

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

**TOWN OF MESILLA
BOARD OF TRUSTEES
WORKSESSION
MONDAY, JANUARY 24, 2011
5:30 P.M.**

TRUSTEES:

Nora L. Barraza, Mayor
Carlos Arzabal, Mayor Pro Tem
Sam Bernal, Trustee
Jesus Caro, Trustee
Linda L. Flores, Trustee

STAFF:

Nick Eckert, Town Clerk/Treasurer
Jeff Gray, Marshal
Kevin Hoban, Fire Chief
Debbie Lujan, Public Works Director
Gloria Maya, Recorder

PUBLIC:

Salomon Perez Susan Emery
Derrick Wooton Rudolph Fresquez
Richard Fresquez

1. Discussion of community irrigation ditches and EBID/Town of Mesilla involvement.

Mayor Barraza thanked Mr. Gary Esslinger, EBID, for attending and addressing the public's concerns. Some of the concerns are who is responsible for the maintenance of the small ditches and does a property owner have the authority to lock a gate to prevent other property owners from irrigating.

Mr. Esslinger spoke about one component being the maintenance and gates and the locking of the gates as the second component. He indicated that the maintenance of the ditch belongs to the landowner once it leaves the EBID canal even if they do not have EBID water rights. The ditches are easements on a property that are regulated by State Statute. The ditch must be kept open for the downstream user. EBID has the right to lock the gates if the landowner has not properly cleaned the ditch and/or there is danger of flooding.

Mayor Barraza stated it is the property owner's responsibility to keep the ditch clean the downstream user.

Trustee Caro asked if any of the property owners have the right to lock the gate to prevent water to the property owner at the end.

Mr. Esslinger responded Mesilla has 2 different scenarios in ditch obligations. One scenario is there are Community Ditch Associations, an agreement between a number of ditch users. The association has its own by-laws, a mayordomo, and has dues. Under the by-laws they almost have the same power as an irrigation district. Anyone willing to pay the dues or petition, if needed, may join the association. The associations make improvements to the ditch.

Trustee Caro stated many cement the ditches.

1 Mr. Esslinger stated State Statute and the Interstate Streams Commission regulate the community
2 ditch application process. Anybody that belongs to the association must pay EBID water fees.
3 The association dictates who pays, who can get water and who cannot get water. If someone is
4 illegally getting water, the association can cut them off. If an issue arises it becomes a civil
5 matter and must go to civil court.

6
7 Mayor Barraza asked what is needed to be done to start an association.

8
9 Mr. Esslinger responded an application must be filed with the New Mexico Stream Association.
10 EBID promotes Community Ditch Associations which makes it easier.

11
12 Trustee Caro asked if a property owner who did not join the association, and has been paying
13 EBID water rights have any rights.

14
15 Mr. Esslinger responded no because the association has authority over the ditch. Stated that
16 property owner who is not a part of the association may petition to join at any time. The
17 association has control to stop a non-paying user water access. They can intervene and take the
18 association to court. It is not between EBID and the locals - it is between the neighbors making it
19 a civil matter.

20
21 Mayor Pro Tem Arzabal asked what if there is not an association and a landowner has placed a
22 gate blocking water to downstream users who do pay EBID water rights.

23
24 Mr. Esslinger responded the property owners may take that person to court. The second scenario
25 is the private ditch where the owner is responsible for the maintenance of the ditch and if there is
26 an issue with a neighbor blocking the water; it must be resolved in civil court. EBID can inspect
27 that ditch and if the ditch is dirty we can lock the canal. Under ordinance you are breaking the
28 law. This is a problem for EBID because along the ditch there are people that do not have water
29 rights. EBID can lock the gate if no one is watching the water during irrigation. EBID can
30 advise property owners to clean their ditch since it can lock the gate if the ditches are dirty. EBID
31 can also prohibit the flow of water for not using the proper pipe size.

32
33 Mayor Barraza asked if it would be advisable for the town to put together a resolution to address
34 this and would we be able to enforce it.

