

VALENCIA COUNTY BOARD OF COMMISSIONERS

Regular Meeting

January 15, 2001

The Meeting was called to order by Chairman Padilla at 5:05 P.M.

PRESENT	ABSENT
Aurelio H. Padilla, Chairman	
Gary Daves, Vice-Chairman	
Alicia Aguilar Member	
S. T. Frank Pando, Member	
Helen Baca, Member	
James Fernandez, County Manager	
Thomas Garde, County Attorney	
Tina Gallegos, County Clerk	
Press and Public	

Executive Session

County Manager James Fernandez read the agenda for executive session. Mr. Fernandez asked to add item C, contracts for Community Monitors and the Jail Monitor. Commissioner Pando made a motion to go into executive session. Commissioner Daves seconded the motion. Motion carried with a vote of 4-0.

Commissioner Pando made a motion to return to regular session. Commissioner Daves seconded the motion. Motion carried with a vote of 4-0.

Mr. Fernandez reported that under personnel matters, during executive session the Commission discussed the following: status change from part time to full time for Shawn Quintana under Cops II, the resignation of Peggy Estrada from the Assessor's Office effective January 18, 2002, the resignation of Heather Garcia from the Treasurer's Office effective February 1, 2002, and the dismissal of David Padilla from the Road Department effective January 11, 2002.

Under litigation, Mr. Fernandez said the item discussed was that Administration received notice that the Bur Ben case, which is a county access road problem in regards to Steven Otero, has been scheduled to be heard at trial on March 19, 2002. The last item discussed in executive session were the contracts for the Community Monitor and the Jail Monitor. Direction was given to staff to continue the Community Service Monitor for the remainder of the fiscal year, at an estimated cost of \$3,740.00. The duties of the Jail Monitor have been assigned to the County manager effective January 25, 2002. Commissioner Pando made a motion that's all that was discussed in executive session. Commissioner Daves seconded the motion. Commissioner Daves said the Community Service Monitor is a person who facilitates people in lieu of a fine or jail to go out to pick up trash and various things like that. He also said these people would serve time in jail at a cost to the County, so this is a case where the County's savings would probably not occur because of this cut, simply because the jail costs would probably be in excess. Commissioner Aguilar said she supports everything except the termination of the Jail Monitor contract, as the Jail Monitor contract is part of the Cornell contract. Commissioner Aguilar has a problem with the fact that now the duties of the Jail Monitor have been assigned to the County Manager, because the County Manager has become the Fiscal Agent in addition to being the County Manager and everything else. Commissioner Aguilar also said she has a problem with the contract itself in that it does identify a Jail Monitor. Commissioner Aguilar said when the Commission voted about the cuts and it affected the Extension Service and others, now it seems to her that they're going back and looking at the benefits of certain items and reinstating them. She feels like the Commission is going backwards and feels very uncomfortable with that. Commissioner Pando said that as far as the Community Monitor, if the County had to send 10 prisoners out of the jail to another jail, it would cost the County approximately \$168,000.00, to him \$3,700.00 verses \$168,000.00 is not good math. Commissioner Daves said if he could get another vote, he would reverse the decision on the Extension Service. Commissioner Aguilar said the Commission took action and it affected the community. The decision she made was based on a legal responsibility. Commissioner Aguilar said she trusts someone when they say they're going to cut and thinks the Commission should review everything and not just pieces of it. Commissioner Pando voted yes. Commissioner Aguilar voted no because of the Jail Monitor contract but said she supports everything else. Commissioner Daves voted yes. Commissioner Baca voted yes. Motion carried with a vote of 3-1. Mr. Fernandez added that the Commission heard from the Head Magistrate Judge who provided documentation on the caseload.

Pledge of Allegiance was led by Commissioner Baca.

Approval of Agenda

Mr. Fernandez asked that item J be deleted, and said that he would present item K for the Sheriff. Under item R, Mr. Fernandez asked to add a request from the County Clerk regarding BOE

employees. Commissioner Daves made a motion to approve the agenda as amended. Commissioner Pando seconded the motion. Motion carried with a vote of 4-0.

