

# VALENCIA COUNTY BOARD OF COMMISSIONERS

## REGULAR MEETING

**MAY 3, 1999**

### **M I N U T E S**

The Regular Meeting of May 3, 1999 was called to order by Chairperson Alicia Aguilar at 9:18 AM.

#### **PRESENT**

Alicia Aguilar, Chairperson  
Aurelio H. Padilla, Vice-Chairman  
Helen Baca, Commissioner  
Eloy G. Giron, Commissioner  
S. T. Frank Pando, Commissioner  
James Fernandez, County Manager  
Thomas Garde, County Attorney  
Kandy Cordova, County Clerk  
Press and Public

#### **ABSENT**

#### **EXECUTIVE SESSION**

County Clerk Kandy Cordova read the agenda of the Executive Session. County Manager James Fernandez asked to add the GIS Contract to the agenda as Item D. Chairman Alicia Aguilar asked to add an item of potential litigation as Item E.

Commissioner Frank Pando made a motion to approve the agenda with the two additions. Commissioner Eloy Giron seconded the motion. Motion carried.

Commissioner Helen Baca made a motion to go into Executive Session. Commissioner Al Padilla seconded the motion. Motion carried.

Commissioner Frank Pando made a motion to return to the Regular Meeting. Commissioner Al Padilla seconded the motion. Motion carried.

Personnel Director Carol Anaya stated discussion was held on the following:

#### **NEW HIRES:**

Rose Molina  
Paul Sanchez (pending pre-  
employment physical and drug test)

#### **RESIGNATION:**

Elva Gomez

Commissioner Eloy Giron made a motion to ratify action taken during the Executive Session. Commissioner Frank Pando seconded the motion. Motion carried.

County Attorney Tom Garde stated, "During the Executive Session we discussed current litigation with regards to the Bonito Land & Cattle Company. We discussed the Subdivision Act of New Mexico and no action was taken on either item. We also discussed a current situation with regards to a prisoner and Presbyterian Hospital and lastly we discussed the purchase of property adjacent to the Courthouse."

Chairman Alicia Aguilar said, "The County is directing administration and our attorney to proceed with the purchase of the two buildings East of the Courthouse and obtaining proper approval and satisfying all of the conditions. That was discussed in Executive Session and direction is hereby given to administration to proceed."

The County Manager said, "In Executive Session discussion took place on the GIS Contract. The project has been awarded and the County Attorney has looked at the legality and reviewed this contract."

Chairman Aguilar asked if the Sheriff was in the audience. He wasn't. She reserved the right to ask him a question if he came in at a later time.

Commissioner Al Padilla made a motion that all that was disclosed was all that was discussed in Executive Session. Commissioner Helen Baca seconded the motion. Motion carried.

#### **INTRODUCTION OF COUNTY ELECTED OFFICIALS & STAFF**

Chairman Alicia Aguilar introduced County Manager James Fernandez, Monica Mireles, Personnel Director Carol Anaya, Commissioner Helen Baca, Commissioner Al Padilla, Commissioner Eloy Giron, Commissioner Frank Pando and herself, County Attorney Tom Garde, County Clerk Kandy Cordova, Paula Weathersby, Zoning Administrator Mike McCartney, County Planner Steven Chavez, a Representative from the State Land Office, Brian Buddenhagen from the News-Bulletin and Arley Sanchez from Journal South.

#### **PLEDGE OF ALLEGIANCE**

Monica Mireles led the Pledge of Allegiance.

### **APPROVAL OF AGENDA**

County Clerk Kandy Cordova read the agenda as presented. County Manager James Fernandez asked to delete Item G (Approval of Medicaid Non-Emergency Transportation) and add Item I (Manager's Report). Commissioner Eloy Giron said Officer Jose Torres wants to address the Commission under Public Requests. Chairman Alicia Aguilar stated Lisa Miller wants to address the Commission under Public Requests. County Manager James Fernandez said Dale Sonnenberg wants to also address the Commission under Public Requests.

Commissioner Frank Pando made a motion to approve the agenda with the changes. Commissioner Eloy Giron seconded the motion. Motion carried.

### **APPROVAL OF MINUTES**

The Minutes of the April 19, 1990 Regular Meeting were submitted for Commission approval. Commissioner Eloy Giron made a motion to approve the Minutes. Commissioner Al Padilla seconded the motion. Motion carried.

### **PUBLIC REQUESTS: At the Discretion of the Chairman, For Information Only.**

Jose Torres expressed his concern regarding fire protection. He is a volunteer fire fighter with the Los Lunas Fire Dept. He came across a letter of minutes that was obtained from a Valencia County Fire Chief's Counsel Meeting. He lives in the Valencia - El Cerro Fire District and the way he interprets the information that he has is that if there is a fire in Blythe Mobile Home Park, which is in the Valencia - El Cerro Fire District, they would call MeadowLake Fire Dept. instead of the Los Lunas Fire Department which is closer. MeadowLake is 11 miles away, while Los Lunas is three miles away. He said this does not make sense to him. He requested that the Commission look into this.

Commissioner Eloy Giron asked if there was a Joint Powers Agreement with the Village of Los Lunas. Lito Chavez said there is a Mutual Aid Agreement that was signed in 1994 and they are abiding by that agreement.

Chairman Alicia Aguilar stated that the Valencia/El Cerro District is her district. She said she would speak with Fire Chief Frank Barka and bring this up and then to the Fire Chief's Counsel Meeting and in all fairness, she said John Cherry the Valencia County Fire Marshal will be at that meeting and they can discuss this issue. There is a shortage of volunteers and since volunteers man the fire districts, there is a concern as to whether they will be able to respond to an emergency situation.

Lisa Miller from the Soil & Water Conservation District presented the Commission with packets explaining what the Soil and Water Conservation stands for. The objective of the District is to encourage and promote soil and water conservation as well as the wise use and care of all natural resources. The Valencia Soil and Water Conservation District Supervisors have established a program as the means for guiding the planning and development of all of our resources (soil, water, animal, plant, air, etc.) and human issues, managed together in a harmonious conservation effort.

Dale Sonnenberg said he is a filmmaker and is working on water issues for the State and is in the audience making pictures during the meeting.

### **ACTION ITEMS**

#### **(A) PROCLAMATION/Respect for Law Week**

Sally Rizzo was not in the audience to make the presentation. County Clerk Kandy Cordova read the Proclamation.

Commissioner Frank Pando made a motion to approve the Proclamation. Commissioner Eloy Giron seconded the motion. Motion carried. **(See Exhibit A)**

Chairman Alicia Aguilar thanked the Valencia County Sheriff's Dept., the Sheriff and the UnderSheriff for all of their efforts and for the excellent job they are doing.

Commissioner Frank Pando thanked all officers from the State Police to the Municipalities.

#### **(B) COLLABORATIVE ACTION TEAM SLIDE PRESENTATION**

Yolanda Denny did not show up for tonight's meeting.

#### **(C) REQUEST TO AMEND ZONE MAPS/Continuation of Hearing**

**Unzoned to SP, Gravel & Mining Operation, Max Kiehne**

**Unzoned to OD**

County Clerk Kandy Cordova swore in all speakers regarding this issue.

Chairman Alicia Aguilar stated the public hearings have been held on this issue and today they will be looking at the fact-findings. This is a continuation of a public hearing.

Mike McCartney said this is a continuation of the public hearing of April 19, 1999. Valencia County is the applicant. The request is to amend zone maps from unzoned to SP for the purpose of a gravel and mining operation and unzoned to OD for Valencia County. Mr. McCartney referred to a letter written by himself to all of the Commissioners giving a little background on this issue. The reason for this request is to zone the Lands of Bonito Land & Livestock so that Valencia County can have a say on what transpires on the land. The request is to amend zone maps from Unzoned to Out Land District. The situation with the lands of Bonito Land & Livestock has gone on for over 3 years. The case has been to District Court 4 times and 2 times it has been remanded back to the Valencia County Board of Commissioners. The case has been appealed to the New Mexico Court of Appeals, which overturned the District Court's decision, bringing us back to where we are today.

