

**VALENCIA COUNTY BOARD OF COMMISSIONERS**

**REGULAR MEETING**

**JUNE 21, 1999**

**M I N U T E S**

The Regular Meeting of June 21, 1999 was called to order by Chairperson Alicia Aguilar at 4:43 PM.

<b>PRESENT</b>	<b>ABSENT</b>
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	

**EXECUTIVE SESSION**

County Clerk Kandy Cordova read the agenda of the Executive Session. Commissioner Frank Pando asked to discuss Solid Waste as Item D of the Executive Session. Chairman Aguilar asked if the discussion would be about the contract. Commissioner Pando said, "No, Al and I had a meeting this morning and I wanted to tell you guys what we discussed. There was some stuff said that is not true and I would like to clear the air. It's not pertaining to a contract because there is no contract yet, but I would like to bring it up, if I may."

County Attorney Tom Garde asked, "Is it pertaining to items that would involve the contract?" Commissioner Pando said, "Possibly, yes, unless you want to discuss it under litigation." The County Attorney said, "I'm not so sure it would be under litigation, but I think to clarify the contract, that would be appropriate."

Commissioner Frank Pando made a motion to approve the agenda for the Executive Session with the addition of Solid Waste to be discussed under Litigation. Commissioner Al Padilla seconded the motion. Motion carried.

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

Commissioner Eloy Giron made a motion to return from the Executive Session. Commissioner Frank Pando seconded the motion. Motion carried.

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

<b>RESIGNATIONS'S:</b>	Norman Rance Loretta Garcia Toryn Terrell Brian Culp
<b>NEW HIRE/Court Security El Cerro Mission:</b>	Richard Shiplet pending zoning verification
<b>STATUS CHANGE/ With Salary Adjustment:</b>	David Baca/Sheriff's Dept. Denise Turner/Detention

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

County Attorney Tom Garde stated, "During Executive Session we discussed the potential litigation with regards to San Bar Construction, we also discussed the Bonito Land & Cattle Notice of Appeal, we also discussed the Notice of Appeal with regards to Lobo Valley and we discussed the Notice of Appeal with regards to Equity Growth and the pending litigation with regards to David Silva and lastly we discussed the decision by the Bankruptcy Judge with regards to Van Tol in which the Judge ruled that the land will remain non-conforming use as the Bankruptcy was filed prior to the closure of the dairy. As such it will remain a dairy operation."

James Fernandez said, "Also discussed in Executive Session was an update on land acquisition and more specifically the meeting that the County had with the Planning and Zoning Commission of the Village of Los Lunas and the results of that hearing as well as the closing dates for two pieces of property the County is attempting to buy."

Commissioner Al Padilla made a motion that these were the only items discussed in the Executive Session. Commissioner Eloy Giron seconded the motion. Motion carried.

**INTRODUCTION OF COUNTY ELECTED OFFICIALS & STAFF**

Chairman Alicia Aguilar introduced Commissioner Frank Pando, Commissioner Eloy Giron, Commissioner Al Padilla, Commissioner Helen Baca, County Attorney Tom Garde, County Clerk Kandy Cordova, Paula Weathersby, Sheryl Salas, Sheriff Juan Julian, Planning and Zoning Administrator Mike McCartney, Business Manager Carlos Montoya, Human Resources Director Carol Anaya, County Manager James Fernandez, County Planner Steven Chavez, Administrative Asst. Monica Mireles, Barbara Garcia, Fire Marshal John Cherry, Belen School Board President Paul Trujillo, Charles Eaton and Sofia Hensley.

### **PLEDGE OF ALLEGIANCE**

Sofie Hensley led the Pledge of Allegiance

### **APPROVAL OF AGENDA**

County Clerk Kandy Cordova read the agenda as presented. Mike McCartney asked to delete a portion of Item D (Vacation of Easements/Easement for Gail Reese, Agent AM Surveying Mike Shook).

Commissioner Frank Pando asked to move Action Item A (Proclamation/100<sup>th</sup> Birthday Elias Maez) to Item 5-A.

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

### **PROCLAMATION/100<sup>th</sup> Birthday Elias Maez**

Commissioner Eloy Giron invited Elias Maez, Jr. to bring his father, Elias Maez, Sr. to the front of the Commission Room. Commissioner Giron read a Proclamation in honor of Mr. Elias Maez, Sr. 100<sup>th</sup> birthday.

Commissioner Eloy Giron made a motion to approve the Proclamation honoring Mr. Maez on his 100<sup>th</sup> birthday. Commissioner Frank Pando seconded the motion. Motion carried. **(See Exhibit A)**

Birthday cake was served to the family and the audience.

The family thanked the Commission for the honor.

### **APPROVAL OF MINUTES**

The Minutes of May 25, 1999 were presented for Commission approval. Commissioner Eloy Giron made a motion to approve the Minutes of May 25, 1999. Commissioner Frank Pando seconded the motion. Motion carried.

The Minutes of June 14, 1999 were presented for Commission approval. Commissioner Frank Pando made a motion to approve the Minutes of June 14, 1999. Commissioner Eloy Giron seconded the motion. Motion carried.

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

Jacqueline Guilbault from Valley Improvement Association presented a brochure by the New Mexico Highway and Transportation Dept. to the Commission. She said in 1996 VIA nominated Camino Real in Valencia County as a Historic Scenic Byway. The County Commission adopted a resolution and sponsored that nomination. In 1997 VIA and Middle Rio Grande Council of Governments nominated Apple Pass Trail which goes from Camino Real to Abo. That is where the Salt Mission Trail starts. It was a three county nomination, Valencia County, Socorro County and Torrance County. The Valencia County Commission sponsored that project. The Scenic Historic Byways are designated for the recreational, educational, historical, cultural and archeological characteristics. They promote tourism and recreation in the County.