35
36 Mr. Esslinger responded EBID can intervene by locking the gate. Somebody has to convene a
37 meeting – it would go to civil court.

38
39 Mayor Barraza responded then our judge would not have to deal with this.

40
41 Mr. Esslinger responded it may go to your judge. These are misdemeanors but at the same time
42 are serious violations.

43
44 Mayor Barraza asked if an association can be made up of one person.

45
46 Mr. Esslinger responded there needs to be 2 or more property owners to become an association.
47 The benefits of becoming an association is you are allowed to seek funding.

48
49 Mayor Barraza asked how effective is an association not all the property owners belong to belong
50 to an association and can they lock the gate to prevent the downstream property owners from
51 receiving water.

1 Mr. Esslinger responded to be effective all of the property owners need to be a member. EBID is
2 trying to conserve water and a concrete ditch helps with that.
3
4 Mayor Barraza asked if ditches can be covered.
5
6 Mr. Esslinger responded that is allowed as long as it is done correctly as to not prevent the flow
7 of water.
8
9 Mayor Barraza reiterate so they cannot prevent the flow.
10
11 Mr. Esslinger responded they cannot prevent the flow of water. It is in the best interest to follow
12 the rules to prevent going to civil court.
13
14 Trustee Caro asked if they can be denied joining the association.
15
16 Mr. Esslinger responded he believes majority rules. He recommends looking at the State Statute.
17
18 Trustee Caro asked if they would need to continue paying EBID water rights if they are denied.
19
20 Mr. Esslinger responded you are paying for the right of the water you are not paying for the
21 water. Stated water rights add value to your property. Promoting Community Ditches
22 Associations benefits everyone. State Statute protects the surface water uses in many ways.
23 EBID will step in to help work through issues.
24
25 Mayor Barraza asked if it is useless for the town to get involved.
26
27 Mr. Esslinger responded this usually turns into neighbor against neighbor. EBID will help by
28 mediating but they have the right to call law enforcement and they know who has water rights.
29 The paying property owners have the right in situations like this. The ditch riders are familiar
30 where the small tracks, etc. are.
31
32 Mayor Barraza responded EBID is familiar with all the ditches.
33
34 Mr. Esslinger responded that is correct – staff is already checking on the ditches.
35
36 Ms. Debbie Lujan asked about the town’s right of ways and if it is the town’s responsibility to
37 clean the ditch.
38
39 Mr. Esslinger responded the easements dictate where the responsibility falls. Inaudible -
40 The town would have the say so as well as what they want in the ditch.
41
42 Mr. Salomon Perez asked if a ditch has been in existence for 100 years or more can as association
43 common gear portions of the whole ditch after your gate and where do they get that authority.
44
45 Mr. Esslinger reiterated the Community Ditch Association has a considerable amount of power.
46
47 Mr. Perez stated so now after having water for 100 years this would supersede that and allow for
48 culverts, etc.
49
50 Mr. Gary responded yes but the resident’s recourse is to take them to civil court. He does not
51 believe that the Town of Mesilla or EBID to make that decision.

1
2 Mayor Barraza asked what if there is not an association but a private resident.

3
4 Mr. Esslinger responded they need to take the property owner to court, it is neighbor against
5 neighbor.

6
7 Mr. Perez asked if a town ordinance would help these situations.

8
9 Mr. Esslinger responded he does not believe an ordinance would help. The association can stop
10 the water once it is in the community ditch.

11
12 Mr. Perez stated if the town adopts an ordinance then the Mesilla Marshal can be sent to
13 investigate.

14
15 Mr. Esslinger stated he believes what would happen is the down stream user would file a
16 complaint. The Marshal would then ask EBID who has the right to the ditch and he will respond
17 the Association has the right.

18
19 Mr. Perez asked why our municipal court cannot resolve it.

20
21 Mayor Barraza stated we don't have to have an ordinance, State Statute would be applicable.

22
23 Mr. Esslinger stated EBID would ask the local law enforcement to investigate and if the law has
24 been broken a citation may be issued.