There have been numerous letters and telephone calls from residents who oppose the operation of the Lands of Bonito Land & Livestock. If the property is not zoned, anything can be done on the land. It is for 864 acres for the use of a gravel operation. The remaining 5800 acres to remain OD, which is Outland District.

Steven Chavez stated, "This is a continuation over the course of several months of the mining operation that is occurring in the area. The findings of fact with the caveat that there are still some engineering findings which have not been produced yet. We are working on that still. These findings have to be done in the next couple of weeks. With these findings come conditions that the Planning Dept. would like you to place upon the operation. We think they are reasonable conditions.

Mr. Chavez then read the proposed conditions and findings. **(See Exhibit B)**

Discussion was held on the proposed conditions.

Chairman Alicia Aguilar said, "Those who are testifying, we are in the fact finding so if you have facts or findings, that is what will be presented today. We've had the public hearings and heard the comments of whether you are against it or you are for it. The purpose of this meeting and the continuation is for us to actually get the facts."

The people speaking regarding this issue were:

Max Kiehne	Hess Yntema
Steven Hooper, Hooper & Assoc. Inc.	Elliott L. Mabe
David Bergsland	Pat Owens
Bruce Watson	Jerry Debevic
Chris Bartaglia	Geri Rhodes
Clyde Worthen	Drew Markel
Leonard Garcia	Bob Davey

Hess Yntema presented and read a letter from Steven Hooper to Commissioner Alicia Aguilar. The letter is dated April 16, 1999. **(See Exhibit C)**

Chairman Alicia Aguilar stated, "Let the record show that I never received the letter. It is addressed to me and dated April 16, 1999."

Commissioner Eloy Giron stated, "This issue has been before this Commission as long as we've been on the Commission as well as the one before us. It's been very controversial and like Mr. Kiehne responded earlier that he has to respond to the people he had commitments with, we also have to come back and respond to people we have commitments with, that's our constituents. Mr. Debevic just left, but he had stuff to say that impacts all of us. None of us are attorneys and this is nothing against Mr. Garde or Mr. Yntema, but we're here as a body that is going to make a decision. We have our staff as the applicant and we are going to be making a decision. We have before us the proposed conditions and findings and at this time I move that we take the recommendations from Steven Chavez with some amendments to this. The amendments that I would like are, instead of having 864 acres; I would like to change that to 40 acres. We've made a decision on the West Side and we allowed him 40 acres. That's 40 acres, but we would allow 3 acres for a mining operation and at this time that is all we would allow is 3 to 5 acres to be allowed to be mined at this time pending a survey from the County and pending survey that both parties could agree to. That Bonito Land & Livestock shall provide 50 cents a ton as materials to be removed and also after 17 we go to 18, that the commercial vehicles operate between the hours of 7:00 AM and 5:00 PM and eliminate weekends. Before I get a second, if I do get a second on this, if any Commissioner has any more additional amendments to this, I respect it."

Chairman Alicia Aguilar said, "Commissioner Giron if you could withhold on your motion until we hear from the attorney and we have some additional findings. I would appreciate it."

Commissioner Eloy Giron said, "I would withdraw my motion until we hear from our attorney." County Attorney Tom Garde said, "Before we get to that, I think the question was raised by Mr. Yntema as far as a study from the State Highway and I think Mr. Chavez can address that."

Steven Chavez said, "I met with a Planner from the State Highway Dept. who is also kind of an armchair engineer. He has been a Planner for over twenty years. He has also had quite a lot of engineering experience and he was one of the original planners with Highway 263 and the MeadowLake intersection. He did an analysis based on the original forecast from the late 80's. He included the number of trucks that were being used on those roads hypothetically. He explained his finding to Steven and Max Kiehne and those findings were detrimental to the road in MeadowLake. The worst case scenario at 200 trucks per day, eighteen wheelers at full capacity, the life of the road would be until the end of 1999. He based that on a ten-year life expectancy of the road. Without further explanation from an expert from the Transportation Dept., I hesitate to try and interpret his findings because I am not qualified, as an expert and that are why we need the numbers crunched by experts. The State Highway and Transportation Dept., we basically relied on their analysis two weeks ago and Friday they called and said they will not help us any further. They will not get involved. They believe this is a local issue and it is their policy to stay out of local issues."

"We are asking Max Kiehne to have that done on his own and submit it to us. What we do with large subdivisions is very similar. We require an independent traffic analysis by an engineering firm. With this we are asking not only for a traffic analysis impact study, but for an engineering analysis for the road, for the condition of the road and the life of the road, factoring in hopefully some of the numbers that were given to us from the State Office."

More discussion was held on the findings.

Chairman Alicia Aguilar asked Counsel, "The request is for 864 acres, based on the information that has been presented to us, can we look at this in two phases and look at the existing, and then setting some conditions and then setting some further conditions before we would even consider an expansion of this?"

County Attorney Tom Garde said, "Yes you can, but my concern is that you really don't have any data with the regards to the affect it is having on the road. As Mr. Chavez indicated, he received information from the State Highway Dept. but they basically said, we don't want to get involved. The Commission is in a situation where if you set an actual limit today, it could be challenged in Court. There is really no data to back it up. We are kind of making a decision without an engineering study that has been requested by administration."

Chairman Alicia Aguilar said, "Your recommendation is to ask for a continuation, but within two weeks have an engineering analysis study done that would address the traffic, the weight limits, the potential of traffic on this road?" The County Attorney said, "Regardless, we're going to be in litigation on this matter, but I think to basically to provide this Commission with a legal basis to insure that we are in our best footing, that would be the appropriate action to take. Max Kiehne has offered to pay for the study and if it can be completed within the next two weeks, the Commission will be in a much better position to make a decision on this matter."

Max Kiehne said he believes the engineering study can be done within the next two weeks, but most of the companies are quoting more than two weeks for a traffic impact study. There are several firms that can do the study on the road. Mr. Kiehne suggested that the County gets proposals from three companies, they can order it, select the company and tell them where to do the study and he is committed to pay for it.

There is a transcript of this hearing compiled by a Court Reporter attached as an exhibit. **(See Exhibit D)**

Commissioner Eloy Giron stated, "I'm ready to move on this and get it completed. We have a recommendation from our attorney. I was ready to move about two months ago. I'm going to respect that wish from the attorney. We will wait for an engineering study, but I would like to have a commitment within the next two weeks from a engineering firm to have one completed in a timely fashion. We do need to move on this, it has been before us numerous times and there is no hidden fact on how I feel on this issue, but we do need to move on this issue with the engineering firm. I will respect the recommendation from our Counsel."

Chairman Aguilar asked, "Can we have that in the form of a motion, that we have a continuation of this hearing and we request Mr. Kiehne to pay for a Traffic Analysis Engineering Study?"

Commissioner Eloy Giron said, "At this time I move that the County request a Transportation Impact Analysis. Mr. Kiehne will pay for the engineering on this and the County will pick the engineer. We will direct this toward staff and we will hear this in two weeks. We'll have an answer within two weeks at the next Commission Meeting. That's in the form of a motion."

Chairman Aguilar said, "Commissioner Giron if I may have an input before you complete your motion, that there may be some other concerns that the County may have and they are to identify those this week and provide that information to Mr. Yntema so that all issues are addressed and it is of no surprise to anyone that we know about it and they don't know about it."