Geri Rhodes asked for a clarification on the conditions that were imposed on Lobo Valley Acres. She said Commissioner Pando said he would amend his motion to include the conditions that Steven Chavez had recommended, but he never phrased the motion to include those conditions. The motion was voted on without Mr. Chavez reading them again. She believes it is premature to have final plat approval until it is clear in everyone's mind just what the conditions are.

County Attorney Tom Garde said, "Because Commissioner Pando's motion was not seconded to act on those conditions, those conditions were not reflected in the motion." Ms. Rhodes said, "Clearly it was his intent to include them and in all fairness it seems that since there was this mistake, the Board should review the motion and vote on it again." Tom Garde said, "Under the new Subdivision Act the Commission has to make a decision within thirty days at Preliminary Plat. The clock is running and at that time and at this point it is too late to bring it up." Ms. Rhodes asked if it could be brought up right now. The County Attorney said, "No Ma'am."

Mike McCartney said, "For clarification, the conditions that Mr. Chavez recommended were also incorporated into the letter that was sent to Mr. Otero and his attorney. They are part of the requirements for final plat."

Leonard Garcia representing the MeadowLake Community Association asked whether or not on the review by the engineer that reviewed MeadowLake Road and found it to be unsafe because of the heavy vehicles that were traveling the road, or was it because of the passenger vehicles traveling the road. He asked if the engineer's report would mandate action that the road should be looked at. He also asked if the report would mandate the Sheriff to have more officers up there on a regular basis to monitor the traffic. He asked if a Writ of Mandate would have to be filed to have these two things done.

Chairman Alicia Aguilar said she has taken down the two items and they will be forwarded to administration because Public Requests is only for information purposes, however they will look into the situation and ask administration to respond.

County Attorney Tom Garde said, "The jest of Mr. Holmes report is that the trucks on that road would in fact make the road unsafe. The problem is that it is a county road and it would take a

half a million per mile to build up the road to specifications. It may be a legal question, but as far as a fiscal question, that's another matter. At this point, I don't know where the resources could come from, if in fact it could be brought up to compliance. There is a problem with the road, but the problem is financial." Mr. Garcia said the road was a safety issue and not a financial issue when the road was considered to be unsafe for buses to travel on or private vehicles. It wasn't stated that there was no money, it was safety for children.

Chairman Aguilar said, "I would want administration to go back and actually review the correspondence and report because to say that it is unsafe for buses and children and all that, we would need to go back and review the report."

Commissioner Eloy Giron asked, "Since this is being directed to administration, could a meeting be set up between the three of us, we can get with Mr. Fernandez and review the engineer's report? I think I have a copy and the Manager's Office has a copy." Chairman Aguilar asked the County Attorney, "Do you recommend something like this? We're already giving a directive to administration to look into it and maybe respond. I also have a concern that this being Public Requests that we're taking action and we're giving direction and it really shouldn't be." Tom Garde said, "Either option is appropriate, basically a meeting with Mr. Garcia and Mr. Fernandez is appropriate."

Mel Sisson said he knows there is going to be negotiations within the next few days with Waste Management. He said he owns and operates Peralta Recycling and has been in business in the County for many years. He asked for consideration during the negotiations to be able to stay in business. He asked the question, why is it necessary to have an exclusive contract. He said he did not expect an answer today, but would like to have an answer eventually.

Kandy Cordova said, "I am presently serving as Chairman for the Board of Directors for the Valencia County Senior Citizens Olympics. As Chairman I would like to express our sincere appreciation to the Commissioners for the financial assistance and for your constant support for the Senior Olympics. I would also like to invite this Board; we are having an Award Ceremony on Friday at 1:00 PM at the Senior Citizens Center in Belen. This will be for all of the people who participated locally, their awards will be given at that time." Mrs. Cordova presented the Commissioners, the County Manager and Carol Anaya with an official Senior Olympics Cap with the official logo on it.

Charles Apodaca spoke regarding the Solid Waste Ordinance and Contract that were enacted in 1996. He requested that the County Commissioners amend the Ordinance to allow the haulers that are still in business today to be grandfathered in under the proposed ordinance and contract. He said in 1996, he was a licensed, authorized hauler approved by the Environmental Dept. and the Transportation Dept. He is still certified today. He said the haulers that have followed the rules and have met all environmental standards should be allowed to continue to do business. He said the contract that the County now has bought out several of the predecessors for billions of dollars. He said at the meeting of June 14<sup>th</sup>, Marlene Feuer stated that the entire Commission understands that neither Waste Management nor the County is abiding by the laws that are on the books. He requested that they be allowed to continue business in Valencia County because no harm has come from the current arrangements. Customers are happy and the companies are performing well. He said he understands that the Commission has directed the County Manager to negotiate and draft a contract acceptable to both the County and Waste Management. His company has not been invited or included in the negotiations. He requested that the negotiators include language in the contract that will permit his company to survive. He said he would be allowed to continue in business if the negotiators in the County include in the amendment and ordinance as well as the contract, his company and those served by others licensed in 1996 and be allowed to continue in business. Mr. Apodaca said, "The proposal also quoted the County Attorney as being concerned about the contract not lapsing and the ordinance being amended to reflect the extension. The amendment was proposed at the July 6<sup>th</sup>, 1999 meeting. Since the Ordinance is being amended, please include an amendment that will allow me to stay in business in Valencia County."

## **ACTION ITEMS**

### **(A) PROCLAMATION/100<sup>th</sup> Birthday Elias Maez**

This item was moved up on the agenda and presented after Approval of the Agenda.

### **(B) REQUEST PERMISSION TO PUBLISH EMS ORDINANCE**

John Cherry, Valencia County Fire Marshal requested permission to publish an EMS Ordinance to replace an antiquated ordinance that was established in 1985. This ordinance was drafted to bring the Emergency Medical Services up to standard.

