

VALENCIA COUNTY BOARD OF COMMISSIONERS

REGULAR MEETING

MAY 17, 1999

M I N U T E S

The Regular Meeting of May 17, 1999 was called to order by Chairperson Alicia Aguilar at 4:47 PM.

PRESENT

Alicia Aguilar, Chairperson  
Aurelio H. Padilla, Vice-Chairman  
Helen Baca, Commissioner  
Eloy G. Giron, Commissioner  
S. T. Frank Pando, Commissioner

Thomas Garde, County Attorney

Press and Public

ABSENT

James Fernandez, County Manager

Kandy Cordova, County Clerk

EXECUTIVE SESSION

Paula Weathersby read the agenda for the Executive Session. Commissioner Frank Pando made a motion to approve the agenda and go into Executive Session. Commissioner Helen Baca seconded the motion. Motion carried with Commissioner's Pando, Giron, Padilla and Baca voting yes.

Commissioner Frank Pando made a motion stating that only the items listed on the agenda of the Executive Session were discussed during the Executive Session. Commissioner Helen Baca seconded the motion. Motion carried.

Carol Anaya stated during the Executive Session, discussion was held on the following:

NEW HIRES:	Jennifer Hawkes
PROMOTION/SALARY ADJ.:	Eleanor Hawthorne
TRANSFER:	Barbara Garcia
ADM. LEAVE WITH PAY:	Susie Tosh
RESIGNATION'S:	Patrick Monteith (5-31-99)
	Stephen Walsh (5-28-99)

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

County Attorney Tom Garde stated, "During Executive Session under Pending Litigation, we discussed the Public Records Act. We discussed Writ of Mandamus with regards to the Supreme Court. We discussed current litigation with regards to Sun Valley and San Clemente. The last thing we discussed was the extension of the SolidWaste Contract. No action was taken on any of the items."

INTRODUCTION OF COUNTY ELECTED OFFICIALS & STAFF

Chairman Alicia Aguilar introduced Commissioner's Frank Pando, Eloy Giron, Al Padilla, Helen Baca and herself. She introduced County Attorney Tom Garde, Sheriff Juan Julian, Chief Deputy County Clerk Paula Weathersby, Planning and Zoning Administrator Mike McCartney, Charles Eaton, County Planner Steven Chavez, Steve Harris from the New Mexico Highway Dept., Personnel Director Carol Anaya, Business Manager Carlos Montoya and Administrative Secretary Monica Mireles.

PLEDGE OF ALLEGIANCE

Ray Garcia led the Pledge of Allegiance.

APPROVAL OF AGENDA

Paula Weathersby read the agenda as presented. Monica Mireles asked to delete Item E (Presentation: Boys & Girls Club). Paula Weathersby said she would be making the presentations for Kandy Cordova on Item I (County Clerk's Redecorating Project) and Item J (Request for out-of-state travel.)

Commissioner Al Padilla made a motion to approve the agenda with the suggested changes. Commissioner Helen Baca seconded the motion. Motion carried.

APPROVAL OF MINUTES

The Minutes of the May 3, 1999 Regular Meeting were submitted for Commission approval. Commissioner Frank Pando made a motion to approve the May 3, 1999 Minutes. Commissioner Eloy Giron seconded the motion. Motion carried.

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

Ray Garcia said he was the President of the Historic Tome Neighborhood Association. They requested that the County Commission extend the subdivision moratorium indefinitely. They are seeing a tremendous amount of issues that need to be addressed such as roads. There is an issue on MeadowLake Road that is going to be presented to the Commission. There are sewage issues that need to be addressed. They also need to have compatibility addressed. The issue of farmland needs to be addressed. Mr. Garcia said these are very important issues and that is the reason for this request. He also invited anyone who is concerned about a river crossing to come to a meeting on May 23<sup>rd</sup> at the Tome Parish Hall at 7:00 PM. They will have several guest speakers.

Chairman Alicia Aguilar said, "Before we start with the Action Items, there are two items that are very important, but some are here for the Sand & Gravel in MeadowLake and some are here for Lobo Valley. We are going to hear the Sand & Gravel first so I may ask those individuals that are outside, if they are here for that issue to come inside and some of you may need to step outside because of the room. If you could accommodate me, please. That way everyone gets to hear about their issues."

**ACTION ITEMS**

**(A) NEW MEXICO FINANCE AUTHORITY RESOLUTION/Adult Detention Facility**

Dennis Falk said he is with the Modrall Law Firm in Albuquerque and is Bond Counsel to the New Mexico Finance Authority. He is here to ask that the Commission adopt a Resolution, which would allow the publication of a Notice of Intent to adopt an Ordinance. That Ordinance deals with the financing of the adult correctional facility. It requests the Finance Authority to issue its bonds. The bonds are payable from the Finance Authority's public revolving fund, in order to take advantage of the good rating that those bonds would have, however that would be a loan agreement, and the County's ordinance authorizes a loan agreement and other documents. Mr. Falk said under the loan agreement the money would be borrowed from the bonds to construct the correctional facility and the County would agree to pay that money back. The way the money is to be paid back is from two primary sources of revenue and only those two sources of revenue. The first is the 1/8% Correctional Facility Gross Receipts Tax and the second is the first 1/8 of the County Gross Receipts Tax. Mr. Falk said he would be covering this issue in more detail as the County goes forward with the project and at the time that the ordinance comes before the Commission.

County Attorney Tom Garde said he had reviewed the Resolution and he has spoken to Mr. Falk. He said this is the first step in getting this project going. There is a meeting set up on Wednesday afternoon to go over more documents, but this is the first phase in getting the ordinance enacted and get the finance monies in place.

Dennis Falk said the date for adoption of the ordinance is June 7<sup>th</sup>. They will be meeting with representatives of the County, as well as representatives of the Finance Authority to go over the documents. When that is complete, they will come before the Commission on the 7<sup>th</sup> of June to ask for the adoption of the ordinance. The bonds will be issued about July 14<sup>th</sup>.

Commissioner Frank Pando asked about the amount of \$5,500,000.00 as a pledge. Mr. Falk said that was the maximum amount in the event that there is anything unforeseen that occurs between now and the adoption of the ordinance. The amount will be set when the ordinance is adopted.