25
26 Mayor Barraza stated if it is applicable to Mesilla the residents would call EBID; EBID would
27 contact the local law enforcement, who would investigate and issue a citation if needed.

28
29 Mr. Perez asked if Mesilla would have any authority without an ordinance other than calling the
30 outside law enforcement agencies.

31
32 Mayor Barraza responded the town would not have any jurisdiction; it would be between EBID
33 and the property owner.

34
35 Mr. Perez responded Mesilla would have jurisdiction if an ordinance was in place referencing the
36 state and EBID law.

37
38 Mayor Barraza asked Marshal Gray what court would handle a neighbor against neighbor dispute.

39
40 Marshal Gray responded a civil matter would need to go to Magistrate Court.

41
42 Mayor Barraza asked if this would be considered a civil matter.

43
44 Marshal Gray responded anything involving water rights would go through Magistrate Court.

45
46 Mr. Perez asked if we had an ordinance would it still need to go to Magistrate Court.

47
48 Marshal Gray responded we would be adding a step by going to Municipal Court.

49
50 Mr. Perez responded it might not be adding another step.

51

1 Marshal Gray stated by going to Municipal Court there would now be a judge who may need to
2 recluse himself since he may be part of the parties involved.

3
4 Mr. Esslinger indicated the strong arm of the law is on the water rights owner. If they feel
5 violated they should go to civil court and solve it there. EBID would provide documentation to
6 the court.

7
8 Mr. Perez asked if EBID has the documentation for the associations to see if they are in
9 compliance with state law.

10
11 Mr. Esslinger responded EBID may have copies; the state of New Mexico would have the
12 originals and be able to provide the information. Mr. Esslinger reviewed the statutes and
13 guidelines. He stated that EBID is willing to intervene and will help the Town of Mesilla with
14 any issues.

15
16 Mayor Barraza stated Mesilla does not have staff to deal with these types of issues. Thanked Mr.
17 Esslinger for his time and information.

18
19 Mr. Esslinger stated EBID also tries to educate the public regarding water rights.

20
21 **MEETING ADJOURNED 6:24 P.M.**

22
23 **APPROVED THIS 14TH OF FEBRUARY, 2011.**

24
25
26
27 _____
28 Nora L. Barraza
29 Mayor

30
31 **ATTEST:**

32
33
34 _____
35 Nicholas Eckert
36 Town Clerk/Treasurer

37
38
39
40
41
42
43
44
45
46
47
48
49
50 **TOWN OF MESILLA**
51 **BOARD OF TRUSTEES**

1 **MEETING**
2 **MONDAY, JANUARY 24, 2011**
3 **6:00 P.M.**

4
5 **TRUSTEES:** Nora L. Barraza, Mayor
6 Carlos Arzabal, Mayor Pro Tem
7 Sam Bernal, Trustee
8 Jesus Caro, Trustee
9 Linda L. Flores, Trustee

10
11 **STAFF:** Nick Eckert, Town Clerk/Treasurer
12 Jeff Gray, Marshal
13 Kevin Hoban, Fire Chief
14 Debbie Lujan, Public Works Director
15 Gloria Maya, Recorder

16
17 **PUBLIC:** Billy Garrett Cynthia Garrett
18 J.P. Smith Janet Hampton
19 Alexandra Hall
20

21
22 **OPENING CEREMONIES**

23
24 A. Pledge of Allegiance

25
26 Mayor Barraza led the Pledge of Allegiance.
27

28 **ROLL CALL AND DETERMINATION OF A QUORUM**

29
30 **Roll Call.**

31 **Present:** Mayor Barraza, Mayor Pro Tem Arzabal, Trustee Bernal, Trustee Caro, Trustee Flores.
32

33 **CHANGES TO THE AGENDA**

34
35 **Motion:** To approve the agenda, **Moved by** Trustee Bernal, **Seconded by** Mayor Pro Tem
36 Arzabal.
37

38 **Vote:** Motion passed (**summary:** Yes = 4).