### **Approval of Minutes**

Commissioner Aguilar made a motion to approve minutes for December 11, 2001, December 18, 2001, December 20, 2001, and January 02, 2002. Commissioner Daves seconded the motion. Motion carried with a vote of 4-0.

### **Public Requests**

Rita Padilla Gutierrez told the Commission that 9 months ago a group of individuals formed a committee to form a project. That committee is known as Arisas de Rio Abajo Planning Committee. The members are Maria Elena Arella, Regina Padilla Griego, Rita Padilla Gutierrez, Carlos & Victoria Otero, Cecilia Padilla, Rosemary Romero, Charlie & Irene Sanchez. Ms. Gutierrez thinks this is going to be an important cultural venue for the County. In essence, this is the development of a process by which new comers and old families of the Rio Abajo area are able to present the history of this valley in a pictorial presentation. The Committee intends to launch the program on April 5, 2002 at the Belen Municipal Building. Once the Committee gets this out, they will begin to recruit families. In addition to that this program is going to have local artists come in to display their works. The public is invited to this program.

Dotie Hoffman thanked the Commission as somebody cleaned up trash along Highway 314. Ms. Hoffman also requested budget information at the last meeting and thanked Mr. Fernandez for his responsiveness on that.

Cathy Chavez, Deputy Director for Youth Development Incorporated in Valencia County, said that YDI is a non-profit organization that has been in Valencia County for 15 years now. There are several programs in which the target population is in the East Mesa area. Ms. Chavez is concerned that the community center is closed due to budget problems that the County is having. Ms. Chavez said YDI would like to use the facility for some of the programs and said they collaborate with many of the organizations and families in that area, which also have expressed concern about it closing down. Ms. Chavez said when there is a closed facility it is subject to vandalism, and told the Commission that YDI carried liability insurance and would like to schedule to use the facility. Commissioner Aguilar would support using the facility and told Ms. Chavez to get a hold of the Personnel Director to schedule it. Mr. Fernandez said there is a staff member going to open the facility daily for different groups that have already been assigned for the utilization. Commissioner Daves asked if there is a plan to close this facility. Mr. Fernandez said he would make any effort to work with these groups.

Jerry Rhodes asked the Commission about the County's role and responsibility about the condemnation of the Jarratt's property. Ms. Rhodes understands that the Jarratt's are outside the Village of Los Lunas limits and for some reason Los Lunas can reach over the County boundary and condemn land. Ms. Rhodes asked if the village has to annex the property before they can condemn it. Ms. Rhodes asked what is to protect any citizens from such an action. Tom Garde, County Attorney, said he has not researched the issue but the Village does have the authority of condemnation, so generally speaking they do have the right to condemn property, but as far as the specifics of condemnation of the Jarratt property, he has not researched the issue. Ms. Rhodes said she would like Mr. Garde to research it so she could be sure if there's any way the County can protect county residents. Commissioner Aguilar asked Mr. Garde why he said the Village has the right to go onto the County, if they don't have extraterritorial agreements or anything like that. Mr. Garde said generally speaking a county or village has the right to condemn property, but with regards to the Jarratt property, he has not researched it. At one commission meeting he was asked to research that and that was later withdrawn because of finances. Commissioner Aguilar said when the County was going to build the jail, that used to be city property and then the County purchased it, the City tried to say the same thing and the County said no it is County property, they have no jurisdiction. Commissioner Pando would also like answers to those questions. Commissioner Pando understands that the Village owns 15 acres where the sewer sits right now and they only use 3 acres. Commissioner Pando does not know why the Village needs another 20 acres. The only answer Commissioner Pando has received is that they're supposedly needed for arsenic, which has something to do with the water. Commissioner Pando said the village is offering \$20,000.00 an acre but that doesn't take into consideration the cows that are going to be gone and the production of the land will be gone. Commissioner Aguilar said that if the Village can condemn anyone's property, that needs to be addressed. Commissioner Pando asked if the Commission could direct Mr. Garde to do a little bit of research. Commissioner Daves said the Village could condemn land if they can justify it. Commissioner Daves said the Jarratt's could take it to District Court and say that this condemnation is not justifiable in public interests. Commissioner Aguilar supports Commissioner Pando in asking the Attorney to look into it. Commissioner Daves said he would not want to be billed for that research because it is black letter law. Commissioner Aguilar dropped it, as he is on retainer monthly.