Commissioner Al Padilla seconded the motion. Chairman Alicia Aguilar said, "We have a motion by Commissioner Giron and a second. That is for a continuation of this hearing and in two weeks provides us with a T.I.A. and an engineering study. The County will pick the engineer and administration will also identify any other concerns or issues that would need to be satisfied as part of the engineering traffic analysis."

Commissioner Frank Pando stated, "I just wanted to address Mr. Yntema. You are more than welcome to have these papers that I have in front of me. I received them this morning, so you know as much as I do when I walked into this meeting."

Max Kiehne said he knows it is practical to get the engineering study done within the next two weeks, but he does not believe it is practical to get the Transportation Impact Analysis done in two weeks. He recommended that this issue be deferred for four weeks so that they can get both studies done and in addition to that he suggested that as to the conditions that the Planning Staff has presented that the operators and himself meet with Chairman Aguilar, Mike McCartney and Steven Chavez and address those conditions to be brought back at the same time, so that the Commission is aware of what his responses are also.

Tom Garde said, "As much information as we can obtain, I think would be beneficial to all parties."

Chairman Aguilar said, "We would be requesting Commissioner Giron to amend his motion to not be two weeks, but four weeks. Is that what I'm hearing?"

The County Attorney said, "Before we make that determination, I think we need to find out if in fact it can be done within two weeks because I think time is of the essence." Chairman Aguilar said, "It's fine, it's proper to just have a continuation of two weeks, bring us as much information as you can and we'll go from there."

Commissioner Giron asked Mr. Kiehne, "Do we have a commitment from you at this time not to increase your operation?" Mr. Kiehne said, "It is up to the operator's, but I don't see them doing that." Commissioner Giron said, "You own the property."

Hess Yntema said, "It's clear that Mr. Kiehne owns the property, but he's leased it to independent contractors who make a decision based on market on whether to remove or not to remove. Mr. Kiehne does not have control. Mr. Hooper has said he is not going to take anything out, but as to another operator." Chairman Aguilar said, "Mr. Hooper won't be taking out, but there is also another lease with CalMet."

Chairman Alicia Aguilar said, "We have a motion and we have a second for a continuation." The motion carried.

Chairman Alicia Aguilar stated, "This is to Counsel. Based on the information that has been given us, I'd like to see a limit on the number of trucks for the next two weeks. Mr. Kiehne has mentioned to us that it is just Zamora Trucking that is hauling. That is 8 to 10 trucks per day hauling 4 loads per day. That would be 32 to 40 trucks per day."

Tom Garde said, "What I would suggest is that staff meet with Mr. Kiehne to see if some arrangement can be worked out." Chairman Aguilar said, "My recommendation would be for staff to meet with Mr. Kiehne within the next day or two and have something in writing for us as a possible commitment for the next meeting. If one cannot be reached, please let us know also."

**(D) PRELIMINARY PLAT APPROVAL/Lobo Valley Acres Subdivision**

County Clerk Kandy Cordova swore in the speakers. The tapes of this meeting are on file in the County Clerk's Office.

Mike McCartney said this is a proposed 26-lot subdivision that is located off of Patricio Road in Tome. This application was submitted on 2-5-99 and sent to the State Agencies on 2-11-99.

Steven Chavez stated, "Lobo Valley Acres is a subdivision with 26 lots, 26 1 acre and less lots, depending on how you look at it. It is in the middle of Tome, and it is an agricultural community. We are going to hear testimony regarding that, far better testimony than I can provide you. Far better facts than I can provide you regarding the agricultural character of the community. Some of the issues that I found in this application, I'd like to bring to your attention. First the flood plain that was disclosed in the proposal states that it is Flood Plain X. It is indeed in Flood Plain A, which has some very distinguishable implications regarding elevations. It is not in Flood Plain X. It is in Flood Plain A. We haven't had time to do an analysis based on that, but I can tell you that we originally thought it were in Flood Plain X and we based that on what was provided to us. In our findings we determined that it is indeed Flood Plain A. The next issue is the gross acreage and the net acreage distinction. In the Disclosure Statement under number 5 and 6, they disclose that it is a gross area of land that is 1 acre. The largest lot is over 1 acre and the smallest is .84 I believe. I would like to see the language cleaned up so that the prospective purchasers aren't misled in any way. Under number 5, it says the largest parcel offered for sale within the subdivision is approximately 1.03 acres and the size of the smallest parcel offered for sale within the subdivision is no less than 1.0 acre. That is a little misleading. It is misleading if you are looking at net acreage. It is not misleading if you are looking at gross acreage. I think we need to require that he establish or describe in a little bit more detail under item 6 that the net acreage is .84 because of the roads. Some of the other conditions that we requested in the Planning and Zoning Commission, I believe have been met regarding the streets, the cul-de-sac, we requested that there be cul-de-sacs instead of deadends with 50 ft radiuses and I think they will address that a little further."

"Because of facts leading up to this proposal, I would request that the County, if they choose to approve it, that the County would mandate an approved guarantee for the proposed improvements of this subdivision. If the defendant wishes to submit for final approval and recording, before completion of the required improvements, I think that they should post a suitable guarantee. I mean a bond, not a lien or any other guarantee. I would like to see a bond in the amount of 125% of the total improvements made. I think that is necessary given the facts that led up to this and I think you have that in your Minutes. I would also like the County if they do decide to approve the preliminary plat, mandate a cease and desist until all of these conditions are met. It has come to my attention, credible information that another lot has been sold in the course of the past two weeks. If that is true, I think it needs to be explored diligently because this is not the kind of thing that this County needs happening here at all. That is why we have this process. A cease and desist is in order. Under number 12, the language is pretty loose. I would like to see that tightened up a little bit. It says any home one to three years old must meet the requirements set forth in the Restrictive Covenants. It states in item 8 that they want mobile homes or manufactured homes not older than three years old. We encourage that and it is legal to do that, but in number 12, the last sentence, they have loose language to that affect. I would like to see that first phrase taken out and for it to say all homes in the subdivision must meet the requirements set forth in the Restrictive Covenants. I think we should encourage Restrictive Covenants whenever possible. The language in these Restrictive Covenants really provides very little protection to prospective purchasers as a community association. They leave a door open for them to walk away from the subdivision, the developers do. I would like for this Commission to mandate the date that the developer and the community association in the Restrictive Covenants be a little bit more active in their participation to enforce the covenants. We know that the County cannot enforce the Restrictive Covenants. We can certainly require language that protects the goals of the County. I think under the Liability Section, they should state specifically that the developer or the association has the authority and is required to do everything under those Restrictive Covenants. In the Restrictive Covenants they don't go into detail describing the minimal age requirement for a mobile home, they just state that a home one to three years old is required to meet the conditions in covenants. I would like language that says all homes have to be no more than three years old at the time of purchase. I think that is more consistent with what they are disclosing than their own Disclosure Statement, so we are not mandating, we are just asking them to be more consistent with that."

"The issue of compatibility is a very important issue for us and we're seeing that more and more today in subdivisions. We have communities that are already designated by the steering committee on comprehensive planning in the land use element and we are going to formalize those pretty soon. We have recommendations by members of the steering committee with trying to basically document the language in the comprehensive plan and designate certain areas for protection of agricultural value, protection of density based on agricultural use, protection of uses based on the existing predominant use in that area."

"That is an important facet of comprehensive planning. Without a comprehensive plan, we cannot do those things. We cannot factor into the analysis of the equation the issues of compatibility based on those values."