Commissioner Eloy Giron asked when the election was held to have the Gross Receipts, and what was the maximum amount requested. Chairman Aguilar said, "It was a 1/8% and there was four million on the facility, however because of the time that it would take to get it, there had to be some additional tax appropriated or obligated and that's where that would come in. The amount for the facility is at \$3,900,000.00. That's what we approved for a 96-bed facility. Am I not correct?"

Monica Mireles said, "I believe you're talking about the other tax that was pledged, which was the first 1/8 Gross Receipts Tax combined with the County Correctional Gross Receipts Tax."

County Attorney Tom Garde said, "I believe there was an amount on the ballot, I don't recall exactly what they was, but what is being done here is there is a combination of the amount on the ballot plus the 1/8 Gross Receipts Tax. Basically when we get to the ordinance, the Commission will adopt the amount that the Commission will spend on the project."

Commissioner Frank Pando made a motion to approve the New Mexico Finance Authority Resolution (99-20). Commissioner Eloy Giron seconded the motion. Motion carried. **(See Exhibit A)**

**(B) FINAL DECISION/Amendment of Zone Maps/Max Kiehne  
Unzoned to OD, Valencia County  
Unzoned to SP/Gravel and Mining Operation**

Chairman Alicia Aguilar said, "We have two sheets and this is final decision, but if anyone has fact or testimony or if they have not been afforded the opportunity to speak at other meetings and you do have some information for us, please come forward and sign your name and we will allow you a few minutes to speak."

Mike McCartney stated, "At this time we are here for a final decision in regards to Bonito Land and Livestock's property located on the East Mesa, approximately 5800 acres. The original request by the applicant, (which the applicant is Valencia County) was to zone 864 acres to SP for the purpose of gravel and mining operation and the remaining portion to OD. At this time what the applicant is requesting is to take the remaining portion other than the 864 acres and go ahead and zone it OD and then we'll deal with the remaining portion at that time. It would be 5800 acres minus the 864." Chairman Aguilar said, "Mr. Kiehne would you agree that it is 4936 acres."

Hess Yntema said, "We've written the Commission by letter dated today. I would like to ask if that has been put in the record?"

Commissioner Frank Pando said all he really wanted to know was how many acres they are dealing with. Mr. Yntema said, "We have it by legal description so I really don't know, it's about 5800 acres."

Chairman Aguilar said, "If we have 5800 acres and we deduct 864, we come up with 4936 acres." Mr. Yntema said, "I won't question your math, Madame Chair, but to the extent that you're saying that's the area that's being mined or is under lease for mining and the reason why I rose to object is that I understand the Commission is preparing to zone 4900 acres OD." Chairman Aguilar said, "It is 4936 acres to OD." Mr. Yntema said, "I'm rising to object on the basis that a substantial portion of that is under lease for mining activities and indeed mining activities are going on that property." Chairman Aguilar said, "For the past month or so you have been here, the applicant has been here and there has been a request. The request has been to zone 864 acres SP. The balance, which would be 4936 acres, would be OD. You have agreed to those two requests." Mr. Yntema said, "No, Madame Chair, my client has not agreed to those requests and that is the point that I'm up here to make today." Chairman Aguilar said, "Excuse me and excuse my language. What the hell have we been doing here listening, taking public hearing, public testimony and now you're telling me that you don't agree with the applicant?" Mr. Yntema said, "Madame Chair may I ask if you received my letter date today?" Chairman Aguilar said, "I will refer to our attorney."

County Attorney Tom Garde said, "Yes, we did receive your letter." **(See Exhibit B)** Mr. Yntema said, "That letter sets out, Madame Chair, the extent of the property that has been leased by Bonito and the extent to which Bonito asks that its mining claims be allowed." Chairman Aguilar said, "Sir, your letter today states that you now want 1704 acres. Two weeks ago you were saying it was 864 acres. We're still dealing with the same application that was submitted that we've been dealing with for about three or four months now, correct Commissioners? I will proceed with what is on the agenda. When we read the agenda and approved it, you did not get up and you did not speak and say there is a change, there is an amendment, whatever. I'm looking at an approved agenda that says there is a final decision based on an application given to this County." Mr. Yntema said, "I'm pointing out that the application to the extent that the application says 864 acres should be Special Purpose because it is being mined. The application is in error. The area that is being mined is greater than 864 acres."

Mike McCartney said, "At this time, I would request a motion by this Board in regards to the 4936 acres to be zoned from unzoned to Outland District."

Commissioner Eloy Giron said, "Chairman this is your district, I think any recommendation should come from you."

Chairman Alicia Aguilar said, "The Chair moves that we approve 4936 acres for OD as was requested by the application that has been filed with Valencia County." Commissioner Al Padilla seconded the motion. Motion carried unanimously.

Mike McCartney said, "That is in regards to the 864 acres. At this time I would like to pass out to the Commission as well as Mr. Kiehne's attorney a copy of an engineer's report submitted by Mr. Dave Holmes."

Chairman Alicia Aguilar asked Mr. McCartney if this letter was faxed to Mr. Kiehne's attorney. Mr. McCartney said, "I do not believe so. We just got it late today. I think Tommy tried. That is why we just made it equal to all as well as to his attorney."

County Attorney Tom Garde said, "The County received this letter right near 5:00 PM. It just happened that Mr. Yntema was coming down the steps and I gave him a copy of it."

Chairman Alicia Aguilar said, "For the record, the letter is from Mr. Dave Holmes. He is a professional engineer." Mike McCartney introduced Dave Holmes to the Commission for any questions they might have of him.

Dave Holmes, a professional engineer from Albuquerque reported on his engineering evaluation of MeadowLake Road. **(See Exhibit C)**

Discussion was held on the Unzoned to SP, Gravel and Mining Operation. Those participating in the discussion along with the County Commissioners were:

Max Kiehne	Hess Yntema
Brad Larson	Ron Green
Gary Kiehne	Clyde Worthen
Jacqueline Guilbault	Elliott Mabe
Frank Wilson	Jan Dykeman/ State Land Office

A transcript of this portion of the meeting is attached as **Exhibit D**.