Jessica Tafoya, who works for Success by Six in El Cerro, said she is in support of the El Cerro Mission Community Center. Ms. Tafoya does a program out there one day a week and has been there for a year and a half now. There are 7 parents involved in this program and this educates parents on parenting skills and gives them life skills to further their life with their children. Every year they create projects and last year they created a parent/child research room in the Community Center. Ms. Tafoya is concerned about whether the center is still open to the parents. Ms. Tafoya said she has a parent who is willing to do some volunteer work at the Community Center and be housed there three days a week for three hours a day.

Commissioner Daves said there has been consideration of possibly removing the Senior Program from the Meadow Lake Center, which is the only program that keeps the Meadow Lake Center going. Commissioner Daves said that if that building were closed down, he believes it would be vandalized. This is a major asset to the County and he said that is not going to happen for the reasons that the building was constructed with state grant money and the County has an obligation to maintain that resource for that community. Commissioner Pando is the Chairman of the Valencia County Senior Support, and said now they can go out and have fundraising activities for seniors. Commissioner Pando hopes that once they are able to do this, they can eliminate a lot of the financial crises that the seniors are going through. According to Commissioner Pando there are numerous grants that are available for this type of activity. Commissioner Pando asked if it is true that when Mr. Fernandez provided the information of the cuts, Del Rio, Meadow Lake, and Mrs. Armijo from El Cerro Mission were affected, all these were cuts that were placed in the budget in order to build reserves? Mr. Fernandez said there was the elimination of the position at the El Cerro Mission Community Center, and Ms. Gonzales was able to bump another individual, so she went into another part time position and one of the positions was eliminated. In terms of the Older American Program and possible savings there, that was part of the possibility that the Program was looking at as possible consolidation of senior citizen's centers for possible cost savings. Initially they thought it would require an additional \$20,000.00 to make it for the remainder of the fiscal year as a transfer from the general fund, and Ms. Gonzales thought by consolidation that she might be able to come up with the money. Since then, Ms. Gonzales has provided administration with information that they are working on the menus and possibly getting some staff through the State Area Agency on Aging that will save roughly about \$17,000.00 without having to do consolidation. Mr. Fernandez explained that the presentation that was given to the Board was the possibility of consolidation, and that's how it was presented. Commission Chair Aguilar asked if they just saved \$17,000.00 from Older American, are they going to look at some other programs that were eliminated, to be able to see if they can review those and fund them? Mr. Fernandez said his understanding from direction of the Board was to look at all aspects of this, and he continues to look at all aspects to see if there are cost savings in any fund, program, or contract. In regards to some of the center consolidations or closings that were proposed, when those were brought out to the public, Mr. Fernandez has had individuals come forth from private entities who are looking at partnering with the County to make sure that those facilities stay open. Commission Chair Aguilar asked Mr. Fernandez to update the Commissioners in writing so the Commission knows what's going on and who's coming forth.