"We are left here with some problems. I specifically did not do an analysis on compatibility because we don't have enabling legislation. We don't have enabling legislation in the zoning ordinance or we don't have the enabling authority in our comprehensive plan that permits us such an analysis at this time. All we can do is look at whether or not they have met all State Agency requirements and the County Ordinances as they are listed at the time of application. Those conditions have been met with exceptions. Some of the exceptions that this proposal has are very unique to the proposal. We have a large acequia going through the middle of it. We have a culvert going through the middle of it to get to the other side of the acequia. There are 8 lots that rely on this

culvert and I think that should be scrutinized. I haven't seen anything to that affect. I haven't seen any documentation from the Middle Rio Grande Conservancy District on it. I think the bridge should be scrutinized to make sure that it is safe for fire trucks, for certain weights, for the existing pump trucks that we now have in the Tome Fire Department. I think it should be scrutinized to what has occurred prior to this hearing and prior to the application going in. I think many of the people here will allude to that. This is important for the record; we never received a claim of exemption from the subdivision regulations. We informally had discussions with Mr. Otero's attorney, Frank Sedillo regarding the subdivision on whether it was subdivision or whether it was a lot split. We never received a formal claim of exemption from that. At the time we indicated to them that we believed it was subdivision and I stick to that analysis. It is subdivision. In the subdivision regulations there are requirements for proposals, for advertising, for selling lots and for how to deal with the improvements of those lots and the disclosure. I'm sure the prospective purchasers and purchasers that are already on line need to be made aware of what's happened so that the County can protect itself. Aside from that, all of the State responses except the Middle Rio Grande Conservancy District have been approved. The list that the Soil and Water Conservation gave us, they sent us two letters, the first one indicating they had some concerns, you have that in your packet. The concerns were basically the drainage, the acequia and how that was impeding the drainage and the velocity by cubic feet. Those have been met. Apparently the second letter received from them, those concerns were met, but again we don't have the enabling legislation to allow us to do such an analysis. The Fire Marshal was positive. I would like to see the road leading into it from Patricio cleared up a little. The turning radius is a little tight because we have a reverse 90-degree angle. It is very hard to get in fire trucks. I think it can be taken care of if they widen the ingress and egress."

"The Planning and Zoning Commission added a condition, they passed it to this Board as to paving, street and gutter. The paving recommendation is a good recommendation. The roads should be paved and I think the policy has taken on an informal policy to require paving of subdivisions. The last little subdivision you have approved, it is not mandatory, but it is at your discretion to require that. I think it should be required to a minimum. I don't think street and gutter is applicable because we don't have the infrastructure or the sewer system to do that. We did receive a letter from Mr. Chavez who is a water scientist. I've looked at those concerns and I believe those concerns can be addressed with the water systems that they are going to install and be permitted by the State Engineer's Office. The State Engineer's Office, I believe has already given a favorable response aside from the permits of the individual septic tanks and the wells. There are really no other issues regarding this subdivision other than those things. I'd like to take questions and I think I can respond to some of the issues I have raised up as they are articulated by others."

Chairman Alicia Aguilar said, "Under the, let's take Item A first, the flood plain area. This does fall in a flood plain area, so then we would need to ask the subdivider to provide us with base flood elevations seeing that it is an A zone and we have not determined that." Steven Chavez said that is correct. Mrs. Aguilar said, "The other thing is and I was going to ask Mr. Hibdon because you are aware it is in a flood plain and that there are maps, preliminary maps that have been provided since 1991 and showed that in a flood plain area."

Ron Hibdon said, "Yes Ma'am, but the maps that we're using presently show it as Zone X. As you well know the F.E.M.A. Maps are changing on us, it seems like on a monthly basis and the one that Steve is referring to I'm not even sure that is one that is current. He made a lot of statements here that you can't believe you know." Chairman Aguilar said, "It is my understanding that the boundaries have never been changed, once that got placed in a flood plain area we just didn't know about the elevation. The latest available data is dated 1998." Ron Hibdon said, "Is that the one we are currently using? The Building Inspector's tell us one map we're using and you're saying we're using this one here. As I recall the one we're using is back about 1982 when it was filed. I don't know the exact number." Chairman Aguilar said, "It is 1998, they're preliminary maps, but that area is a proposed flood plain area." Mr. Hibdon said, "I see no problem with that anyway Alicia, if it is in Zone A then the developer will be providing Elevation Certificates for every lot."

Chairman Aguilar said, "Looking at the Subdivision Regulations and if it is in a flood plain area, the elevation for each lot should be provided at the time of application for preliminary plat approval, so then each person would know how high they are going to have to elevate. The conditions are a little bit different than for you stating it is Zone X and no requirements at all. Correct?" Ron Hibdon said, "It is my opinion that it is Zone X, but if it is in Zone A, our drainage report should dispose of it." Chairman Aguilar said, "The other issue was the soils and allowing to put a septic tank, realizing that originally on this plat split, the minimum was one acre with the largest being about an acre and a half. Correct? So we were then talking about 23 acres and 18 lots that were split or approvals. Something like that. Looking at what the Subdivision Regulations are telling us now and on the soils from the ED, the drainage, the septic tanks, we would need ET beds."

"Going back to a subdivision that came before us known as Sun Communities which was further South of Belen, and them wanting to do one acre also, the information provided here is the same as there, that some of the soils may have to be removed and new soils brought in order for those septic systems to function properly."

"I'm bringing up concerns that I may have on the Disclosure or on the plat so that when I call on Mr. Otero or Mr. Sedillo. These are concerns that I have and Mr. Hibdon that they may be able to address this. There are two lots that were sold originally. I do not know how the ingress, egress of those two lots were identified, because if was changed, do we now have a plat map showing two lots with one road and it's forming a certain direction and then we have a subdivision with a different road. That would be a question of mine. The big question that I would also have is that we have changed these lots to be net acreage. You have gross acreage of one acre and in some instances of .84. If the roads were ever going to dedicated and accepted by the County for maintenance, we do not have the public road just as a County Road that was accepted by the public. This is considered an easement and it is taking property from the individual property owners if they ever came to the County and said we want you to maintain our road. Does the County then have to get permission

from every property owner because it is an easement and not classified as a County Road? It is not shown that way. The forty feet is taking the property from the property owners. I go back to compatibility, but mostly density and if it is in a flood plane area, density can be addressed there."

Commissioner Eloy Giron said, "Under disclosures here, can you tell me how many lots have been sold? Not just sold by going to a Title Company and closing, how many purchase agreements do you have in affect right now?"

Matthew Otero said, "On the subdivision that we are trying to get approved today, no lots have been sold. No lots are currently in connection with a title company. There are two lots that; they are not even with the subdivision. To answer your question, there are no lots that have been sold off of Lobo Valley Acres."

Commissioner Frank Pando said, "The two lots that were sold in the back, what was the egress and ingress of those lots before?" Matthew Otero said, "There is a 40-ft easement currently through the County, that we planned for the County. Previously in another one that we straightened out, so there is a 40-ft easement in between the subdivision that we're trying to get approved now that has been approved by the County." Commissioner Pando said, "Those two lots that are sold, are they going to be under the same covenants and the same restrictions?" Matthew Otero said, "When we sold those two lots, we sold them with the idea that they are going to follow the covenants on those two lots. They are covenants that are identical to Lobo Valley Acres. They don't go with Lobo Valley Acres, but when I sold them, I wanted to sell them with the same intent that they are going to build their home the same way that all of the other homes are built. You have to keep in mind; those two lots are not part of Lobo Valley Acres. If you look at the map in your packet, it doesn't include those two lots. Those two lots are previous, they were there years ago."