Mike McCartney stated, "At this time, the County as the applicant, administration would like to submit documents for the record. The first one is the submittal for the Special Purpose Zone Application by Bonito Land & Livestock dated May 8, 1998, the second item is a letter from Valley Improvement Association dated May 18, 1998, the third item is a copy of the Commission Meetings from the Regular Meeting of May 18, 1998, also the Minutes from the June 8, 1998 Meeting of the Board of County Commissioners, also the letter dated May 7, 1999 addressed to Mr. Yntema who is the attorney for Bonito Land & Livestock. **(See Exhibit E)** At this time, Madame Chair, based on months and months of testimony and expert witnesses being sworn in and giving their opinions, the administration through consultations with attorneys and with the County Manager, etc. hereby request to amend our application from 864 acres to only 3 acres as the existing use be zoned SP for mining purposes."

Mr. McCartney said, "I have a list of conditions and findings." Mr. McCartney then read the conditions and findings into the record. **(See Exhibit F)**

Chairman Alicia Aguilar stated, "Based on the information provided, all of the testimony and we're going back to almost two years, different sites, but the testimony that is there. I would at this time move to amend the application to three (3) acres SP and OD on the remaining 861 acres. Include the conditions that you provided and limit the loads per day to the minimum number that Mr. Kiehne himself provided us and that is eight (8) trucks per day. That's my motion."

Commissioner Eloy Giron seconded the motion.

County Attorney Tom Garde said, "Because the engineer did not do any studies with regards to the weight load, I think it would be inappropriate to set a load weight at this point."

Motion carried unanimously.

Chairman Alicia Aguilar said, "Before we leave, just to reiterate what we have done, we have zoned on the first request 4936 acres OD and on the second request another 861 acres OD, 3 acres SP with all of the conditions stated by administration, in addition to the eight loads per day."

**(C) REQUEST TO VACATE EASEMENT/Michael Lundmark**

Mike McCartney said this is a request by Michael Lundmark to vacate an easement on his property. The property is located in Los Chavez. The use of the lots is Agricultural Use.

Michael Lundmark is requesting that an easement through one of the properties that he purchased be vacated. The reason is that the easement went into another property and Mr. Lundmark has now purchased that property also. There is no longer a need for the easement. The legal description of the property is Sec. 19 & 20, T6N, R2E, Map 87 Tract 3-A-I, Lands of Michael & Lorrie Lundmark.

Chairman Alicia Aguilar made a motion to approve the vacation of the easement for Michael Lundmark. Commissioner Al Padilla seconded the motion. Motion carried.

**(D) PUBLIC HEARING/INCREASE LOT SPLIT FEES/Valencia County Ord. Article No. 9**

Mike McCartney said this is the first public hearing for a request by staff to increase lot split fees from \$200.00 for 2 to 5 lots to \$200.00 per lot. This is in regards to Valencia County Ordinance Article 9, Administrative Fees. There will be a second hearing on June 7, 1999. The request for the increase in lot fees is to provide additional staffing for the Planning and Zoning Dept. as well as to provide revenue for the increased amount of time it takes to do research on property owners to get the packets ready for hearings. The costs have quadrupled in the last two years. Mr. McCartney said they checked with the surrounding counties and with the amount of activity he believes this increase is justified.

Ron Hibdon, who has a surveying business in Los Lunas said, if these fees go into affect as per se, it will have no affect on him, however he will have to pass the cost onto his clients. A fee of \$200.00 per lot on 5 lots is \$1,000.00. That is more than he charges to do a survey on the property. He said he had his secretary contact every county in New Mexico, as well as every major town in New Mexico. He said Bosque Farms charges \$50.00 per lot, Village of Los Lunas \$250.00 plus \$10.00 per lot, City of Belen \$20.00, Bernalillo County \$100.00 plus \$10.00 per lot, Sandoval County \$20.00 per lot, Torrance County \$250.00 plus \$10.00 per lot, Sierra County \$50.00, \$100.00 if it's parcels over 10 acres, Guadalupe County, no charge.

Steven Chavez, County Planner said, "During the past 9 months that I've worked for the County, I've noticed an increase in applications or I've noticed the application process for summary review. Mike and myself have looked at the ordinance and we felt that the administrative fee was insufficient because the State Law for summary review requires now that we do a search back for five years instead of three years. We also have to do a search regarding all of the abutting properties and we have to determine whether the applicants are circumventing the subdivision ordinance and whether they are circumventing the summary lot review process. To do that they have to do a search lot by lot and year by year. The time is substantial and I think that justifies the fee increases. It is a reasonable increase based on the time we spend on it."

Mike McCartney said this was brought about by the time spent on searches on property in the Vega area.

Diedra Wilson said all of the prices that were quoted by Mr. Hibdon were all for summary reviews from the Counties. Their subdivision regulations go through the same process that Valencia County does. Their fees are much higher on the subdivisions.

**(E) PRESENTATION: Boys and Girls Club**

This Item was deleted.

**(F) OEW Mexico STATE HIGHWAY DEPARTMENT UPDATE**

Steve Harris, State Engineer, District Three for the New Mexico State Highway Dept. reported on the highway program for Valencia County and how it will affect the lives of the residents. He said in Valencia County, after eight years of toil, they have the project lined out to construct State Road 309, which is Reinken Avenue in Belen. That road is being constructed from Main Street across the railroad. It terminates near Jarales Road, which is State Road 109. They are also initiating the design and environmental work to construct from Jarales Road to the river. They are looking at whether that should be three lanes or four lanes.

They are also constructing on State Road 47 south of the Valencia Y. It is the first section of four-laning on that road.

Mr. Harris reported briefly on the proposed river crossing and said it would be 10 months before recommendations would be made public.

Mr. Harris reported on the severe problem with traffic congestion over by the Luna Mansion. They have asked the contractor that is doing the study on the river crossing to evaluate that intersection and give them an idea of what can be done in the way of modifying the signal timing and

some of the movements in the area of whether more improvements might be needed. It is a very touchy area; there are historical sites there with the Luna Mansion and some of the other properties. There is limited right-of-way in that area also.

State Road 6 is being widened through an Economic Development Program west of I-25 for approximately 2 miles. They are starting a corridor study to evaluate State Road 6 from that point to I-40 to the West. The study is being done in conjunction with District 6, which is out of Grants.