#### **Request Signature of Final Plat for Milagro Estates Subdivision/Tabled 1-2-02.....Ruben Chavez**

Ruben Chavez, Planning & Zoning Supervisor, told the Commission that at the last meeting he presented the final plat for Milagro for signature. There were three conditions at that time that were discussed. One was the engineering report that Mr. Chavez received and was favorable to this project. The second was the road agreement, and the third was a letter from a surety. What Mr. Chavez wanted was a mortgage company or bank to give the County some type of surety that this project was hopeful and could be funded as well. Wells Fargo delivered a letter to Mr. Chavez's office this evening. Mr. Chavez gave copies of the letter to the Commissioners. Mr. Chavez said the letter speaks favorably in financing the project. Mr. Chavez presented the plat for signature, if the Commission feels the three conditions have been satisfied. Mr. Chavez feels this is at the Commission's discretion. Commissioner Daves made a motion to approve based on this information. Commissioner Pando seconded the motion. Commissioner Daves believes the County has a fallback protection in terms of requirements that the developers will have to meet before they can construct. Mr. Chavez said there is a 125% bond that will have to be posted before construction. Motion carried with a vote of 4-0. The Commission took a break to sign the plat.

#### **Request to Amend Zone Maps from C1 to C2/1316 South Main St. Belen.....Sal Martinez**

Commissioner Pando recused himself on this vote as he has a letter signed by Mr. Sanchez where he is insinuating that Commissioner Pando tried to improperly influence the Planning & Zoning Commission. The only thing Commissioner Pando did to his recollection was when Mr. Chavez posted this as R2; Commissioner Pando went to Mr. Chavez and told him that in 1996, this property was zoned commercial. At that time there was only one zoning of commercial, which was C1. In 1999 the ordinance was changed to C2. Commissioner Pando retained the right to say whatever he wants as a private citizen. Commissioner Aguilar asked how he could recuse himself and then act as a private citizen. Tom Garde, County Attorney, said basically he is recusing himself from voting in this. Mr. Garde said he doesn't think there is a restriction for Commissioner Pando commenting on it, but thinks there is a restriction for him voting on it. James Fernandez, County Manager, said that a letter was hand delivered to Commissioner Padilla and a copy has been given to each of the Board Members from James Sanchez, and a copy has been given to the County Clerk for public record. Sal Martinez introduced himself and his wife Christine Martinez. Mr. Martinez requested to change his property from C1 to C2. Mr. Martinez feels this should have been grandfathered in when the ordinance came in to play. Since this is a hearing involving land use issues that ultimately could end up in District Court, Mr. Garde asked the County Clerk to swear in the witnesses. Mr. Garde asked the witnesses who might testify to sign in. Mr. Garde explained that there have been situations where zone changes are contested and those cases could involve litigation, and to protect everybody's interest, they have witnesses sworn in. County Clerk Tina Gallegos swore in the witnesses.

Mr. Martinez told the Commission he would like to change his property from C1 to C2 for the storage of vehicles. Mr. Martinez feels that throughout the history of the property that should've been grandfathered in when the ordinance came in to play which was on November 10, 1999. Mr. Martinez was operating a C2 business there at the time. Mr. Martinez said this has been C2 since 1945. Mr. Martinez went through Planning & Zoning and they're recommendation was for it to be passed.