Chairman Alicia Aguilar said, "When this came before us and the two lots were separated and there were issues about advertising that was brought to our attention and that was forwarded to the District Attorney's Office, but the rest as far as being a subdivision, Mr. Otero was asked to go through this process and make application. I think that is important to state." Steven Chavez said, "I thought those issues were taken care of. Originally it was the County's position, it was the Planning and Zoning Department's position that what was being done here was the formation of a subdivision and we required that they go through the subdivision process. Apparently the developer and his attorney and Mr. Hibdon decided they would go through this process and that is why we are here today. We basically considered the issue dropped if the cease and desist was there. We asked them to stop doing everything until the proper approvals were given, if indeed they would be given. Apparently at the time, when we received word that this subdivision was being formed, we received, and I would like to submit this to the Commission as an exhibit, we received two advertisements regarding this proposed subdivision and in each advertisement, the two lots that were sold exclusively of this proposal are in the advertisement. **(See Exhibit E)**

Matthew Otero said, "The advertisement that Steve is giving you, Steve is giving you an advertisement on lots that are already existing. They show exactly the way the lots were platted in 1983." Steven Chavez said, "If I may finish my presentation, the lots that were sold, we viewed those originally as being part of the subdivision because that is the way it was represented in the advertisement. We indicated to the developer that we would hold him to those lots that were in the advertisement that were circulated around Valencia County. As this issue transpired, we accepted this proposal and it was sort of lost in the Planning and Zoning Commission regarding these two lots. Although those lots were already in existence, they were still advertised as such, technically there are 18 lots that were in existence at the time this advertisement came out or at the time the proposal came out. That is not part of the analysis. The part of analysis that we're looking at is whether or not this is really a common promotional scheme under the State Statutes. As you recall in 1996, our State Legislature, in their wisdom decided they would try and slow down the process for lot splits for the co-mingling or the accumulation of individual lots in really creating defacto subdivision, when in fact they didn't have to go through the process, the subdivision review process. In the result of their determination, they placed language that allowed county's to look at these common promotional schemes by the way they are advertised, by the way they are put together in the manner of years or by the way they're represented to the County. I think we can look at those advertisements and include those in the analysis as well. Whether or not there is access to them, it was represented to me that there is access to those two lots."

Commissioner Frank Pando asked what the net acreage on those two lots was. Matthew Otero said, "One of them is slightly over an acre and the other one 1.2 acres. They both net out at a full acre."

Frank Sedillo stated, "The application before you has to do with land that is shown in the plat that is being submitted. The two lots that we've been discussing here were actually two pre-existing lots. There is a disagreement about the interpretation of what subdivision is. Mr. Chavez is of the opinion that if you promote or intend to sell like land, then you are automatically creating subdivision. That is not true, in our opinion."

"If you have 18 existing lots and you don't change those lots at all and you turn around and sell those lots that currently exist, you haven't created a subdivision. You are simply selling lots that already existed. Mr. Chavez has gotten caught up in this definition of common promotional scheme and his interpretation is that since Mr. Otero has purchased these lots that are already pre-existing and had advertised them for sale as they currently existed, that that is somehow a common promotional scheme. It is not. It is simply taking your house and perhaps several they lots that you own in the general vicinity and trying to sell those lots. They had suggested that they follow the subdivision process. My client, Mr. Otero and Mr. Hibdon were of the opinion that they could have just had a replat done and accomplished a division of 16 of those lots that are being proposed now. In order to give the public an opportunity to respond and at the advise of the Planning and Zoning Administrator, they felt at this particular time, that the most appropriate thing to do and also to save time, was to file the application for the subdivision. The difference of opinion to Mr. Chavez and ourselves surfaces from your definition of subdivision and it is contained in your Valencia County

Subdivision Regulations. It is on page 7 of those regulation's and in the left hand margin, it had the word, subdivision and it defines it as, division of a surface area of land, including land within a previously approved subdivision, into two or more parcels for the purpose of sale, lease, or other conveyance; or for building development, whether immediate or future. "Subdivision" shall include any activity, individually or as part of a common promotional scheme, by one other than the original subdivider. It goes on to describe what kind of development might constitute a subdivision, but then it says "Subdivision does not include and it has several subparagraphs and subparagraph #7 says, division of land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased. At least with regards to 16 of the lots being submitted for proposal today, it falls within that exclusion of the definition of subdivision. It has been our position that with regards to 16 of those lots, Mr. Otero could have altered the lot lines as long as he didn't increase the number of lots. That is kind of where the disagreement with Mr. Chavez and ourselves has surfaced. With regards to the two other parcels that were sold, they were already existing, they were preexisting and he simply bought them from someone and turned around and sold them to someone else."

Chairman Alicia Aguilar said, "Mr. Sedillo, I do have a question. You have 18 lots that you are calling existing, what he purchased were the additional two lots. If we look at the total picture including the other two, two lots have been added. It is not just a replat; it is not just a change of lot lines. What I'm saying is that if you have an original picture and the original picture has 18 lots and you're saying I took two lots out so under the subdivision I'm entitled to this benefit. What is left are two additional lots over the existing plat." Frank Sedillo said, "Originally there were 18 lots, separate lots shown on the plat. There's property that is contiguous to those 18 lots, two of those 18 were sold, so 16 of them were preexisting, then there was additional land. He then tried to redraw the lots on those 16, so to either maintain the same number of lots as 16."

Chairman Alicia Aguilar said, "For the record, let me go back and indicate that I was the listing agent on this property. Ambrose Chavez sold it to Mr. Otero. Ambrose Chavez is the buyer's agent. Originally there were 23+ acres split into 18 lots, the largest being an acre and a half. The smallest was 1.07, but if you look at the original tract of land, the same owner as to the East did not own it. We're talking two different purchase agreements, two different owners, two different tracts of land that were put together. If we stick to the one that has 23+ acres, there are 18 lots. On this, you chose to remove two lots that were sold and you're saying I still have the same number of lots. You do not; you have two more lots than was originally purchased on that split. If we go further and we say Tract 1E and Tract 1F, those are part of Lot 8 and 18, when you're talking the approval of a 4 lot split." Ron Hibdon said, "You are completely right. I agree with you completely. There were 18 lots and he sold two, leaving 16 lots. Now we're showing 18 on a subdivision plat, however for a replat that was submitted to the County back in January to Mike McCartney and it was all approved and it was taking those 16 lots and it was putting 15 lots at 1 acre and one lot at 3 acres. The number was not going to change." Chairman Aguilar said, "What we have before us is this plat and that is what we need to address. What I am saying is that the lot sizes on the West Side of the ditch." Ron Hibdon said, "No Mamm I am not saying that."

Frank Sedillo said, "I didn't mean to infer that either. I was simply trying to explain the history of this in a manner that would address some of the concerns that Mr. Chavez raised. The only thing before you today is the application for the subdivision that has been presented."

Mike McCartney said, "For the record after meeting with Mr. Hibdon and Mr. Otero, it was recommended to them that they do go through the subdivision process so that at the public hearings the people involved would have an opportunity to speak. In disagreement with Mr. Sedillo, if you read the paragraph above it says for sale or lease of six or more lots that do not meet current standards can be considered subdivision. That was my recommendation to Mr. Otero and Mr. Hibdon that is why you are here today."

Ron Hibdon said, "We have no problem with the subdivision itself coming before the public to seek approval. It was never our intent to sneak around the back door." Mr. Hibdon then read for the record a letter from the Flyer Press and from Homes Illustrated regarding an error in their publishing of an add for the subdivision. **(See Exhibit F)**

Mr. Hibdon said, "If you really look at those advertisements, in dark the lots were shown on the West Side of the ditch. The lines on the East Side were a little bit lighter. That was going to be a proposed subdivision. It should have had the wording across there."

Commissioner Frank Pando said it was his understanding when you do a replat like that, you are supposed to vacate the existing property. Mike McCartney said, "Not the way I understand it Commissioner Pando, normally if you did a replat, you would vacate a road. What they did was under their replat of the prepared subdivision is that they corrected the straightness of the road."