The Highway 47 Project will be the most sensitive. They will probably do it in three or four Individual projects and work their way all the way to Belen. The Tome area will probably be the last area to be done because it will be more complex addressing the economic and historical issues in that area.

Mr. Harris said State Road 314 on the West Side of the river is not in the current construction program, however they can see some of the problems that are occurring with that road. There are a lot of driveways and a lot of side streets on it. They are having difficulty controlling access to that road. He said in the next 5 to 10 years something is going to have to be done with the access on that road. "If you see the Highway Dept. removing driveways that the citizens have put in, it's probably because they were not authorized. They didn't have the proper permits. It doesn't mean you can't have it, but you have to go through the permit process."

Mr. Harris said the only thing he can say at this point about a river crossing is that it would go all the way from I-25 to Hwy. 47. It would be access controlled. If they build another road that winds up being a Main Street, they would defeat the purpose of creating State Highways which is moving people from one side to the other without a lot of stops in between. Access controlled does not mean that there is no access, it just means it is limited to one mile intervals or half mile intervals. That has not been resolved yet either.

Mr. Harris said there are some things going on that the Commission needs to be aware of. The Big I Project in Albuquerque is one of them. It is their full intent to start construction in seven months and completely build that project in a two-year span. They are meeting to work out the details and cost this week. They are taking all of the interstate work and moving it away from the Big I for the next two years.

Mr. Harris said he does not know the answer to the questions regarding MeadowLake Road. The Highway Dept. has been looking at roads in the County, however the Highway Dept. is not in the business of increasing their inventory of roads. They have more miles of roads than any other State in the Western United States. They are looking at some possibilities that could be win win situations for the County, but he cannot give a good solid answer at this time.

Mr. Harris said he is very pleased that the County has hired a Planner.

Mr. Harris answered question from the County Commission and from the audience.

Chairman Alicia Aguilar said there was a Senate Memorial that was approved that asked the Highway Department to work with Valencia County about acquiring two to three acres of land with the widening of 47 so that they could relocate the El Cerro-Valencia Fire Dept. She asked if they could start the dialogue. Mr. Harris said they had to buy entire parcels and three acres is much less than what the Highway Dept. needs.

Mr. Harris said for nine years he has been trying to get the patrol yard in Belen moved. It is not a very good place for it anymore. It is in the middle of a neighborhood and there isn't good access; however it could serve a local use. They are going to work with the City of Belen and perhaps the County on this issue. The State needs to find 25 acres and move the patrol yard some place else. The present yard has good buildings and could possibly be of some use to the County.

#### **(G) HIGHLAND MEADOWS ROAD CONCERNS**

Buddy Major was not present for the meeting.

Commissioner Frank Pando made a motion to table this item until the next meeting. He requested that Mr. Hammond and Frances Wood be invited to attend the meeting. This does affect his district. Commissioner Eloy Giron seconded the motion. Motion carried.

#### **(H) PRELIMINARY PLAT APPROVAL/Lobo Valley Acres Subdivision**

Mike McCartney said, "This is an item that was tabled at a previous meeting. This is a hearing for final decision on preliminary plat for Lobo Valley Acres, which I'm sure everyone here is well aware, is located off of Patricio Road. We received a letter from the Valley Improvement Association dated today. I'd like to pass out copies and give a copy to Mr. Sedillo and Mr. Otero."

Chairman Alicia Aguilar asked Paula Weathersby to swear in the speakers. She said, "This is to provide us with facts and findings."

Attorney Frank Sedillo asked Chairman Aguilar if this was going to be the same discussion as the last meeting. He said he doesn't know if the Commission is going to take new information or rehash the old information that was provided previously. Chairman Aguilar said, "Some of the information has already been provided, I am going to ask the individuals that we are only looking for new information."

Mike McCartney said, "At this time I also have a letter from Mark Duran, Executive Director of the Manufactured Housing Association of New Mexico, which I will submit for the record. I don't know if you want me to read these two letters into the record." Chairman Aguilar requested that he read Item No. 1 from the letter from Mark Duran. Mike McCartney said, "New Mexico Law (3-21A) prohibits a political subdivision such as Valencia County from prohibiting or restricting a manufactured home subdivision or individual manufactured homes from any area within the jurisdiction of the political authority. A manufactured home subdivision has the right to be built anywhere a site-built subdivision can be located." **(See Exhibit G for all exhibits for Lobo Valley)**

Mike McCartney asked if there was anything the Commission wanted from the letter from Valley Improvement Association read into the record. Chairman Aguilar said Bob Davey signed the letter from Valley Improvement Association and she asked Mr. McCartney to highlight the letter. Mike McCartney said it was a response from discussions with the Historic Tome Neighborhood

Association that concerns were raised and articulated by the development process. What he is concerned about is the high water table coupled with the proximity to the irrigation ditch. He is concerned about the flood plain designation. He has never heard of a developer being allowed to allocate part of the road right-of-way towards the minimum lot size requirement. Water quality has to be a paramount concern. He refers to a 1986 study on wastewater facilities in Valencia County where engineers from Molzen Corbin and Associates wrote; "The vast majority of residents rely on on-site septic systems or cesspools. The extremely high groundwater table in imminent danger or has already begun its decline as determined by a 1986 water report for the Village of Bosque Farms." He understands the concerns from the people in Tome and what they want as a plan for their community. He says he hopes you listen to them and help them advance their goals and at the same time listen to your staff and see that you act in accordance with the law.

County Attorney Tom Garde said he believed they should hear public comment before they listen to comments from staff. Chairman Aguilar said she was going to limit the comments to one minute each. She said, "Many of these people have already spoken and if it has to do with advertising that has come up, I'd like to state that we can't address that. That is something for the District Attorney and the Attorney General and it has already been passed on to them. If we are talking compatibility, we can't address that. I'm sorry. I mention that because if individuals are coming up and they are saying that they want to preserve it as farm land, we have heard that and it is already part of the record."

Steven Chavez said, "If I may as a matter of procedure, I would request that the County be allowed to continue this presentation. It was my understanding, previously that we would continue the preliminary plat review process under Section 4.4.5 which allows for information to be brought to this Board continually. It doesn't state anywhere that new information cannot be looked at or that old information cannot be rehashed. This is a public forum. It concerns me because I believe that we do have new information. I've met with the Attorney General's Office and we've discussed the water contamination issues and their experts."