Mr. Chavez said a request was heard at the December 11, 2002 Planning & Zoning Commission Meeting for the zone change, and on a 4-1 vote the motion passed and recommended in favor of the zone change. In the Commissioner's packets there are findings & conclusions from the Planning & Zoning Commissioners as to why they recommended in favor of the zone change. In those packets, there is also information that Mr. Chavez presented to the Planning & Zoning Commissioners as well. Commissioner Aguilar questioned the original letter, as there is a petition signed by 25 people that says this is from RR2 to C2, and the Martinez's said it's from C1 to C2. Mr. Chavez said that is their finding, when the applicant came in to his office, they looked at the zoning map and the particular piece of property is designated RR2 on the map and he instructed Mr. Martinez to apply for a zone change from RR2 to C2. After some time passed, Mr. Martinez presented Planning & Zoning with minutes and a letter dating back from 1996, and on October 7, 1996, the Commission approved a zone change to CD which was commercial at that time. On October 8, he was further granted a conditional use for an automobile repair facility at that location. Based on these requests and the zone change, Mr. Chavez's office concurred that there would possibly have been an error in the designation of the zoning map. There is a procedure in the ordinance that allows for that. Mr. Chavez concurred with Mr. Martinez that the maps do show this property as designated RR2 but based on the evidence that Mr. Martinez presented, Mr. Chavez concurred that there was an error in the designation when Planning & Zoning colored the maps and this should have been commercial development even at that time. Commissioner Aguilar told Mr. Chavez that he is in charge of Planning & Zoning, yet the Martinez's had to bring the information to him to prove that this was C1. Mr. Chavez said he has no records of what happened in 1996. Mr. Chavez believes that Mr. Martinez may have been issued several business licenses throughout his tenure in business. Commissioner Aguilar talked about the one issued November 19, 2001 that is effective through March of 2002, so the business license was issued while they're going through the zone change. Mr. Chavez said his office did issue that license and anybody conducting business in Valencia County, Planning & Zoning would issue a business license. By law, anybody doing business in any community must register in that location, according to Mr. Chavez. Commissioner Aguilar said she works at Remax Advantage in Los Lunas and they don't have a county business license. Mr. Chavez said they haven't checked on that yet. Commissioner Aguilar asked if he is going to go to all businesses in Los Lunas and to the Luna Mansion and say they need a county license. Mr. Chavez said the Luna Mansion is not serving food and doing business in the County, it's in the incorporated area. Mr. Chavez said the registration law by statute says that business people must register their business in the area that they're doing their business in. Mr. Chavez said when Planning & Zoning issued the business license to curbside towing, they acknowledged his business at 930 Reinken Avenue in Belen, they never licensed and permitted him to do business at this proposed location where he's trying to change the zoning. Mr. Chavez said the County does not only get the \$25.00 on this, but they also get to track the gross receipts that are due to the County.

James Sanchez, Attorney who represents the 25 people who signed the petition that is before the Commission and attached to his letter, addressed the Commission. On November 13, 2001, the first meeting with the Planning & Zoning Commission was held where this matter was heard. At that time, the request was for a change from RR1 to C2, and the request was for a business for only the storage of vehicles, there was not going to be any repairs. Mr. Sanchez said the request mutated between that date and December 11, 2001 at the second Planning & Zoning meeting, at that time the request now is to change it from C1 to C2 and they added the additional request that they be allowed to make repairs to the motor vehicles. During that time, Mr. Sanchez was curious that the County issued a business license to this same business asking permission to do business at this same site on November 19<sup>th</sup>. What Mr. Sanchez is really curious about, is that business license is stamped by a person that was terminated as of March 13, 2001 and that was Mr. McCartney. Mr. Sanchez asked how a business license with Mr. McCartney's stamp could be issued to the people that were asking the Planning & Zoning Commission for approval to conduct this business in the County. The motion to amend to C2 was passed and there was a variance approved as well, and Mr. Sanchez said the reason the variance was approved is because it is very clear that the proposed business before this Commission does not meet the absolute black letter requirements of this County's ordinance. Mr. Sanchez referred to ordinance 11-03.04E, which states that you cannot allow a variance for any business if it does not meet the minimum parcel requirements of the subject-zoning district. It is clear that C2 requires a 2-acre parcel, this parcel in question is not 2 acres, and it is not even close, according to Mr. Sanchez. Mr. Sanchez said there is no reason for this Commission to consider this application, and there is no reason for the Planning & Zoning Commission to consider it because it will never meet the County's black letter requirements. Mr. Sanchez told the Commission that if they are going to try to enforce the ordinances anywhere in this County, they have to start with this one, they have a minimum 2-acre requirement. Mr. Sanchez said the request is to change it from RR1 to C2 and told the Commission they must comply with the law at the time the request is made, that is today, and that requirement is a 2 acre minimum parcel. Mr. Sanchez said it's also curious how this same business could receive a license with a stamp from someone who is terminated as of March 13, 2001. Mr. Sanchez asked the Commission to answer that question before they pursue this matter further.