Commissioner Eloy Giron made a motion to allow the publication of the EMS Ordinance. Commissioner Helen Baca seconded the motion. Motion carried. **(See Exhibit B)**

Chairman Alicia Aguilar said one of the things that was added to the ordinance was a \$50.00 cost imposed on all of the ambulance pickups to reimburse the EMS personnel for supplies. They are the first to respond, but there is no reimbursement for the service. This would supplement the EMS Services.

## **REQUEST FOR PROPOSALS, TOME HILL PHASE V**

Jacqueline Guilbault from Valley Improvement Association said this is last and final phase of the Tome Hill Project. She thanked the Valencia County Commission for their support through the seven-year process. She requested permission to publish two different parts of the project. One is an RFP for Professional Services for the interpretive sign to be constructed and placed on Tome Hill

Park, south of Tome Hill. The second part of the project is the request to publish the bid proposal for the last phase of the construction on the park site, which is the remaining landscaping and the remaining post and cable. This will complete the entire project. The Joint Powers Agreement for those was signed in January 1998. They will be advertising in July with construction to start in September or October. It should be completed by the end of the year.

Commissioner Eloy Giron made a motion to grant permission to publish proposals for Tome Hill Phase V. Commissioner Al Padilla seconded the motion. Motion carried.

#### **BID PROPOSALS FOR FINAL PARK CONSTRUCTION**

Commissioner Eloy Giron made a motion to publish bid proposals for final park construction. Commissioner Frank Pando seconded the motion. Motion carried. **(See Exhibit C for both items)**

#### **(C) PRESENTATION OF PETITIONS**

##### **Sunflower Avenue, Court & Lane for Paving**

William Scoville presented a petition requesting that Sunflower Avenue, Court & Lane be paved. He said when the road is graded, the dust is very bad and the road is like a washboard in a day or two. **(See Exhibit D)**

Chairman Aguilar asked Mr. Scoville if these roads were dedicated. She said she would need to have the Road Department address this issue. He said there is an easement off of each deed for this. Chairman Aguilar said on her list of roads it does not show Lane and Court. She said she would like for the Commission to accept the petitions, but they will need to forward it to the Road Superintendent to see if the roads are County dedicated. If they aren't then the County cannot pave them.

##### **Old Jarales Schoolhouse Renovations**

Ruperto Baldonado stated they have done their job in presenting the Commission with petitions and a letter from the Historical Society. He said at this time they would like to know what the pleasure of the Commission is going to be.

James Fernandez said they got a corrected deed and it has been recorded with the County Clerk's Office and the property has been assessed in the County Assessor's Office.

Commissioner Frank Pando asked where the money was coming from to do the renovations. The County Manager said, "During the last Legislative Session there were items that were authorized for the County in the amount of \$62,500.00 for a Jarales Substation and a El Cerro Mission Substation. Nothing specifically was authorized for a community center." Commissioner Pando asked if the \$62,500.00 could be used for this project. The County Manager said, "It can be utilized for a substation, if that was designated as a substation. My understanding is that the legislative intent must be followed otherwise we stand to lose the funding if it is not used for a substation. If you want to use it for a community center, you would have to look at an alternative source."

Chairman Alicia Aguilar said, "A couple of years ago we had budgeted about eighty or eighty five thousand dollars for the community center and the Commissioner from that district requested that the funds be transferred to another line item so there were no funds available, so they wanted to use the old school for a community center and I think what Mr. Fernandez is saying is that we have \$62,500.00 that is available now, but they are to be used for a Sheriff's Substation." Commissioner Pando said, "I'm all for this, but the only question I have is, I know these people have had this problem for many years and apparently it can be solved, but there is no money to solve it with."

Commissioner Al Padilla asked, "Wasn't there some money allocated last year towards this project?" Ruperto Baldonado said it was \$25,000.00.

Carlos Montoya said, "There was \$25,000.00 budgeted for the Jarales project, but the prior year it was taken out of the budget. We still haven't used it so it is still in the budget until June 30<sup>th</sup>."

Commissioner Helen Baca made a motion to renovate the old Jarales School and put a substation, because it is desperately needed. Commissioner Frank Pando seconded the motion.

Commissioner Al Padilla asked if that money could be used if they use the same building for a substation and a community center. The County Attorney said, "As I understand, the grant is for both projects so we're talking about half of the \$32,000.00." The County Manager said, "There is \$62,500.00 allotted for a substation in Jarales and \$62,500.00 allotted for a substation in El Cerro Mission." Tom Garde said, "If in fact that grant is to be utilized, there needs to be a designated substation. A portion of the building could be a substation, but the rest of the building would have to be a multi-purpose. You cannot co-mingle funds. You would have to designate an area for a substation and the other remodeling would need to be in the remainder of the building." Commissioner Padilla said, "You've got \$62,500.00 and you have \$25,000.00" The County Attorney said, "You can't co-mingle funds."

Carlos Montoya said, "\$25,000.00 was designated for the Jarales Community Center. The only suggestion I know is, that the building is in dire need for a roof. I think for \$10,000.00 we can get a roof in there. \$25,000.00 could be used to roof the building. One half of the building could be used for a substation and the other half for a community center. Regardless, a roof is needed for the whole building."