Chairman Aguilar said, "Mr. Chavez I was not limiting you as the County Planner, that will make the fact findings at the end, but if that's the case and that is what the Commission wants, then we will let them speak."

Those participating in the discussion with the County Commission were the following people:

Ron Hibdon	Al Leith
Rita Padilla-Gutierrez	Michael Lundmark
Jim Smith	Frank Sedillo
Mike McCartney	Clarence Chavez
George Chavez	Lawrence Sanchez
Brenda Padilla	Tom Garde
Marcel Reynolds	Jerome Chavez
Ray Garcia	Steven Otero
Fred Landovazo III	

Steven Chavez stated, "I would like to apologize for my outburst. I misunderstood what you were requesting. I was under the impression that you were following the advise of Mr. Sedillo to limit this public hearing to a very narrow review, which in my opinion is not envisioned in that section of the Subdivision Act which is 4.4.5. You have a letter that I provided to you all regarding my review and recommendations with Lobo Valley Acres. For the record I faxed the original version to Mr. Sedillo earlier this morning or late this morning. You received your copy just moments ago when Mr. McCartney passed it out to you."

"First, what I would like to state that I do recommend approval of this subdivision with some very strict conditions. The reason for these strict conditions, I think I've outlined in the letter and I think the ensuing circumstances, the history of this subdivision proposal was fraught with an adversarial relationship between the developer, his agents and the County and the ordinance and the regulations as well. That's why I'm going to recommend these conditions. That's why I explained the history regarding this proposal. The conditions, more specifically, that I recommend are:

- Middle Rio Grande Conservancy District permit a gate over the ditchbank; the levy and I think we can justify that based on safety. As a previous prosecutor, I think the Sheriff can attest to this, we have a lot of crime regarding homes that abut ditch property or ditchlands. They use it as a quick easy access to break into homes. I think a gate would slow them down considerably. We have several properties abutting the ditch. I don't like locked communities, but a locked gate, with certain people having access to it, the people that have the right-of-way is reasonable considering the situation we have with crime. There is a situation with crime regarding these types of properties and where they are located."
- "The next condition that I would recommend is that the developer receive Environmental Dept. Permits before final plat approval. That is supported in the Subdivision Regulations under Section 5.3.8 of our County Subdivision Regulations. It is also in the State Act, given the circumstances of the potential for groundwater contamination and given the questions that haven't been addressed here regarding groundwater contamination or addressed in my mind sufficiently. I think that's important."
- "The next condition that I recommend is that the recorded road, and if you look at the letter and look at the exhibits, specifically exhibits C, D, E and F, those exhibits are the

plats that were filed in 1983 of this land. It's basically the 18 lots that were filed in 1983 and they were consolidated by Mr. Otero between then and now. Those roads are still existing and they are plats and there are recorded deeds. They are a part of the County Clerk's records. It is improper to request a subdivision preliminary plat approval without vacating those roads first. I think that's necessary. Also there are two lots and I believe it's in exhibit D, the two tracts where the proposed road cuts East over the culvert. Those two lots will be split in half from the proposed road. If we allow this without the vacation of those two lots, then we have two conflicting recorded easements and I think that will be a problem in the future. That easement has to be vacated as well. We have a vacation process."

- The next condition is that the plat reflects a 28-lot proposal, not a 26-lot proposal. It is my opinion and has been my opinion from the very beginning that this is not a 26-lot subdivision proposal, it is a 28-lot subdivision proposal and it should be addressed and reviewed as a 28-lot subdivision proposal. I provide to you the legal analysis that has been confirmed. We have received concurrence from the Attorney General's Office regarding that analysis. I won't go into details, Mr. Garde can explain that to you, it's detailed specifically in the letter. I think it is important that the two lots on the North end be considered a part of this proposal. The disclosure statement should specifically include the above ground sewage systems and the permitting requirements by the Environmental Dept. We're talking about very stringent permitting from the Environmental Dept. on these systems. We're talking about above ground systems that have to have a drain at least four feet above any ground water, so we're talking about above ground drain system. The purchasers should be placed on notice that those mounds will be placed in their yards."
- "I think Mr. Otero should be required to request an application for a Business License. To my knowledge there has not been a Business License issued to Mr. Otero for the business he is doing in Valencia County and I think we can require that."
- "I would like to do now is go into a little bit more in-depth analysis regarding the lot proposal and the zoning ordinance. The lot proposal envisioned 26 lots on net acreage of less than one acre. That is a specific violation of Section 10-B-1 of our zoning ordinance. Section 10-B-1 requires that lots be one acre and if we are going to allow anything else that variances are issued. I described in my recommendation some history regarding that ordinance at least from the prospective of my tenure with the County, at least from the last eight or nine months. We did approve one subdivision, Las Calandrias, several months ago and in that proposal they requested variances through the Planning and Zoning Dept. and they received those variances and they went on with their subdivision proposal for preliminary plat. They separated those two and then they consolidated them at this Board. This proposal, we have not seen that. We have not received any applications for variances for the lot size. I think that the subdivision, Las Calandrias, can be distinguished as well by the location. That subdivision is on the East Mesa. It is very high up on the far East end of the Albuquerque groundwater basin. Its groundwater table is extremely deep and we have those records for your review. It is much, much deeper than what we're dealing with here. We've heard everything from four to five feet to twelve inches in the testimony that we've heard in this hearing and the last hearing. Those distinctions are significant, because I don't think we're creating precedence and I don't think we're treating the developer any differently that we would treat anybody else that's going to subdivide or going to create a subdivision in the valley. It has been policy of the Planning Dept. for as long as I've known the Planning Dept. that the zoning ordinance be adhered to strictly and I recommend in this case that the zoning ordinance be adhered to strictly, therefore I believe it's necessary that the survey be reconfigured to include lots that meet the subdivision regulations as well as the zoning ordinance, taking into account those two lots that purportedly have been sold on the North end. I don't have numbers for you because I'm not a surveyor, I don't know what we will end up with, but I do believe that the plat is insufficient, that the preliminary plat doesn't provide us with the requirements set forth in our zoning ordinance or our subdivision regulations. I do recommend approval as long as these things are met. I think it is very necessary that these things be met considering the questions that have been raised regarding the Environmental, Conservancy, and the groundwater. I spoke with Salomon Romero who runs the Environmental Dept. here in the Valencia District on Friday and he indicated to me that he was going to look into it a little closer. Unfortunately he and his staff are in Santa Fe to discuss issues like this, not this specific issue of course, but issues like this. We do have a big question regarding the groundwater and regarding new permits that reportedly will be issued for septic and drainage."
- "I think it would be prudent for this Board to consider assessing or requiring that the developer put forth an assurance bond in the amount of 125% of the value of the proposal, under Section 5.2.3 and Section 8.3.1 of our County Subdivision Regulations and I think given the circumstances surrounding this proposal, that is necessary. I have had communications with Fred Wiseberg, who is the Asst. Attorney General who works in the consumer protection division at the Attorney General's Office, the sole attorney who deals with Subdivision Regulations, he is considered the in-house expert over there and he did send me a letter and he did send me a copy of a letter that he sent to Mr. Sedillo and Mr. Otero. The first letter he sent to Mr. Sedillo and Mr. Otero, he did require that they did cease and desist advertising until all of the requirements have been met."