Commissioner Daves asked Mr. Sanchez what businesses if any have been on this land in the last five or ten years. Mr. Sanchez did not know. Commissioner Daves said some comments that Mr. Sanchez made tonight and in his letter are not helpful to the pursuit of good business of this Commission. Commissioner Daves addressed a part of the letter about Commissioner Pando that said, "fail to disclose", and questioned if Commissioner Pando ever failed to disclose anything. Commissioner Daves said that Mr. Sanchez suggested that the County Planner "is attempting to quietly push through an illegal zone and variance request to accommodate one of the County Commissioners that appeared. The Commissioner failed to disclose and clearly attempted to improperly influence the Planning & Zoning Commission." Commissioner Daves told Mr. Sanchez that if he is very serious about those concerns, they're not issues before this Commission and doesn't help Commissioner Daves in judging this issue. Mr. Sanchez said he has no idea what point Commissioner Daves is trying to make and said he is trying to give a complete history of what was before the Planning & Zoning Commission, and that is the only reason the Commission received his letters. Mr. Sanchez told the Commission that the law is crystal clear, that this parcel does not meet the County's zoning requirements. Mr. Sanchez asked the Commission to enforce the law as written and passed by the County. Commissioner Daves told Mr. Sanchez he would've appreciated his presentation a lot better if that were about all he had said. Mr. Sanchez said he is not here to be appreciated; he is here to represent his clients.

Commissioner Aguilar said the fact is that the County does have an ordinance and the ordinance is very specific. She said there was a hearing and there is a petition of 25 people who are against this. Commissioner Aguilar thinks the Martinez's have been placed in a position whereby they came in good faith to do something and it got muddy with management. As far as disclosure, Commissioner Aguilar said that Mr. Martinez is Commissioner Pando's nephew. Commissioner Aguilar said the Commission has to follow the ordinance. Commissioner Aguilar asked Mr. Garde how to proceed.

Mr. Garde told the Commission the way they precede is to have a full discussion as to the history of this property. Mr. Garde does not think that has been addressed at all and thinks the issue is whether or not this property was being used for C2 purposes prior to the establishment of this ordinance. Mr. Garde explained there is the term grandfathered in and he thinks the Commission needs to hear testimony and in fact that is pertinent to this case.

Mr. Chavez said that prior to the December 11, 2000 meeting, it should've been the November meeting, the applicants submitted an application. Mr. Chavez did a site design review on that application and there were some items such as the paving and landscaping that were not addressed, in fact the site plan itself was delivered the same day of the meeting. At the November meeting, the Planning & Zoning Commission asked Mr. Chavez for a recommendation based on the site plan and he told them that he did not have time to review the site plan, so at that point he did not have a recommendation. Mr. Chavez said the Zoning Commission heard testimony from the audience based on lot size and fencing, so they tabled it. The Martinez's resubmitted their application, when they did that they also addressed the lot size by asking for a variance on lot size, the ordinance is 11-03 on variances, the Commission reheard this in November and Mr. Chavez presented his itemized list in November regarding the site plan. The Commission listened to that testimony, and based on section 11-03 or 11-07, they granted that variance subject to this Commission granting the zone change. Mr. Chavez presented evidence at the December 11<sup>th</sup> meeting, saying that this County had awarded the Martinez's a business license in 1996 and they also granted a business license for a feed store at this location, and granted a business license for a recreational facility at this location. Mr. Chavez explained to the Commission at that time, had it been under today's ordinance, both the feed store and the exercise facility, along with the mechanic shop that was there, would be considered C2. The Martinez's did not ask to be grandfathered into the use, they asked for a public hearing to have the process done through public hearing and give due process to either side. Mr. Chavez feels the Martinez's have gone through all the procedures. Mr. Chavez said he gave the Planning & Zoning Commission this testimony, they acknowledged the claim by the Martinez's and based on the uses that had been there and the uses in that neighborhood, his recommendation says this will be the highest and best use, and he recommended in favor of this because there was commercial and light industrial already around that neighborhood. That is also what Mr. Chavez is recommending now.