Chairman Alicia Aguilar asked a question of Ambrose Chavez. She asked, "Because this concern was brought to me twice and seeing that you are the agent, are you marketing this property at all?" Ambrose Chavez said, "No we are not. In reference to those ads, we have ceased to advertise or sell them. I haven't sold a single one in the subdivision or the two prior lots. Matthew Otero sold them." Mrs. Aguilar asked, "Are you marketing them as proposed and saying these will be available?" Mr. Chavez said, "I'm not marketing them at all right now. There is no advertising."

Matthew Otero said, "I had 18 lots there that I purchased. My intent was to develop the other 8 acres on the other side. When we gave this plat to the advertisement, it was my fault. I told them that those were just proposed lots. They did not put proposed. I had in no way intended to change the lots." Chairman Aguilar said, "I asked this because two calls came to me indicating that certain individuals were wanting to buy this piece of property and that Mr. Chavez was, they were buying the property and I wanted it clarified. I'm not putting anyone on the spot." Ambrose Chavez said, "In the beginning we were, but we're not anymore."

Matthew Otero said, "We are getting tons of free publicity over this. There have been tons of interested people, but to this point we have told them we have a county process to go through. If it is approved then you are more than welcome to purchase a piece of property."



Commissioner Al Padilla asked if the information needs to be passed to the Planning and Zoning before you start advertising. Mike McCartney said if it is an approved subdivision they have to notify the Attorney General also, however they were not notified of this.

Frank Sedillo said, "With regard to the advertising of the West lots, you'll see that they are not the same proposed subdivision lots that are presently in the package before you. The advertisement at least with regards to the Western side of the property shows the lots as they currently exist today. In that situation you would not have to provide to either Zoning or to the Attorney General's Office because you simply purchased a number of lots and are re-selling them as they currently exist. With regards to the proposed subdivision as is in the package before you, that advertisement would have to be submitted."

Steven Chavez said, "I think if what I'm hearing from Mr. Sedillo is that this is not a subdivision or never was a subdivision. The point is missed, it's not the accuracy of the advertisement of whether it is right or wrong, even if it is a proposed subdivision, they are saying that it is going to be subdivision by proposing it in the first place. So whether or not they advertise as subdivision or a proposed subdivision, it makes no difference. The exception that Mr. Sedillo is trying to claim, first of all they didn't follow the proper procedure for claiming that exception. There is an exemption review process within our subdivision regulation guidelines. That process was never followed an application for the exemption was never submitted. The exception also deals with a very small, small issue and that is whether or not there are lot splits or changing boundaries. We're not looking at that. Of course that's part of the equation, but there are also other questions to ask and the other question that is most important is whether it falls under the other guidelines of the subdivision rules. This exception is not lived in a vacuum. You're not looking at every subdivision under that exception. You're looking at everything. You're looking at the entire act and the act speaks to the intent. There is case law that supports that and the act also speaks specifically to a common promotional scheme. It defines what a common promotional scheme is and I think what we need to do is we need to have the subdivider clearly tell this Board that this is a subdivision. That's why they are in this process. I think they are trying to claim an exemption and say they are under this process by default."

Chairman Alicia Aguilar said, "This is what we have and this is what we are dealing with now, so there isn't any confusion on what has happened in the past, even with Mr. Otero or Mr. Sedillo and the arguments going back to whether it is a subdivision or not. We're saying it has been applied for as a subdivision and we are following Subdivision Guidelines."

Edward F. Schaub spoke on behalf of the Tome Neighborhood Association and presented a packet to the Commission. This packet will be on file in the County Clerk's Office.

Those speaking for or against this issue were:

Jimmie Otero	Jennifer Montano
Ramon E. Torrez	Ray A. Garcia
Eileen Otero	Brenda Padilla
Jim Smith	Marcel Reynolds
Rosemary Montoya	Edward F. Schaub
Clarence L. Chavez	

Chairman Alicia Aguilar asked Steven Chavez if all the State Agencies required by the Subdivision Regulations were contacted. Mr. Chavez said, "Yes, they were, however the Middle Rio Grande Conservancy District has not gotten back to us." Mrs. Aguilar said, "Of the others, when we're talking, the compatibility issue keeps coming up, but it is my understanding and I have checked on this, Mr. Chavez, that we cannot address it. When we're talking the comprehensive plan, that is what we are working on now and we would be able to address it in the future. For right now we can't look at compatibility. Am I correct?" Chairman Aguilar asked Mike McCartney, "Of all of the State Agencies that were contacted, do we currently have any adverse opinions?" Mr. McCartney said they have asked for more information and all responses were made and they have come back with some concerns, but not with adverse opinions. Chairman Aguilar asked what recommendation was made by Soil Conservation. Mike McCartney said, "They brought up the compatibility issue, but they couldn't based on the regulations and the due process they asked for, they could not recommend denial based on our guidelines."

A petition was presented opposing the property development of Lobo Valley Acres. **(See Exhibit G)**

Chairman Alicia Aguilar asked for a show of hands of people in the audience that opposed this subdivision. There were approximately 44 hands raised. Those supporting the subdivision were approximately 17 hands raised.

Commissioner Eloy Giron said, "I have sat back and stayed quiet on this issue and listened to both sides. This is a question for Mr. Garde at this time. Somehow I feel like Jimmie Otero stated that he feels his son has followed the law and we feel like we need to follow the law on this also. He also stated about being greedy. Right in between both parties I feel that there may be a position where there might be a compromise between the two parties. At this time what position can the County take because how many different ways can we go with this and make a decision on supporting a compromise. The time clock is running right now with the way the Subdivision Regulation's fall." Tom Garde said, "Basically the Commission has three options with regards to the preliminary plat approval. The number one option is to approve it without conditions. #2 are to approve it with conditions and #3 are to deny it. The only out that the Commission has is under our own regulations and that the Commission has thirty days to make a decision. What this Commission could do is basically continue with this fact finding process now and then basically set this matter for the next two weeks to give final. That will allow staff to develop findings that when the Commission does make a decision on one of those three factions the staff will have the ability to prepare findings to submit to the Commission. That is one option that the Commission can do is basically continue with this process today. Continue it for two weeks that would allow some negotiations between the

association and Mr. Otero. That would allow that to happen and that would give staff the ability to prepare findings in this matter."

Ray Garcia said, "We're concerned that the Commission has to do something within thirty days, otherwise they can do whatever they want. We've been reading these rules and we are just concerned. We would work with Mr. Otero if he will work with us." He said they don't have a problem with him making money. They have a problem with 28 septic tanks with 12,000 gallons of sewage per day and the infrastructure. He said if their water is not drinkable, they have nothing.

Commissioner Al Padilla asked Matthew Otero, "Is there some way you are willing to work with these people on a compromise and then come back in two weeks?" Matthew Otero said, "If I compromise, will they live up to their end of the compromise? I bought this development. I told the bank what I was going to make on it. I'm expected to make what I'm expected to make. If I put five homes out there, the members have 200 members, is that correct?"

Chairman Alicia Aguilar said, "If I may say is, what I would recommend is a continuation of this hearing and get all of the facts together, fact finding and in two weeks a decision will be made. That is still within the thirty-day period. I think that if you can get together with Mr. Garcia and the Association and discuss it privately and there is something that materializes, please bring it to administration, but I don't believe we should sit here and request a negotiation."

Matthew Otero said, "I cannot compromise. I wish I could. I have to build this subdivision." Chairman Aguilar said, "I want the public to understand that legally we cannot ask him to compromise for us."

Commissioner Frank Pando asked the County Attorney, "If this is approved or disapproved or whatever happens, I'm pretty sure there is going to be some type of litigation on this thing either way. Where does that put us and where does that put them?"

Tom Garde said, "From a legal standpoint, for this Commission to make any decision, there must be findings of fact and conclusions of law. At this point I don't believe this Commission is ready to make such a factual analysis. I think we might complete this hearing today and this matter be reset for the next meeting so that we can have that addressed."