He also required that they provide him with assurances that they have stopped advertising for the subdivision. Additionally the letter that he sent to me basically just confirms my analysis or our analysis or reasoning regarding the two lots that were excluded. In my mind they were excluded arbitrarily for no reasonable reason other than the fact that they have already been sold."

- Those are the conditions that I recommend that this Board place on this subdivision proposal and with that I'll leave questions to the Board and to Mr. Sedillo."

There was more discussion held on this request for preliminary plat approval by the previously mentioned people.

Chairman Alicia Aguilar said, "It is important to state, I was going to let Counselor do it, but it is important to state that in following the subdivision regulations we must act on this within 30 days. We can either approve, we can approve with conditions or we can deny but to let it go and say no, table it, the subdivision regulations state that if action is not taken within 30 days, the subdivider gets automatic approval. It is something that the Commission has to act on tonight. Those are the only three choices that the regulations give us."

County Attorney Tom Garde stated, "I think it has been made real clear the options this Commission has are (1) to approve without any conditions (2) to approve with conditions as set out by Mr. Chavez or (3) deny. The problem with denial is in the situation that you have is, you have approval from all State Agencies. In a legal setting, I suspect a Court would set aside that denial because of all State Agencies. This Commission does have the right to set conditions and Mr. Chavez has basically set out conditions that he feels are important to this Commission and to this County that need to be dealt with. Whether or not, as far as Mr. Otero, if he is denied, I would echo create his own subdivision without going through approval."

Chairman Aguilar asked, "If it were denied and he has received State Agency approval and the Court overturns it, then he would have approval for what?" Mr. Garde said, "Then there would be no conditions." Chairman Aguilar said, "It would be the 3/4 acre lots as it's been presented with no conditions at all." The County Attorney said, "That's correct."

Commissioner Frank Pando said, "I notice that Steve's presentation said a lot about lot size and various other things and that he touched on conditions, so by your saying conditions, we can impose conditions that say an acre or better, correct?" Tom Garde said, "That's correct, basically what we have heard today is that we have history to the affect that we have not approved any net lot sizes of less than one acre in the greenbelt. That's one factor. We also have the other concerns with regards to the groundwater and things that Mr. Chavez expressed. Those are conditions that this Commission can in fact impose."

Commissioner Pando said, "When you say five lots, that includes the two they sold. Correct?" Mr. Garde said, "This is subject to interpretation." Commissioner Pando said, "If that is the case, then poor Matthew is stuck because they are all set in four acre plots."

Mr. Otero said, "When I was sold this piece of property, it was advertised as an 18 lot approved subdivision." Commissioner Pando said, "It was not a legal subdivision, it had never been approved by anyone, but everybody in the world knew there was 18 lots."

Chairman Alicia Aguilar said, "The Title Company wanted clarification on that and the Title Company did get a letter from Lloyd Sais and Lloyd Sais did mention that these were fully approved. It did not go through me, it was between the Title Company and the previous County Manager because that was a condition."

Commissioner Eloy Giron asked, "How many subdivisions has the majority of this Commission approved in the greenbelt in the last 2 1/2 to 3 years?" Mike McCartney said, "Very few in the greenbelt, maybe one or two and Dahl Acres and that was about three years ago. On this current Board, about primarily on the East and West Mesas." Commissioner Giron said, "And the message was sent at that time, even before?" Mr. McCartney said, "Always in the greenbelt, correct." Commissioner Giron said, "Matthew and Mr. Sedillo, we sat here, I sat right over there two years ago." Matthew Otero said, "Am I reading this Commission right? Are you saying that you will approve it if I do one acre net?" Commissioner Giron said, "This Commission has taken a stand on that. We've asked these other developers and they've abided by it. They've gone with the one-acre in the greenbelt. What you're asking us right now is to go back on our word with these other developers and Mike Mechenbier split up 75 acres out there, he could have probably ended up with about 150 lots and 30% more if he had gone less than an acre. He did go with more than an acre on this. It is my recommendation that we make sure we protect the greenbelt and make sure we stand behind what we did already and push that one acre in the greenbelt."

Commissioner Frank Pando said, "If you guys recall and this hasn't been a very long time ago, the Subdivision Regulations used to read 1 1/2 acre minimum throughout Valencia County. All of sudden, I don't know who wrote the book, one acre is the State Law. What you do in Mora or Taos is different that what we do in Valencia County. Every county is unique. Everyone has needs with different characteristics."

He said, "I believe and continue to believe very strongly in the green belt. I have a five-acre, little tiny subdivision in Tome where I subdivided into 1.00 acre each. I have a lot of respect for the land."

Chairman Alicia Aguilar said, "In the valley and in Valencia County, the people have always been community minded and they've always opened their arms to welcome newcomers into the community. That's part of Valencia County. No matter where you go there is always friendliness there, but it has to be reciprocated and there has to be compassion and there has to be empathy for the people that are living in the valley. If there can be a compromise that would work out for both, why would you want to sell lots where there is already an air of hostility or animosity in bringing these people down? We heard a testimony that said she wants to move to a rural country area and know her neighbors. What you are presenting to us is that you did go with 3/4 acre net, but you stretched the law to the limit to benefit you. You know that and we're saying, Matthew, talk to us."