Mr. Garde asked Mr. Chavez to address the use of Mr. McCartney's name on that business license. Mr. Chavez said as he understands, they buy a stack of business licenses once a year; the new business licenses will not be issued until March. Mr. Chavez said they were operating under the stack of old licenses that they had in storage instead of re-buying a whole new stack and just use it for a short period of time. Mr. Chavez said there is no point, in mid year since the bulk of the licenses were already distributed and there was only 10% or 15% left. Mr. Chavez said that was an oversight but saw no reason why the County should invest a whole lot of money for 10% of the business licenses. Mr. Chavez does not feel that his office does enough business licenses after the season to warrant any additional expense.

Commissioner Daves asked Mr. Chavez to comment as Mr. Sanchez mentioned the application being amended to include repairs. Mr. Chavez said when the applicants resubmitted their application and amended it, not only did they apply, Planning & Zoning published the required date for each one of their applications, they not only applied for a variance but also amended their storage to minor automobile repair as well. Commissioner Daves asked Mr. Chavez to characterize what that is. Mr. Chavez said there's a building on the site and since it's already there, he amended the application to fix cars in the shop. Commissioner Daves asked Mr. Chavez if he feels the use is appropriate from a land use point of view and he has evidence or history that this has been a commercial site with C2

businesses on it for a number of years. Commissioner Daves thinks that what Mr. Chavez said earlier in that sometimes the zone maps are considered incorrect in the sense that when they were done the attempt was to reflect the land use that existed at the time and that's what the zone was, and this is one of those cases. Commissioner Daves asked Mr. Martinez if there was a time where this property has been used for residential purposes. Mr. Martinez said that his father has been in business since 1945 and since then this hasn't been residential. Commissioner Daves asked if under the zoning ordinance, there is authority for a variance on that acreage since C2 zoning has to have two acres? Mr. Chavez said this Commission has granted the authority to the Planning & Zoning Commission to grant a variance based on some criteria, he referred to the zoning ordinance. Commission Chair Aguilar asked that even though the County has an ordinance that is very specific on variances, Mr. Chavez has the authority to grant that variance as long as the applicants go to Planning & Zoning. Mr. Chavez said he does not have any such authority, but this Commission has awarded the authority of granting variances to the Planning & Zoning Commission. Commissioner Daves asked Mr. Chavez if he thinks this cases meets the standards of a variance. Mr. Chavez said he has never made recommendations on variances or conditional uses to the Planning & Zoning Commission. Mr. Chavez clarified that to approve this, it has to have a variance. Commissioner Aguilar said what she is hearing is the Commission is dealing with a variance and they can't seem to get a clear answer. She added that there is a two-acre minimum in the valley and stated that Mr. Chavez said no one has to comply with that, they can go for a variance and get an acre on anything. Commissioner Aguilar told Mr. Chavez that they have an ordinance, follow the ordinance. Mr. Chavez referred to and read section 11-03, variance criteria and requirements. Commissioner Daves asked what the conditions are of the site plan that he put in or that the applicants have agreed to in terms of mitigation of impacts. Mr. Chavez said they were not addressed and that was the surface area and the landscaping plan, they did modify the site plan to include the surface area, they were going to gravel it, fence it, and do some landscaping. The Martinez's submitted those plans, and the Planning & Zoning Commission recommended following the proposal that they submitted. According to Mr. Chavez, the Planning & Zoning Commission recommends to the Commission that the applicants follow the plan that they submitted. Commissioner Daves said this would be upon any favorable motion and vote to approve this would be to append those conditions. Mr. Chavez said that is what Planning & Zoning is recommending. Commissioner Daves asked about the fencing. Mr. Martinez said it has a 6-foot solid wall with pro-panel all the way around and is lifted higher than the driveway. This is on 1.34 acres, and Mr. Martinez said that last time he stored 45-60 vehicles.

