, or other legal authority at the hearing, a written memorandum containing such legal argument, along with citations to the specific legal authorities relied upon, shall be submitted to the appropriate Planning Staff sufficiently in advance of the hearing for inclusion in the Authority Member or Commissioner Agenda Packets. If at a hearing any person, or their attorney, presents legal argument referencing specific ordinance sections, statutes or judicial decisions without having submitted a memorandum in advance of the hearing, the Authority or Commission may recess, table, or postpone further action on the matter until the appropriate Planning and Legal Staff have had sufficient opportunity to analyze the citations to authority, and may take such other action as the interests of justice and due process may require.

C. Entities such as neighborhood associations and other groups of individuals with members sharing common positions or comments may designate a single non-attorney spokesperson to present the common positions or comments of the entity or group of individuals to the Authority or Commission in lieu of individual testimony or comment. Nothing in this section, however, shall authorize the unauthorized practice of law by a non-attorney.

### **4. EX-PARTE COMMUNICATION**

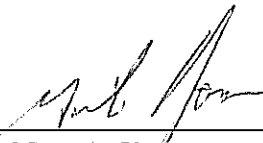
A. All communication with members of the Authority or Commission, outside of a public hearing, concerning the substance of a specific matter that is pending, or that reasonably may be brought before the Authority or Commission for quasi-judicial action, constitutes ex-parte communication and is prohibited. Ex-parte communication includes, but is not limited to, communication by telephone, voicemail message, note, letter, document, text message, email, photograph, or facsimile transmission, and includes communication from an applicant, proponent, opponent, adjacent property owner, or any member of the public with an interest in the particular matter.

B. Ex-parte communication does not include Authority or Commission communication with Planning or Legal Staff.

C. Outside of a public hearing, an applicant, a proponent, an opponent, an adjacent property owner, and a member of the public with an interest in a particular matter that is pending or that reasonably may be brought, before the Authority or Commission for quasi-judicial action should communicate only through the appropriate Planning Staff.

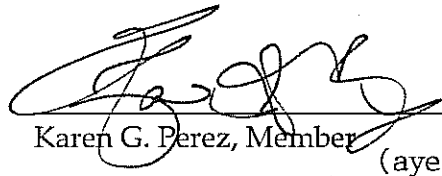
RESOLVED this 31 day of Aug., 2007.

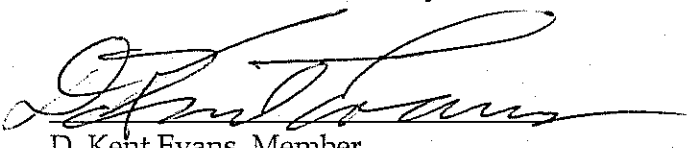
**THE EXTRA-TERRITORIAL ZONING AUTHORITY**

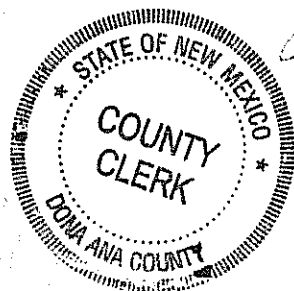
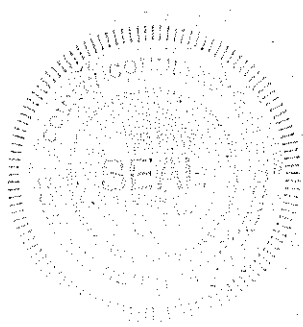
  
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Gil Jones, Chairperson (aye)

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William J. McCamley, Vice Chairperson (aye)

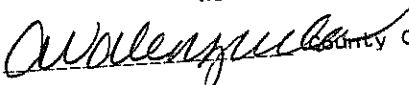
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José V. Frieze, Member (absent)

  
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Karen G. Perez, Member (aye)

  
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D. Kent Evans, Member (aye)



COUNTY OF DONA ANA )  
STATE OF NEW MEXICO ) ss  
RESOLUTION  
PAGES: 4  
I Hereby Certify That This Instrument Was Filed for  
Record On The 29TH Day Of January, 2008 at 11:51:36 AM  
And Was Duly Recorded as Instrument # 0802772  
Of The Records Of Dona Ana County

Witness My Hand And Seal Of Office  
Rita Torres  
Deputy  County Clerk, Dona Ana, NM