Matthew Otero asked, "Am I correct in saying, if you approve the subdivision and I be allowed one acre net, does it get approved?"

Chairman Aguilar said, "I can't answer you that way. What I'm saying is that we have three options, deny, approve with conditions or approve. We're saying that there are concerns."

Matthew Otero said, "If I accept one acre net, would you be willing to approve the subdivision?"

Frank Sedillo said, "I think my client would be willing to accept as a condition, a one acre net lot size, if that is going to be a condition placed on the approval of the subdivision."

Tom Garde said, "With all due respect to this recommendation, I think the decision is this Commissions and basically this Commission can deny, accept or accept with conditions. I don't think the Commission will be best served with attempting to negotiate something, basically it is attempting to make a decision. One of the things that I need to address to Mr. Sedillo is, we discussed at the last meeting certain concerns that I have with regards to the disclosure statement, with regards to the ability of the purchasers to enforce the restrictive covenants and those need to be addressed."

Ray Garcia said, "When we talked to Matthew, we talked about bigger lot sizes, about four acre lots. We wanted bigger lots and then we went into a bunch of different things that we couldn't get involved in, but we wanted two-acre lots. Cut in half there is only 14 of those manufactured homes out there and it has nothing to do with manufactured homes, there is 14 manufactured homes out there and there is still two acres and a person can still afford two acres and there was at least the other eight acres on the other side of the ditch to be irrigated. As it is right now they are real small and you have a huge contingent in there and it is frightening to us. These are serious issues here about this thing. Matthew wants it approved and we don't want it approved. We feel there are issues with compatibility that need to be addressed. There are all the septic systems. There is 12,000 gallons of waste going in there per day. We could probably live with two acres, put a decent house on there and we won't have problems with it."

Commissioner Al Padilla said, "We've had the opportunity to listen to the presentation, both pros and cons on the Otero Subdivision in question. It is my understanding that attempts have been made by the Tome Association and other entities to meet with Mr. Otero to try to come to some compromise that would be agreeable to both sides on this issue. I understand that attempts have been unsuccessful. It is my belief that this Commission has been given the responsibility to protect the quality of the citizen's lives, to protect the environment in which they live their lives. If we are to follow the directives of the citizens of this County, in good conscious we can't ignore the opportunity being given us here today to take a stand and help protect their land. We must have something of value to pass on to future generations. Careful scrutinizing all requests that come before this Commission and to assess the consequences of this request in the future can only do this. I urge my fellow Commissioners to follow me and support me in turning down the request for this subdivision. It is in the best interest of the landowners of this area and I believe that even Mr. Otero's children will someday thank us in the future years to come. Therefore I make a motion to deny Mr. Otero's request."

Chairman Aguilar said, "And your fact finding?" Commissioner Padilla said, "I believe it has already been said."

Chairman Alicia Aguilar said, "The motion dies for lack of a second."

Commissioner Frank Pando said, "I am not a Commissioner in that district, however I know most of the people there. I also own land real close to that area. I'm going to make a motion that this subdivision be approved with the following conditions:

- The entire Lobo Acres, I guess that's what it is going to be called, be comprised of 23 lots which is 18 that existed originally and 5 that will exist across the ditch.
  - There will be pipe fencing on each lot that the developer to ask for, including the 2 lots already sold.
  - Contact the Conservancy District about a permit for the bridge to the 5 acres.
  - I would like to see paved roads. I know that we can't mandate, but I would like to see them.
  - I would like to see a gate on the ditch road that was discussed.
  - Every lot should have EID permits.
  - They are to vacate road that existed and record and straighten the road that is being created now.
  - I'd like to see a performance bond of 125%.
- That is in the form of a motion."

Commissioner Eloy Giron seconded the motion.

Chairman Alicia Aguilar stated, "In having a compromise, the law is very specific in following the regulations that if we don't have fact finding that we are referring to the law. That's what the subdivision regulations say, if you are going to deny you have to follow what is in the regulations. As much as we may want to say, 2-acre minimum or so, not only that, the Planners recommendation was to approve. The Planners recommendation was not to deny."

Commissioner Eloy Giron said, "We have a plat right now that was approve October 24, 1983. What you're asking us to do a couple of hours ago was turning the clock back and addresses the Commissioner's actions 15 or 16 years ago. Some of the Commissioner's that signed off are already dead. If we were to try and address this issue right here, we'd be going back, we'd never go forward on these issues. All of these other ordinances we've got, we'd be turning the clock back on a lot of stuff. That's why I seconded this motion."

Marie Garcia-Shaffner asked if the conditions that Mr. Chavez presented earlier be in affect as well. She is concerned about wastewater in her community and she is concerned about drinking

water. She asked if they were included in that motion or is the Commission going to set aside those conditions.

Commissioner Pando said he thought he mentioned that. He said he would amend his motion to include all of Steve's conditions.

Steven Chavez said he would again read his conditions. (He did not read them again.)

Marie Garcia-Shaffner requested that the Commission direct Mr. Otero and Ray Garcia to come up with a compromise.

Chairman Aguilar stated, "In the last week, I have made calls to Mr. Garcia about a compromise. I called to see if there was a compromise and Mr. Garcia said two acres. Mr. Otero, I called you. I even called David Medina from Rancher's Bank to see if there could be any compromise. I think this Commission; most of us have talked to all of you. We have bent over backwards in trying to find a compromise for the community and we've had to make it for you."

Commissioner Frank Pando called for the vote.

Motion carried with Commissioner's Pando, Giron, Baca and Aguilar voting yes. Commissioner Al Padilla voted no.

#### **(I) COUNTY CLERK'S REDECORATING PROJECT**

Paula Weathersby stated she had three quotes for the County Clerk's redecorating project. It is the recommendation of the County Clerk that this quote be awarded to the lowest bidder, which is Frank Pando.

Commissioner Eloy Giron made a motion to approve the award of the quote to Frank Pando.

Chairman Alicia Aguilar stated, "For the record, I'd like to state and this comes from Counselor because Commissioner Pando is a Commissioner, but in fact it did go out for RFP and he was the lowest bidder and Commissioner Pando will not be voting on this motion."