39 **Yes:** Mayor Pro Tem Arzabal, Trustee Bernal, Trustee Caro, Trustee Flores.
40
41

42 **ACCEPTANCE OF THE CONSENT AGENDA**

43
44 **Motion:** To approve the consent agenda, **Moved by** Mayor Pro Tem Arzabal, **Seconded by**
45 Trustee Caro.
46

47 **Vote:** Motion passed (**summary:** Yes = 4).

48 **Yes:** Mayor Pro Tem Arzabal, Trustee Bernal, Trustee Caro, Trustee Flores.
49

50 **BOT MINUTES:**

51 2. Regular Meeting 1-10-11 *Approved by consent agenda.*

1
2 **PZHAC BUSINESS:**

- 3 1. Case 011001; 1803 Avenida de Mesilla, Cali Szczawinski, Sign Permit for Modifications to an existing
4 free-standing sign for Meson de Mesilla. Zone: HC. *Approved by consent agenda.*
5 2. Case 011002; 1937 Calle de Parian, Diane Fryer, Sign Permit for a free-standing sign for The Rustic
6 Olive. Zone: HC. *Approved by consent agenda.*

7
8 **NEW BUSINESS:**

- 9 3. For adoption: An ordinance regarding Alternative Energy Systems (AES's). *Gina*
10 *Gentile, Community Development Coordinator.*

11
12 Ms. Gentile reviewed the changes made to the ordinance based on comments made at the last
13 meeting. Thank Mrs. La Rue Pollard for proofing reading the draft.

14
15 Mayor Barraza stated this ordinance has been in the works for over a year and the West Mesa
16 residents have participated in providing recommendations. Ms. Gentile also researched
17 ordinances from other entities.

18
19 Trustee Flores stated she feels the definitions should be broader as there may be some residents
20 who may try to override the ordinance.

21
22 Ms. Gentile responded Section B – Standards; gives all the required parameters for a wind energy
23 system.

24
25 Trustee Flores stated Section A-C should read “that”.

26
27 Ms. Gentile recommended changing just that section since Section B-10 makes it mandatory.

28
29 Trustee Flores responded she does not have a problem with it being in the standards but is
30 concerned with the definitions which may not hold up in court.

31
32 Ms. Gentile asked if removing letter C addresses her concern.

33
34 Trustee Flores responded that would work.

35
36 Ms. Gentile stated for the record she would remove letter C under definitions.

37
38 Mayor Barraza agreed with the change. We do address that item when an application is
39 submitted through Special Use Permits which works very well and will work with the Alternative
40 Wind Energy ordinance.

41
42 Mayor Pro Tem Arzabal feels the ordinance is well written and not every ordinance is perfect.
43 He recommends approving the ordinance as it is and we can work with it as we go.

44
45 Trustee Caro agreed we are ready to go forward.

46 Trustee Bernal agreed we are ready to go forward. Thanked everyone for all their hard work.

47
48 Mayor Barraza stated this will affect everyone in the R-1, R-A, and R-F zone. This is prohibited
49 in the Historical Residential and Commercial Zone.

50 **Motion:** To approve the adoption of an ordinance regarding Alternative Energy Systems, **Action:**
51 **Adjourn, Moved by** Mayor Pro Tem Arzabal, **Seconded by** Trustee Bernal.

1
2 Trustee Flores stated she is concerned with the 1 per acre; feels it may be crowded. People have
3 paid a lot of money for the view in the West Mesa area.
4

5 Mayor Barraza stated for example if a property owner has 7 acres they would be allowed to have
6 7 Alternative Energy Systems.
7

8 Ms. Gentile responded they would be allowed 7 if they can justify it by their energy consumption.
9

10 Trustee Flores stated people would need to have 2 or 3 systems to get to the 1.5.
11

12 Ms. Gentile responded she is not sure if there is a system efficient enough that would produce
13 enough energy for a home with only 1 tower.
14