Edward Schaub stated, "Would you please look at Mr. Otero's own covenants where he says that no natural vegetation will be depleted and then he chopped every tree down. He also says that he is not liable for any of this. He can come and pollute my properties and be above the law and this Commission is not going to do anything. It is not acceptable."

Chairman Aguilar said, "One of the things and I take offense in a since of the five Commissioners here. We did look at the preliminary plat and there were many questions that we had. You chose to take the position of doing the presentation and treating us as if we had not read our information. As far as the response from E.D. and the soils and the septic, we have that information. You have not attended one of our meetings before, but generally we go through it and we ask questions. You would be given the liberty to respond and to add if you wanted to. We haven't done that. This has been a little bit different than other public hearings."

Matthew Otero said, "I want to talk. I haven't been able to talk. I've answered questions. To see where I stand myself, to ask for a compromise as they have, I'm sorry. I'm truly, truly sorry and I respect them and their feelings of what goes on in the neighborhood. I cannot compromise. I'm sorry to say, as rude as it may be; I really need an act on the decision here. Yes or No, that's all I'm looking for. That is all I applied for this subdivision to do. I have paid professional people big money to look at this and study it and follow it and build the subdivision the way the book says. Believe me, that's what we are doing. We've made some small mistakes. We have final plat approval to come in front of you. That in my opinion is what preliminary plat approval is for. I'm not going to deny that we made mistakes. We never tried to cheat anybody. We never tried to false advertise with the advertising of selling the lots. I was going to sell 18 lots and I was going to subdivide 8 acres on the other side. This subdivision was sold to me and was approved in 1983. Like it or not, it was approved. Like it or not, it's for sale. I went with the surveyor and put some surveyor marks, unfortunately the road went up, it went down and it went up again. If you look at one lot it probably crosses over. It's 120 feet from one end to the other. Is that what we want? No. I decided that wasn't the kind of subdivision I want even though it was approved."

"Whether it be a subdivision or whether it be plats approved or whatever you may call it, that's what was there. I told Ron, this isn't right. This looks bad. We did that back in the late 70's or early 80's, they developed all kinds of land up in Mission Park when they used to use a tree as a surveying mark. We are not in that time any more. These laws and regulations were adopted in 1996, they were enforced. In 1983 they split property anyway they wanted. Now we're having to come before you people and follow these rules and regulations. I'm not stupid, I know I barely got my subdivision on these rules and regulations. I know that we are going through the new process right now. Correct me if I'm wrong Steve, it may be four or five times bigger than this and it may be a lot tougher for us developers to develop, but never the less, I have followed the rules and regulations and I believe that my team has. I'm at a point where I purchased this piece of property. You know how hard I worked on this Commissioner Aguilar."

Frank Sedillo said, "You can see there is quite a bit of history here what with the advertising of the other lots that aren't involved in this application. We're simply here today; we submitted the application for the subdivision. It's my understanding that all government agencies have been contacted and have had an opportunity to comment. Despite all of the objections of the owners association, in all of the issues that they have raised, all of the governmental agencies, whether they Are State or County have made comments and have essentially approved the subdivision. Apparently they have some concerns and those concerns have been addressed by Mr. Otero or by Mr. Hibdon and there is additional concerns raised by Mr. Chavez that don't seem to be objectionable to Mr. Otero with regard to the development of this project. Essentially what we've got is a subdivision that has been approved by the other governmental agencies, now whether or not the Commission chooses to accept those recommendations or those comments is entirely their

perogative. I would like to submit, if in the event that the County Commission does not approve the subdivision, then essentially what you have is 20 lots that have already been subdivided previously, prior to the subdivision ordinance going into affect. There are 20 lots out there that currently exist. They are currently divided, not in accordance or in the method or manner that Mr. Otero has proposed now, but there are still 20 lots out there. He can take those 20 lots and he can just sell the lots and the individuals that purchase those lots will have the opportunity to either build or place mobile homes or do whatever on their lots that is legal, that zoning allows. There are 20 lots out there that are going to be used regardless. What he plans on doing is trying to develop all of those all of that acreage in a reasonable and professional manner. He has developed other acres in the past. What we would request that action take place today. We would ask for a motion to approve the plat as submitted."

Steven Chavez said, "If you do decide to adopt the condition in the form of a motion to continue this hearing, I would like this Commission as a condition during that phase to order the developer to cease and desist any further development of those properties until the preliminary plat is dealt with. Also I'd like to comment on the law. Luckily our legislator's cleaned up the loophole in the law in 1996. If you are going to develop lots, you have to follow the schedule that is in the statute. You can't develop more than a certain amount or certain number of lots within five years."

Commissioner Al Padilla said, "In listening to both sides of this issue, there is a rather complicated problem here and while I believe in preservation of the land and keeping the rural as is, I have come to the conclusion that we have to make the final decision. Matthew is ready to make it one way or another and so is the other group. They seem anxious to know how this Commission is going. I am going to make a recommendation that we deny this proposal."

Chairman Alicia Aguilar said, "I will second this motion with the understanding that by law when we are denying a subdivision there must be fact finding as part of the denial."

Chairman Aguilar asked Commissioner Padilla to state the fact finding for his motion. Commissioner Padilla said, "The issues that were raised here by the association, compatibility and also sewage, water, the traffic impact, land use, preservation of land, minimize conflicts and I believe some of the ordinances, the subdivision ordinances have not been addressed properly."

Commissioner Eloy Giron said, "I've seen both parties here. I personally know the Otero's and a bunch of the farmer's and residents in that area. What I'd really like to see today was a compromise between both parties. It's sad to say it is going to come to this. Ultimately we still have to live by each other. It just doesn't impact that certain area, it impacts everyone. I really wish we could have come up with a compromise."

Chairman Alicia Aguilar said, "I seconded the motion because I wanted to hear what the fact finding was from Commissioner Padilla. My position on this is that I feel we should really be taking the recommendation of our attorney, do all the fact finding, there was a lot of information that was provided to us by the Tome Homeowners Association and we were not given the opportunity to really address that and look at it. There was a presentation that was given to us by the Tome Property Homeowners Association and I would like the opportunity to look at that, compare it with what was presented by Mr. Otero and if I have any questions, have the opportunity to answer them. That didn't happen, but that's what I would like to see."

Commissioner Frank Pando said he would echo Eloy Giron's sentiments. He also hoped for a compromise between everyone because they are all going to live in the same community.

Commissioner Eloy Giron said, "It is still not too late for a compromise."

Matthew Otero said, "If I compromise, will I be paid on the compromise?" Commissioner Giron said, "I think the message is that we want you guys to compromise."

Chairman Alicia Aguilar said, "We cannot go there. As much as I want to, legally we cannot go there, even on the proposed denial, it has to be based on fact finding as far as the regulation, quoting law. We must do that, and to me what I would like is a little bit of time, two weeks, in order to go back and really scrutinize this preliminary plat. I have heard from you. I have heard your concerns and maybe by then there could be some give on some of the lots. There are some issues that need to be addressed."

Chairman Alicia Aguilar called for the vote on the denial. Commissioner Frank Pando voted yes. Commissioner Eloy Giron passed. Commissioner Al Padilla voted to deny. Commissioner Helen Baca voted no. Commissioner Eloy Giron voted no. Chairman Aguilar said, "As much as I would want to vote no, I have to follow the law and at this time I'd have to vote no. The motion to deny dies."

Chairman Aguilar said, "I would like to recommend another motion and the motion would be that we have a continuation of this hearing allowing administration an opportunity to..." Mike McCartney said, "The wording has to be correct. You cannot use the word 'continuation'; it has to be 'a decision will be made at the May 17<sup>th</sup> meeting.'"