Tom Garde said, "One other addition is that once Commissioner Pando took office he did in fact file a disclosure statement with the County that is of record with the County Clerk's Office."

Commissioner Frank Pando stated, "I did file all of the necessary papers, not only with the County Clerk, but with the Secretary of State. I have been building cabinets and this sort of thing for the last 25 or 30 years and just because I'm elected doesn't mean I can't bid."

Commissioner Helen Baca seconded the motion. Commissioner Giron and Baca voted yes. Commissioner Al Padilla voted no. Chairman Aguilar voted yes. Motion carried. **(See Exhibit H)**

#### **(J) REQUEST FOR OUT OF STATE TRAVEL/St. Louis, MO.**

Paula Weathersby stated the County Clerk is on the Board of Directors for the National Association of Counties and will be participating in the conference to be held in St. Louis, Missouri on July 16<sup>th</sup> - 20<sup>th</sup>. She does have the money in her budget to cover the expense.

Commissioner Frank Pando made a motion to approve the out-of-state travel for County Clerk Kandy Cordova. Commissioner Eloy Giron seconded the motion. Motion carried.

#### **(K) EMERGENCY MEDICAL SERVICES WEEK PROCLAMATION**

Commissioner Frank Pando made a motion to approve the Proclamation declaring May 16 - 22, 1999 as Emergency Medical Services Week. Commissioner Eloy Giron seconded the motion. Motion carried. **(See Exhibit I)**

#### **(L) PUBLIC HEARING/FINAL APPROVAL/Section 9.4 Overtime Pay Valencia County Personnel Ordinance 93-03**

Carol Anaya stated this is a final public hearing of the proposed amendment to the Valencia County Personnel Ordinance No. 93-03, Section 9.4 OVER-TIME PAY. She said the County has the Adult Detention and the Landfill operating on a 4-day shift, 10 hours per day. Therefore, by amending this Section, everyone will fall under the 80 hours pay period, actual hours instead of the 40 hours as it is addressed in the Personnel Ordinance at the present.

County Attorney Tom Garde stated the statute provides for an 80-hour two-week period and this is appropriate.

Commissioner Frank Pando made a motion to approve the amendment to the Personnel Ordinance. Commissioner Eloy Giron seconded the motion. Motion carried. **(See Exhibit J)**

#### **(M) COMMITTEE REPORTS FEMA Update**

Chairman Alicia Aguilar said, "All of you have received a letter from the Federal Emergency Management Agency. I'm not going to go into detail. A copy has been provided to our Building Inspector, to our attorney, to our Planner and to our Planning and Zoning Administrator. It indicates a response to all of the questions that were raised about nine months ago. It indicates there will be new maps forthcoming. We have a 30-day comment period. There is no appeal period. There will then be a six-month period to put everything into affect."

#### **Hospital Committee Resolution**

Commissioner Frank Pando said he was appointed Chairman of the Hospital Committee back in November. He said they have gone before the Village of Los Lunas and they have made a commitment to participate in this. He had some of the Board members go to the Belen City Council

with the same request. Mr. Pando is requesting the support of the County Commission and hopefully they will get a hospital built one of these days. He then presented Resolution 99-21 for Commission approval requesting \$5,000.00 from each entity for a feasibility study.

County Attorney Tom Garde said, "Basically we could agree to do it, but we're not going to cut a check until there is an agreement between all of the entities."

Carlos Montoya suggested that a Memorandum of Understanding with the entities be drawn up not to exceed \$20,000.00 so that we won't violate the Procurement Code.

Commissioner Frank Pando made a motion to approve Resolution 99-21. Commissioner Eloy Giron seconded the motion. Motion carried. **(See Exhibit K)**

**Census 2000 Update**

Steven Chavez said he met with the Federal Government Census representatives and they indicated that they envisioned the County as being a liaison with the Federal Census Program which would include advertising for them, photocopy their bulletins and their flyers and present those at major functions in Valencia County. They also would like to have a banner made.

Mr. Chavez said he believed it would be prudent to not have him as Chairman of this committee. He does not believe he has the time to devote to this position.

Chairman Alicia Aguilar made a motion to allow Mr. Chavez to delegate the responsibility of Census to someone else, however he will still oversee it and to allow a \$1,000.00 budget for miscellaneous expenses. Commissioner Helen Baca seconded the motion. Motion carried.

Chairman Alicia Aguilar read a letter and petition written by Richard and Lorilynn Howe requesting the Valencia County Commission to authorize passing zones along the Manzano Expressway, except in locations where it would be an obvious safety hazard. **(See Exhibit L)**

**(N) RESOLUTIONS**

Carlos Montoya presented the following Resolutions for Commission approval:

99-22 - It is a Resolution for Permanent Cash Transfers. Commissioner Frank Pando made a motion to approve Resolution 99-22. Commissioner Eloy Giron seconded the motion. Motion carried.

99-23 - It is a Resolution for Budget Increases. Commissioner Eloy Giron made a motion to approve Resolution 99-23. Commissioner Al Padilla seconded the motion. Motion carried.

99-24 - It is a Resolution for Intra-Budget Transfers. Commissioner Helen Baca made a motion to approve Resolution 99-24. Commissioner Eloy Giron seconded the motion. Motion carried.

99-25 - It is a Resolution for Inter Budget Transfers. Commissioner Frank Pando made a motion to approve Resolution 99-25. Commissioner Helen Baca seconded the motion. Motion carried. **(See Exhibit M)**

**(O) WARRANTS**

Carlos Montoya presented the Warrants in the amount of \$171,357.00 for Commission approval. Commissioner Frank Pando made a motion to approve the Warrants. 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 June 7, 1999, at 9:00 AM in the County Commission Room at the Valencia County Courthouse.

**ADJOURNMENT**

Commissioner Frank Pando made a motion to adjourn the May 17, 1999, Regular Meeting of the Valencia County Board of County Commissioners. Commissioner Helen Baca seconded the motion. Motion carried.

<p><b>NOTE:</b> All proposals, documents, items, etc., pertaining to items on the agenda of the May 17, 1999, Special Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.</p>
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**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: June 6, 1999**

**For an official copy of these minutes and attachments see Commission Book 34 Page 359**