Chairman Alicia Aguilar said, "I have a question on the amount that is budgeted. Even though it was budgeted, have we used that?" Carlos Montoya said, "It's in the budget right now." Chairman Aguilar said, "Yes, but in discussions of putting a freeze on some of these expenditures for the end of the budget year and bringing up the \$25,000.00, I'm not sure if the \$25,000.00 is even there, and the motion is to approve \$62,500.00 for a substation utilizing this facility or this building. In previous conversations with Commissioner Baca, one of the ideas that she had was for MeadowLake and for El Cerro, we'd actually planned it where we went to the Legislature and we asked for a match

for like \$75,000.00 one year and we would match the \$75,000.00. The next year we would go for another \$75,000.00 and matched it with 75. Then we would be able to have \$300,000.00 within two and a half years. So now they have a community center that is designed for a community center. I think that's her plans to save the Jarales School because of the space and utilize it as a substation. The next step to that is, we're not losing a community center, but have the Commission commit to pursuing the funds for a community center."

Paul Trujillo said, "I was involved in the early planning stages with the community to renovate the Jarales School. From the very beginning the intent was to include a substation as part of the facility. However to preserve the integrity of the structure itself, it is necessary that we have it roofed as soon as possible, as the building would not be able to house a substation or anything else, owing to the damage being done by the rains. I see that the usage as a substation is still in accordance with the original proposal that was presented to the Belen School Board and approved when the Belen School Board did transfer the property to the County. The substation was included in that proposal."

Chairman Aguilar said, "What you are saying is that we have the funds now, so you would be in agreement, that at this time if we utilize it as a substation because those are the monies that we have that would be ok, with the commitment that we pursue legislative funds for a community center in the very near future." Mr. Trujillo said, "Certainly, with the understanding that the most important aspect of this project is the roof." Chairman Aguilar said, "And we would have the funds from the \$62,500.00 to start on that right away." Mr. Trujillo said they do have the cooperation within the community for volunteer labor to help out.

Ruperto Baldonado said, "I understand that \$25,000.00 was allocated for the roof before." Chairman Aguilar said, "Mr. Baldonado we budgeted \$25,000.00 in the beginning, but I think that with Mr. Montoya bringing this up in the expenditures of the jail, the prisoners and everything else, what I'm saying is that the \$25,000.00 may appear on the books, but it may not be there. Mr. Fernandez am I correct?" James Fernandez said, "You have an item that appears on the budget but as we close out the end of the financial year, whether the funds will be available for that specific purpose is doubtful. We do have a grant and know there is money from the \$62,500.00 that is available and is earmarked for a substation."

Commissioner Eloy Giron said, "The only question right now is, we have \$62,500.00 allotted from the State Legislature, allotted for a substation so the only question we have right now is where the \$25,000.00 is coming from to go ahead and repair the roof right?" Chairman Aguilar said, "We're saying the \$25,000.00 isn't there and shouldn't have been brought up because, all we have is \$62,500.00 and that could be used, we could tap into that to start fixing the roof and start working into it as a substation. Mr. Trujillo is saying that the original plans from the community and the schools that donated the property were to utilize it, partly as a substation. They are in agreement that if we do that and if we pursue funds for a community center that is designed as such, I think you'd be happy with that."

Paul Trujillo said, "As a representative of the committee, I think the committee would be pleased with that."

Commissioner Al Padilla asked if the whole building would have to be designated as a substation. Chairman Aguilar said, "We're talking about repairing the roof and preserving the whole building and I've been in that schoolhouse and it is not that large, once you start looking at office space and some offices in there, it's not that big."

Jacqueline Guilbault said it is a very good project but it is on the Register of Cultural Properties. Depending on the level of renovation, there are certain things that the New Mexico Historic Preservation Division would need to approve the plans before the work is done.

Commissioner Frank Pando asked how you take something out of the Historic Society. Jacqueline Guilbault said it is already on the State Register, but if you want it out, you have to go through a process to get it removed. Buildings can be removed if they go through the process.

Motion carried on Commissioner Baca's motion to renovate the building as a substation.

Ruperto Baldonado said he would like for the Commission to contact Andres Lovato for direction on what the next step is going to be. Chairman Aguilar said they would send a letter indicating what was approved and a copy of the bill and letting you know that you need to have contact with the County Manager because of the regulations from the Historical Register.

#### **(D) VACATION OF EASEMENTS**

##### **1983 Road & Utility Easement for Lobo Valley Acres Subdivision**

Mike McCartney said, "As per your request at the May 17, 1999 Meeting, before coming back for Final Plat Approval that a road and utility easement that was recorded in 1983 be vacated by this Board. Administration recommends approval."

Chairman Aguilar said, "That's your district." Commissioner Padilla said, "I'd prefer somebody else make a motion on that."

Commissioner Frank Pando made a motion to approve the vacation of the road and utility easement. Commissioner Helen Baca seconded the motion. Motion carried with Commissioner Pando, Commissioner Baca and Commissioner Giron voting yes. Commissioner Padilla voted no.

#### **Easement for Gail Reese, Agent AM Surveying/Mike Shook**

This Item was deleted.

#### **(E) FINAL PLAT APPROVAL/Lobo Valley Acres Subdivision**

Mike McCartney said this is a request for final plat approval for Lobo Valley Acres. At the May 17, 1999, Valencia County Commission Meeting the preliminary plat approval for Lobo Valley Acres was approved based on the following conditions: He said, "If you notice in part of your packets you'll see a letter and a note from our office, as per the letter from the New Mexico State Highway

Dept., Mrs. Kathy Trujillo was contacted for possible impact fees for Lobo Valley on June 1, 1999. On June 2, 1999 Mrs. Trujillo returned the call and informed us that no impact fees would be imposed on Lobo Valley. As we go to the letter dated May 19, 1999, we will address each and every condition.