15 Ms. La Rue Pollard stated there is confusion between the wind energy conversion system and the
16 towers that makes up the system; 1 tower per acre is not out of line. There is a wind energy
17 conversion tower on Las Vistas that sits on the street; the other system on the West Mesa is a 5
18 tower system. The clarification will come with the difference between a full system for home use
19 and towers that make-up that system.
20

21 Ms. Gentile indicated the 1 tower per acre with no more that 3 per parcel were put in place by the
22 taskforce. She has proposed to remove that.
23

24 Ms. Linda Vaskov stated she is very pleased with the ordinance but indicated there were some
25 errors that needed to be corrected which she reviewed.
26

27 Ms. Gentile responded Ms. Pollard reviewed it from a technical writing standpoint not from a
28 content standpoint; she left her personal feeling out of it. The historic type windmills were
29 clarified in #3.
30

31 Ms. Vaskov stated she feels the 150 feet outside of the property line would be too restricted.
32 Asked if Onsite Consumption #11 will that be a requirement on the solar ordinance. Their system
33 generates 40% of their usage when working at full power. The view preservation is difficult
34 since it may always be in someone's view. She does not feel it is practical.
35

36 Ms. Anne Salami stated the old Rasaaf Hills subdivision were not even one acre in size so they
37 would not qualify; so it may not be huge density.
38

39 Mr. Billy Garrett stated he was part of the taskforce and thanked the board for taking their
40 recommendations and concerns and for their support of community involvement in the process.
41 Most of their concerns have been addressed and his concerns come down to technical issues
42 which need to be clarified. He agreed with Mayor Pro Tem Arzabal there are parts that need to
43 be played out in practice. He reviewed his concerns and issues.
44

45 Ms. Dianne Lilley agrees the view issue is difficult and would like to see specific steps by which
46 the application board would look at it. She feels having specific steps would help the process for
47 everyone involved.
48

49 Mr. Derek Wooten stated he was part of the taskforce whose main concern was having it done as
50 correctly as possible and that is what the scope was based on. He teaches Renewable Energy

1 Technology and site evaluation is very important from both aspects; what you want on your
2 property and what affect it will have on your neighbor.

3
4 Ms. Gentile stated most of the ordinances across the nation that she looked at did not address
5 abandonment of towers. The ones that did had a shorter time period to remove towers, which we
6 may consider. We could consider giving 10 days to object and 45 days to take the tower town.

7
8 Mayor Barraza responded there is a motion and a second on the floor to approve as presented
9 with the exception of the deletion asked by Trustee Flores. She thanked everyone for their
10 efforts. As issues arise they will be addressed but for now we have a working document in place.

11
12 **Roll Call Vote:** Motion passed (summary: Yes = 3; No=1).

13 Mayor Pro Tem Arzabal Yes

14 Trustee Bernal Yes

15 Trustee Caro Yes

16 Trustee Flores No

17
18
19 **PUBLIC COMMENTS:**

20
21 No public comments

22
23 **BOARD OF TRUSTEES COMMENTS:**

24
25 Trustee Flores (inaudible)

26
27 Mayor Barraza stated staff attended a staff team building training which was very successful. Mr.
28 Eckert, Fire Chief Hoban, Marshal Gray, Ms. Lujan and herself will be traveling to Santa Fe for
29 Las Cruces Day and a meeting with Governor Martinez and/or Chief of Staff to talk about
30 Mesilla's issues.

31
32 **ADJOURNMENT**

33
34 **Motion:** To adjourn, **Moved by** Trustee Caro, **Seconded by** Mayor Pro Tem Arzabal.

35
36 **Vote:** Motion passed (summary: Yes = 4).

37 **Yes:** Mayor Pro Tem Arzabal, Trustee Bernal, Trustee Caro, Trustee Flores.

38
39 **MEETING ADJOURNED AT 7:06 P.M.**

40
41 **APPROVED THIS 14TH DAY OF FEBRUARY, 2011.**

42
43
44 _____
45 Nora L. Barraza
46 Mayor

47 **ATTEST:**

48
49 _____
50 Nicholas Eckert
51 Town Clerk/Treasurer