The County Attorney said, "The Regulation's don't reflect the word 'continuance'."

Chairman Aguilar said, "I would recommend that on the May 17<sup>th</sup> meeting a decision be made by this Board on Lobo Valley Acres. The meeting is at 6:00 PM." Commissioner Frank Pando seconded the motion.

Commissioner Eloy Giron said, "This has been a very unique subdivision. We have addressed the quality of life over there from the residents and Mr. Otero's subdivision and how he stands on it. We still never addressed the pavement of roads, any of that. We are not getting any commitment from him."

Chairman Aguilar said, "We addressed paving of roads about four months ago and we asked the attorney to provide us with a legal opinion. We cannot make him pave roads now, the Subdivision Regulation's do not address that. There are only design standards on the roads."

The County Attorney said, "The problem with that is that we have approved subdivisions that have been gravel roads in the past. For us to basically impose a paving requirement to a

developer without our regulations being modified would not be fair to any new developer coming in to provide a subdivision to us."

Chairman Aguilar said, "For clarification of my motion, if in two weeks there is all of this information that has been brought up, that will then be placed into one presentation by administration so that even on the information, if the Tome Homeowners Association, I encourage you to get together with Mr. McCartney and Steven Chavez as to what information is coming in and what they are compiling and fact finding. I think Mr. Otero and Mr. Sedillo should be provided with any information that comes in before the two week period so that we are able to be fully informed and make a decision on May 17<sup>th</sup>."

The motion carried.

Commissioner Eloy Giron left the meeting.

#### **PERMISSION TO PUBLISH NOTICE OF PUBLIC HEARING**

Mike McCartney requested permission to publish an amendment to the Valencia County Zoning Ordinance. It is an amendment to Article 9. Administrative Fees. It is a request to publish an increase for lot split fees from \$200.00 for 2 - 5 lots to \$200.00 per lot. The first hearing will be on May 17<sup>th</sup>, 1999 at 6:00 PM. The second hearing at the following meeting.

Ron Hibdon spoke against the increase in fees. He said it would be a tremendous hardship on the developers in the area. He said as a surveyor that is what he gets for doing a survey and he believes to charge that for a summary review is outrageous. He asked what the money would be used for.

Mike McCartney said with some of the projects that are going on such as the jail, the General Fund is being depleted. They are trying to be compatible with the Village of Los Lunas, Socorro County and Bernalillo County.

Commissioner Frank Pando made a motion to allow the publication of the amendment to the Valencia County Zoning Ordinance, Article 9, Administrative Fees. Commissioner Helen Baca seconded the motion. Motion carried. **(See Exhibit H)**

Commissioner Al Padilla made a motion to convene as the Indigent Board. Commissioner Frank Pando seconded the motion. Motion carried.

#### **(E) INDIGENT REPORT/APPEAL**

Barbara Baker presented the Indigent Claims from March 25, 1999 to April 22, 1999. The total amount of claims submitted was \$104,283.79. Mrs. Baker asked the Commission to approve \$61,627.72 and to deny \$42,656.07.

Commissioner Al Padilla made a motion to approve the Indigent Claims as presented. Commissioner Helen Baca seconded the motion. Motion carried. **(See Exhibit I)**

Barbara Baker presented the Indigent Appeal for Lynn Martin. He is appealing the Indigent denial of February 11, 1999 for Janice Martin. Mrs. Martin had cancer and passed away on April 1, 1999, in Las Vegas, Nevada.

Commissioner Frank Pando asked for Mrs. Baker's recommendation. She recommended denial because Mr. & Mrs. Martin own twenty acres of land in Tierra Grande Estates. They are four 5-acre parcels.

Commissioner Frank Pando made a motion to deny the appeal. Commissioner Al Padilla seconded the motion. Motion carried.

Commissioner Frank Pando made a motion to convene as the Board of County Commission. Commissioner Helen Baca seconded the motion. Motion carried.

#### **(F) APPROVAL OF MEDICAID NON-EMERGENCY TRANSPORTATION**

This item was deleted.

#### **(G) WARRANTS**

Carlos Montoya presented the Warrants for Commission approval. Commissioner Frank Pando made a motion to approve the Warrants. Commissioner Helen Baca seconded the motion. Motion carried.

#### **(H) MANAGER'S REPORT**

County Manager James Fernandez requested permission for the Director of the Older American Program to proceed with an application for a Medicaid Non-emergency Transportation Permit. The Director said it would be of great benefit to the Older American Program.

Commissioner Frank Pando made a motion to allow the Director of the Older American Program to proceed with the application. Commissioner Helen Baca seconded the motion. Motion carried. **(See Exhibit J)**

James Fernandez reported on the tour of the old Belen Police Department. They looked at the site and had one of the Building Inspectors look at it as well as the County Architect. The facility is in need of all the mechanical to be replaced, the heating, cooling, the sub-floor would have to be replaced. He said it is doubtful that with all of the repairs, it could be brought up to code for the Health Dept. The preliminary estimate is that it would cost from \$150,000.00 to \$200,000.00. Mr. Fernandez said it is prohibitive for the County to look at this facility for the Health Dept. at this time.

Chairman Alicia Aguilar recommended that administration meet with the City of Belen to discuss a Joint Powers Agreement on sharing the cost of the Health Dept. since it benefits them and the Southern part of the County.

The County Manager reported on the 28<sup>th</sup> he and Mr. Montoya and Mr. Pando attended the Central Solidwaste Authority Meeting at the Village of Los Lunas Council Chambers. The Central Solidwaste Authority heard a presentation from Waste Management on the sale of Tri-Sect. The Central Solidwaste Authority had a motion to have an evaluation done of the Tri-Sect property. They want the County Commission to go along with the evaluation.

Chairman Alicia Aguilar asked for an outline of what they are looking at, what the objectives are and if there is an idea of the cost.

Commissioner Eloy Giron returned to the meeting.

James Fernandez presented the list of inventory items to be auctioned by the Sheriff's Department. Item 4 was deleted. The list still has to be sent to the Department of Finance. **(See Exhibit J)** The Sheriff has proposed a sale date of May 22<sup>nd</sup>, but since the notice has not yet been given to the Auditor that date will need to be changed after notification comes from the State Auditor.

Commissioner Al Padilla made a motion to allow the list to be sent to the Department of Finance. Commissioner Helen Baca seconded the motion. Motion carried.

The County Manager said a Preliminary Budget Hearing would be held on May 10, 1999 at 9:00 AM.

Commissioner Helen Baca made a motion to allow the Preliminary Budget Hearing to be held on May 10, 1999 at 9:00 AM. Commissioner Eloy Giron seconded the motion. Motion carried.

**NEXT MEETING**

The next Regular Meeting of the Valencia County Board of County Commission will be held on May 17, 1999, at 6:00 PM in the County Commission Room at the Valencia County Courthouse.

**ADJOURNMENT**

Commissioner Frank Pando made a motion to adjourn the May 3, 1999, Regular Meeting of the Valencia County Board of County Commissioners. Commissioner Eloy Giron seconded the motion. Motion carried.

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the May 3, 1999, Special Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

**VALENCIA COUNTY BOARD OF COMMISSIONERS**

**SS**  
**ALICIA AGUILAR, CHAIRPERSON**

**SS**  
**AURELIO H. PADILLA, VICE-CHAIRMAN**

**SS**  
**HELEN BACA, COMMISSIONER**

**ss**  
**ELOY GIRON, COMMISSIONER**

**ss**  
**S. T. FRANK PANDO, COMMISSIONER**

**ATTEST: ss**

**KANDY CORDOVA, COUNTY CLERK**

**DATE: May 15, 1997**

**For an official copy of these minutes and attachments see Commission Book 34 page 153**