- You must have 18 lots on the West Side of the ditch, no less than 1.0 acre net each and 5 lots on the East Side of the ditch no less than 1.0 acre net each. I think if you refer to your packet you will the plat map, that condition has been applied with.
- Pipe fencing on all lots including the 2 lots already sold. I think that's something that has to be addressed. There will no permits issued, I think in his covenants that are addressed. That is complied with.
- Restrictive covenants, Mr. Otero as the developer and the purchasers will enforce them.
- The existing road from 1983 will be vacated. (This was done.)
- Item 5, a permit from the State Engineer's office for subdivision water use is included and if you'll refer to the Subdivision Regulations, this has already been complied with also.
- Item 6 is the right of inspection and recession inserted into the disclosure statement. This has been complied with.
- Item 7 is to insert into the disclosure statement that roads will be completed to minimum County specifications within 60 days of Final Plat Approval. This is the one item that has not been complied with, where it states in the disclosure statement that the roads will be completed within 60 days of final plat.
- Item 8 is to insert into the disclosure statement that no lot will be less than 1.0 acre net.
- I have a letter that I'd like to pass out at this time also from Ranchers Bank with a Certificate of Insurance as required by Condition 9 is prior to Final Plat Approval a surety bond of 125% of appraised land value will be required. I'll let that be passed around before we go to condition #10.
- Item 10 is a Middle Rio Grande Conservancy District locked gate on the ditch bank off of Patricio Road. Mr. Otero furnished us with a copy of a letter of denial from the Middle Rio Grande Conservancy about putting up a gate off of Patricio Road. It is self-explanatory and says, "This is a response to a request to install gates across a maintenance road of the La Costancia Ditch. This district does not recommend a gate be placed on the La Costancia Ditch Road. Gates will adversely affect the district's operation and maintenance activities of this ditch."

Frank Sedillo, attorney for Matthew Otero said, "In our research since the Preliminary Plat Approval, we were able to locate a letter from the Valencia County Board of Commissioners directed to Rex Kirkham of Fidelity Title Co. The letter is dated January 26, 1998. The letter essentially says that the Valencia County Administration had reviewed the Warranty Deed from James Coupland and wife Lyn Coupland who were the owners prior to Mr. Otero. It said the letter is to assure you that Valencia County recognizes the plats filed on October 24, 1983 as a valid land division survey. Essentially with regard to the 18 lots, the County had apparently recognized that as a valid land division survey. Our position was that it was already a subdivision and I think that Commissioner Pando mentioned that at the last hearing. I just wanted to make the Commission aware that essentially it looks like we're in keeping with past Commission's actions."

Steven Chavez said, "Substantial compliance has been met under our Subdivision Regulations. Once the developer or the applicant has substantially complied with the conditions imposed at Preliminary Plat, the Commission has 30 days to decide on the Final Plat. If the Commission does not decide on the Final Plat in the 30-day period, then the developer has the right to demand that a certificate be issued by the Commission for approval of the Final Plat. The decision has to be made within 30 days. I'd like to comment on the letter that was given to the Commission for the record. Although it appears that letter says there is a valid land division, I've read the letter, but that is really not germane to what we are doing here. It has no relevance whatsoever."

Commissioner Eloy Giron said, "We had asked for a 125% Performance Bond and what I have here from Ranchers State Bank is general liability coverage. Is that the same type of coverage Tom, that we're asking for?" Tom Garde said, "The record indicates that it was a performance bond that's required. This is not a performance bond. It's insurance, it's a statement by the bank saying he has the funds to complete the infrastructure. It does not address that one condition. I think that is a requirement this Commission made."

Commissioner Al Padilla asked Matthew Otero; "Since the preliminary approval have you been doing any advertising?"

Matthew Otero said, "No I have not paid, myself, for any advertising. I will let you know that I was frustrated and angered that a lifelong friend of mine, Harold Maes and Ellie of the Flyer Press, did advertise something about Lobo Valley Acres. They were under the impression that because of the article in the newspaper and since it was approved that that could be done."

"There's probably some certain legality that needs to be done later on, but I did not pay for that advertising, I did not condone it, I had nothing to do with the advertising. I lost a friend because I went storming into his business in anger because he did it. He says it's none of your business, you didn't pay for it and he threw me out of his business."

Commissioner Al Padilla said he would like to have a statement from Ray Garcia. Mr. Garcia said he would like to have Lora Lucero, the attorney for the Tome Association makes a statement and then he would make a short statement.

Lora Lucero said she has been retained by the Tome Association to represent them in the appeal. She said, "Last week the Association did file an appeal of your decision of May 17<sup>th</sup> on the Preliminary Plat. We believe, because you have an appeal pending that it would be prudent not to approve the Final Plat at this point in time. If all conditions have not been met that were set out for

the Preliminary Plat Approval, we think you are required not to approve the Final Plat. We will be, if the final plat is approved this evening, we will be amending our appeal to include an appeal of this decision this evening and requesting tapes of this hearing. We will be asking for a remedy if the Court decides in the Association's favor that this final plat be vacated. I think it's very prudent for the Commission to at least let the public know as you proceed down this course that the final plat may be vacated in the future. I would simply ask you to ask yourselves when you're making this decision, what is our responsibility and how do we best protect the public and Valencia County residents in this decision. If this subdivision is in dispute, as it is now, because it's in Court, are you serving potential purchasers with the approval of this final plat or would it be better off delaying the decision until after the Court makes a determination?"

Tom Garde said, "Under the Subdivision Act if this Commission does not take action within 30 days as Mr. Chavez indicated, the subdivision is automatically approved. As there was no restraining order that was issued, if in fact this Commission takes no action, the Subdivision will be approved. I think the Commission must make a decision if it is to have any teeth with regards to its approval of the Preliminary Plat."

Chairman Alicia Aguilar asked, "Mr. Garde, in your opinion, has this Commission followed the Subdivision Regulations?" Mr. Garde said, "Basically the status at this point is substantial compliance with a directive as set out by this Commission in a plat. I believe based on representation by Mr. Chavez that substantial compliance has been met. The only issue before this Board is whether or not the Commission will accept the insurance rather than a performance bond by Mr. Otero."

Commissioner Pando asked the County Attorney if the County is protected as well with the insurance credit as with a surety bond. The County Attorney said, "No. The surety bond is an insurance policy for the County. What we have here is an insurance policy for the bank." Commissioner Pando asked, "What would Mr. Otero have to do to satisfy that requirement?"

Mike McCartney said, "Based on prior subdivisions, they bring in a notarized letter of agreement that all conditions must be met or that they are liable. The County has no liability and they file that with the plat map in the County Clerk's Office. This Board does not sign the Plat Map until such time as that criteria is met. As an example, you put two conditions on Manzano Mountain Ranch approximately five months ago; it is still not signed. It is still sitting there because they have not met those conditions. It is not a subdivision until it is filed in the County Clerk's Office and this Board does not have to sign the mylar and those paper copies until such time as you are satisfied."

Commissioner Eloy Giron said, "On Preliminary Plat I think, and I'm speaking for myself, I don't know if the other Commissioners will agree, but I think the Commission received the raw end of the stick because we had before us a replat for Lobo Valley Acres. We had a plat with 18 splits on it that was approved in 1983. We had half of the room that wanted to add, I don't know how many more lots there, 20 some, I forgot. We had the other half of the room that wanted us to go ahead and erase these lines and vacate it. Now this question is to Tom, what perimeters does the County have on vacating property? The only way we can vacate property is, if the owner comes and applies for that or we go out and buy a piece of property and condemn it for whatever we need for Government business. Isn't that true?" The County Attorney said, "That is correct. The only time you can vacate property is when the property owners come before you and ask it to be vacated." Commissioner Giron said, "We have a piece of property that was cut up in 1983 with 18 splits. Before the May 17<sup>th</sup> meeting, they had no conditions on that piece of property. Right now Mr. Otero has to comply with conditions and come up with some disclosures. Now some of the residents in Tome are protected. I was very offended personally, I don't know about the rest of the Commissioners, but at that meeting we were there for a replat, not to vacate. I was attacked personally on that. We had different agendas and I know in my packet, I know what the agenda said and I think the County right now is a lot more protected than a month ago on that piece of property." Mike McCartney said you can vacate a plat if you find someone circumventing regulations, there were 18 one-acre lots on the original plat since 1983.

Frank Sedillo said, "It has always been our position with regards to those 18 lots to the East that was a pre-existing subdivision and that essentially all he wanted to do with regards to those 18 lots was redraw the lines. I think that's what we had said a number of months ago when we were first here. That subdivision was created back in 1983. It was a disagreement that arose and some other development to the West that wanted to take place, so we went with the full subdivision process because that was the recommendation made by county officials. We have gone through that process, we've complied with all of the provisions of State Regulations and County Regulations with regard to the performance bond requirement, I have had communication with Mr. Garde and he had informed me that the letter of credit as Commissioner Pando had called it, would be sufficient."

Tom Garde said, "I have sent you a letter saying I wanted a copy of what you're submitting. That is in fact not correct."

Frank Sedillo said, "That's my recollection of what our conversation was Mr. Garde. If I misunderstood in some way, I did send a letter verifying our conversation. However putting that aside, the liability insurance does protect the county because if Mr. Otero does do something wrong with regards to this project the County would be able to sue him, not only to sue him and collect from the insurance policy that is available, but they would be able to sue and ultimately Mr. Otero's assets may be responsible for the debt that is not covered by the insurance."

Chairman Alicia Aguilar said, "Not to interrupt you, but we have asked our Counsel about the surety bond and he represents this Commission and I really appreciate the free legal advice but we do have Counsel to provide us with that."

Frank Sedillo said, "I'm not trying to provide legal advice, but I'm just trying to make the record and support my client. The second thing I understood is, that performance bonds are typically

not requested in these types of developments and if they are asked for, that the information that we provided is sufficient."

Chairman Aguilar said, "We've already discussed this, it has already been clarified by substantial compliance."

Commissioner Frank Pando said, "I also take offense to the way we were treated in the paper. If some of you people think this is an easy job, please run for it. It's not as easy as it looks. If you think we're not doing it right, please challenge us and please run for the office. I welcome it. I also welcome all of you as residents and citizens, I'm glad to see you here and I hope you continue to be active, not just because of Lobo Acres."

Chairman Aguilar said, "This has been a very difficult issue. It has created a wedge between Commissioner Padilla and myself and I think that this Commission listened to the residents, the original request was for 28 lots and we took away 5 of those lots to stay within the law and the latitude allowed to this Commission. That's what we have, as much as we may want to put the law aside, we can't. We have the law and we have regulations that we have to comply with and no one is above the law especially an Elected Official. You can't put the law aside and say I like you and this is what I'm going to do. That's all I'm going to say."

Ray Garcia said, "It has been a very difficult issue, there is no doubt it. Whether the developers like it or not, communities have a right to ask the developers to develop something reasonable in their community. People come in and do whatever they want with their property and they leave. We're the ones that live there. Our property values may be harmed. It may turn out to be a grand beautiful subdivision, but this is why we came here and this is why we put pressure. People ask us to bring up our concerns. I personally have been a gentleman to everybody here including Mr. Otero. I've always said I didn't want him to lose money. I don't care if he's a billionaire that would make me happy. I don't care about that. I care about my community. We don't want to be split by a bridge either. The only thing I want to say is, I always wondered what was wrong with the people in Tome when I read in the paper that the developer gets certain restrictions in Valencia, for instance one and a half acre lots and stick built homes and we get the trailer park. It just seems to me that it ought to be fair across the board. This is how we see it. A lot of stuff comes back and we just have to react. I care about my community, I care about what's going to be there and I care about my home."

Chairman Alicia Aguilar said, "I appreciate the comments, but that's why we asked the Commissioner of that district first to always make a recommendation. I'm asking, Commissioner Padilla, it's your district."

Commissioner Pando said, "I agree with what you said. The only problem is that this subdivision was already created without us having anything to do with it. The one in Valencia is completely different. That is a 17-acre lot. It has never been cut up like this one was. We can control this one. We had no control over the other one. You had the same opportunity and so did every Tome resident or anybody else in the world to buy that land. You guys should have bought it and done whatever you wanted at that time." Ray Garcia said he wanted to make sure his community is safe and it's a nice area. He said, "No matter how you look at it, this is political decision."

Commissioner Eloy Giron said, "Mr. Garcia you stated that you wanted a reasonable subdivision over there and you also said that these developers go halfway through a project and then leave. You want us to make a decision to protect the community, look how many disclosures there are. This was given to us on May 17<sup>th</sup> and look how much you can protect yourselves with. You brought this up on the performance bond, the performance bond is there in case Mr. Otero goes defunct and you guys aren't stuck with a sore thumb over there. The Bond Company will come in and finish the project. That's the reason why we're asking for these performance bonds, we didn't have that bond 60 days ago. Once this is complete, you will have that protection. People that didn't understand the issue attacked me. We had a piece of property cut up in 1983 and we've done everything possible to protect the residents of Tome and Valencia County with this."

Commissioner Al Padilla said, "There is a question on the performance bond that I have concerns with and also on the appeal that is taking place. I would like to make a motion that we table this matter until those questions are clarified."

Commissioner Eloy Giron asked the County Attorney what the alternatives were on this. The County Attorney said, "The alternatives are to deny final plat, accept final plat, take no action and final plat is automatically approved."

Motion died for lack of a second to Commissioner Padilla's motion.

Commissioner Frank Pando made a motion to grant final plat approval of Lobo Valley Acres with the stipulation that Matthew gets a performance bond to the Commission before final plat is signed. Commissioner Helen Baca seconded the motion. Motion carried with Commissioner's Pando, Giron and Baca voting yes. Commissioner Al Padilla voted no.

#### **(F) PRELIMINARY PLAT APPROVAL/Spellman Estates Subdivision**

Mike McCartney said this is a request for Preliminary Plat approval for Spellman Estates. The agent is Crawford Development Services. It is located in the MeadowLake area between Saxon Road and Amy Road. It will create 15 one-acre net lots. At the March 9, 1999 Planning & Zoning Commission Meeting, Spellman Estates was recommended for approval.

Steven Chavez said they have gone through the proposal. It is on the East Mesa. They've got all of the approvals from all of the State Agencies as well as the local agencies with no additional conditions. He said, "The only additional conditions that we think are necessary to protect the County are conditions that we think need to be placed in the disclosure statement. We feel that B-9, Page 5, should be amended to recite the following:

"All manufactured or mobile homes to be placed within Spellman Estates shall comply with the minimum floor space requirements established in the Valencia County Zoning Ordinance and the setup must comply with State and Local Building and Zoning Codes."



Mr. Chavez said, "The reason we believe that is necessary is there are lots of mobile homes coming into Valencia County that don't know that there is a mobile home ordinance or that there is a space requirement in the ordinance. I think this just validates it. The second condition is in the same paragraph. The developer would like a disclosure statement that would allow mobile homes that exceed 10 years from now. We feel there is a public safety issue and the County does have the authority to require or strongly recommend a specific year, no later than that year. Many of the earlier mobile homes don't have the structural requirements that they have now. Those mobile homes do comply with State, Federal and Local Ordinances. Some of the older ones don't. In my conditions, I deleted 1989 and replaced it with 1996 or later. The common practice in Valencia County, before I got here was three years or earlier, I think it's a prudent way to go instead of establishing a year. Conceivably the subdivision may not be completely developed until 2004 or 2005 and we're dealing with 8-year-old mobile homes. The language should reflect three years or later only when the purchaser places the mobile home on the lot."

Chairman Alicia Aguilar asked why there was no 125% performance bond on the preliminary plat approval. Steven Chavez said, "What we can do is require a letter of credit. By doing that we are not treating this developer any different than any other developer. What we're looking at is whether the developer can meet the requirements or the conditions that we place on it. The conditions that we are placing are not substantial and since they've already dedicated to make the road improvements, it is our belief that the developer can meet those conditions and we can place less stringent requirements. The guarantee language in the Subdivision Regulations speaks to not protecting the County, but the intent of it is to make sure that the developer can meet the conditions and the conditions they impose on themselves in their disclosure statement. We feel this developer can meet those conditions with a letter of credit."

Chairman Aguilar said, "Buried piping will need to be coated with metal or made out of plastic. Structured coating will need to be replaced with coated materials, plus on the septic system new soils are going to have to be brought in, in addition to installation of roadside bar ditches. Schedule of construction, it says construction shall begin as soon as preliminary plat for Spellman Estates is approved, why is it on the others they can't start until after final approval." Steven Chavez said it is his understanding that the developers intend to build rather than to bond out. They have shown that they can meet the requirements of their own disclosure without additional conditions being placed on them.

Chairman Aguilar said, "Look at me as being totally stupid, if we just finished a subdivision on approval and you're saying on approval they need a 125% bond and you're telling me yes they did, but on this other one they can meet it with a letter of credit, but on the other one we weren't sure so we want to place further restrictions on them." Steven Chavez said that is exactly correct. He said, "The developer in the earlier presentation didn't want to comply. We had to pull him into the system through discussions with the Attorney General and threatened civil action. I felt a bond was necessary to make sure that he fulfilled those conditions."

Commissioner Frank Pando said he shared the same concerns as the Chairman. He said he believes in order to protect the County, the same restrictions should apply to everyone. Commissioner Al Padilla said he feels the same way also.

Steven Chavez said, "As a point of clarification, I would just request that you don't be so restrictive in your opinions regarding losses and such. That section in the approval guarantee is permissive. It doesn't say you have to do that. If a developer cannot meet the conditions or their own conditions in their disclosure statements, you can ask for a performance bond and make sure that they do it. You can treat developers differently by the language itself if the County feels a different treatment is necessary."

Chairman Aguilar said, "Mr. Chavez I'm going back about a year ago when we got a subdivision in Tierra Grande. It was brought in and we all knew the subdivider. He comes from a good family, we've all known him, and he's from Valencia County. We said ok. He promised to do everything. It turned out that he started selling the lots, the disclosure statement was changed different from what was given to the individuals versus what was filed. The roads were never done. We had individuals out there bringing in basically shacks of mobile homes that were not on electricity or gas. There are no roads and we went out there and the developer sent these poor people a letter stating that they were in violation of zoning and that they needed to give the land back. To me that is an example of what's good for the goose is good for the gander. If we are going to place it on one, we place it on all. I'm not saying that Mr. Horne cannot perform, but he should agree and say yes I'll do it and there's no problem."

Stephen Crawford said, "I want to make sure there is a delineation between attempting to file the final plat versus building roads versus bonding for building roads. I believe the distinction that we're making here is, there are two ways to proceed for final plat in this County, the first way is that we say I want to file a plat right now and I'm not done building and I'm not through installing water lines or wells or whatever my obligation is. In that case to protect public health, safety and welfare, you have to have a financial instrument that if I go away in the middle of the construction that you are covered. The other way of doing the work and assuring the public integrity is that you don't let us file the plat until all of the construction work is done. It is the converse of the ordinance that you are suggesting we start construction after the preliminary plat is approved."

"If I'm asking to file a plat I need to come up with a lot more assurances and guarantees to make sure that I'm not out there selling a one acre lot with no road in front of it. On the other hand if I'm saying I'm going to build all of the roads before I ever ask to create the one-acre lots and have the Mylar put in the Courthouse, the County is fully covered. If I say I'm going to build the roads first, all you have to do is go out there and look and make sure the roads are built and then you let me file the Mylar in the Courthouse. If I want to do it the other way and I want to file the plat now and start selling

lots now, then you must have some sort of guarantee in line. I think that's the line you're looking at. The schedule that was put into this project was assuming that Mr. Horne was going to start construction and finish a lot of these things before he asks you to allow him to place that final plat in the Courthouse. You're Administrative Officer, Mr. McCartney takes care of the last little bits of those loose ends for you by making sure that a plat doesn't get filed without either all of the improvements being built or some sort of financial guarantee."

Mike McCartney said, "I think the opinion of the Planning and Zoning Dept. is that we must upgrade as time goes on and if a lot isn't sold by the year 2002, we're talking almost 13 years, and as we approve these subdivisions, we might as well upgrade each district and in continuing to do so in consistency with what we've done in the past."

Commissioner Eloy Giron made a motion to approve preliminary plat approval for Spellman Estates with the recommendations of Mr. Chavez, with further restrictions that the mobile homes not be more than three years old. Commissioner Frank Pando seconded the motion. Motion carried.

Commissioner Eloy Giron made a motion to have a 125% performance bond at final plat. Commissioner Frank Pando seconded the motion. Motion carried.

Commissioner Eloy Giron left the meeting.

#### **(G) COUNTY MANAGER'S REPORT**

County Manager James Fernandez reported on the following:

- At the direction of the Commission, he met with several of the developers of Highland Meadows regarding the roads in Highland Meadows. He indicated the Road Dept. will go out and start plotting the roads to try to determine how close they come to the mileage of the roads and what roads the County has for maintenance.
- The El Cerro Community Center will not be ready for another two weeks. They are still in the process of laying the flooring and the bathroom fixtures are not in. We have received requests to utilize the Center. The WIC Program has requested to use it and The Collaborative Action Team has also requested the use of the building for an arts and crafts program for the youth in the area.
- We have been contacted by the News-Bulletin on items they are proposing, one being a cartoon map. It is placed in visitor's guides and Chambers of Commerce. Another project would be the yearly report. The cost of that would be \$2,200.00 to be expended in October. The cost of the cartoon map is \$198.00 and would be expended in October also.

#### **(H) RESOLUTIONS/Intra Budget Transfers/Permanent Cash Transfers**

Carlos Montoya presented Resolution 99-31 for Commission approval. It is for Intra Budget Transfers.

Commissioner Helen Baca made a motion to approve Resolution 99-31. Commissioner Al Padilla seconded the motion. Motion carried.

Carlos Montoya presented Resolution 99-32 for Commission approval. It is for Budget Increases.

Commissioner Al Padilla made a motion to approve Resolution 99-32. Commissioner Frank Pando seconded the motion. Motion carried.

Carlos Montoya presented Resolution 99-33 for Commission approval. It is for a Permanent Cash Transfer and Budget Increase.

Commissioner Frank Pando made a motion to approve Resolution 99-33. Commissioner Helen Baca seconded the motion. Motion carried. **(See Exhibit E for the three items)**

#### **(I) WARRANTS**

Carlos Montoya presented the Warrants for Commission approval in the amount of \$963,658.00. Commissioner Frank Pando made a motion to approve the Warrants. Commissioner Helen Baca seconded the motion. Motion carried.

#### **NEXT MEETING**

The next Regular Meeting of the Valencia County Board of County Commission will be held on July 6, 1999, at 8:30 AM in the County Commission Room at the Valencia County Courthouse.

#### **ADJOURNMENT**

Commissioner Al Padilla made a motion to adjourn the June 21, 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 June 21, 1999, Regular 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: July 6, 1999**

**For an official copy of these minutes and attachments see Commission Book 34 Page 806**