Mr. Martinez told the Commission that he asked that this be grandfathered in and Mr. Chavez told him that he did not have that authority. Mr. Martinez said he went to Commissioner Aguilar and a few other Commissioners and asked what he could do being that this has gone this far. Mr. Martinez said everyone recommended that he go through the motions that he is going through now. Mr. Martinez said his feeling is that this property has been under C2 ordinance. He explained one year the ordinance came in to play on November 10<sup>th</sup>, and he opened a feed store, which was a year before the ordinance came in and a year after the ordinance came in. After that it was a recreational facility, which was Boardwalk Gymnastics, they operated with a county license for two years under C2 with no opposition. Mr. Martinez said he came in as a good citizen to find out what he needed to do to get this going. Mr. Martinez does not feel the Commission can strip a man of his rights on what that property has been zoned as.

Commissioner Baca said along the line there were discrepancies, the Martinez's are very honest people, and she believes if they say they will meet the conditions, they will come through. Commissioner Baca does not feel that the Commission should deprive anyone of operating a business because they're just trying to do the honest thing, as they came to Planning & Zoning and went through the procedure. Commissioner Baca made a motion to approve the zone change with conditions. Commissioner Daves seconded the motion with the conditions. Commissioner Aguilar said she is very empathetic about what these people have gone through but is also concerned about the threat in litigation and the fact that there is an ordinance in place and those questions have not been answered. Commissioner Aguilar voted no. Commissioner Daves voted yes. Commissioner Baca voted yes. Chairman Padilla voted yes. Motion carried.

## **Request Permission to Publish Amendment.....Ruben Chavez**

### **Valencia County Comprehensive Zoning Ordinance 99-07 Section 906 Day Care Facilities**

Ruben Chavez, Planning & Zoning Supervisor, requested to amend the zoning ordinance section 906, which deals with day care facilities. The Planning & Zoning Commission gets a lot of requests for daycare facilities, which ranges from a facility in Rio Communities with 15-24 kids to grandma wanting to take care of a couple of grandchildren at her house while her son or daughter works. The Planning & Zoning Commission feels that because of the Fair Housing Act, there's not a lot that they can do anyway and it seems that the process of coming before the Commission so grandma can ask if she can take over a child or two was overbearing. Planning & Zoning asked to alleviate their load as well and if these issues were minute, if perhaps staff can grant the family daycare providers administratively and they could deal with the larger sizes, since all Planning & Zoning can do is site design review anyway. One of the guidelines that they decided was to follow the State Licensure Law, and that law on daycare facilities says that a person can watch up to six children. Once a person goes over the six children, the law says that person has to taken on an employee. At that point the Planning & Zoning Commission can look at that. Mr. Chavez agrees with the Planning & Zoning Commission on this. Commissioner Pando said he asked for staff to look at the two acre minimum for C2 use a long time ago, and he wanted to bring that up again and deal with the issues

and amend the ordinance as it needs be. Commissioner Aguilar made a motion to approve this request. Commissioner Daves seconded the motion. Motion carried with a vote of 4-0.

**Administrative Fees Assessed for Subdivision Development.....Tom Garde**

Tom Garde, County Attorney, told the Commission that this is a proposal by Ruben Chavez, Planning & Zoning Supervisor, to amend the ordinance under the administrative fees that would be charged to developers. Mr. Chavez said he asked to publish this before and got permission to publish, but the County pays the cost for site design review and drainage ponds. Mr. Chavez said this is the same thing with subdivision fees, the County charges \$1,000.00 at preliminary plat and another \$1,000.00 at final plat, and when they send the subdivision to go get reviewed, its \$7,000.00 or \$8,000.00. Mr. Chavez said he needs an engineer at his disposal to help with subdivisions and said it doesn't make sense for the County to pay that money when it's one of the very few communities that doesn't charge for that fee. Mr. Chavez said this was on the agenda before and the Commission wanted Mr. Garde to review the fees before it was brought to the Commission. Mr. Chavez would still need to publish because this is not published. Mr. Garde said this was set on the agenda and deleted subject to Mr. Garde's review. Mr. Garde thinks the Commission needs to know what the change in the amendment is. Commissioner Aguilar said when the Commission tried to do this before, Mr. Garde's recommendation was to wait until the Comprehensive Plan got done because that would give the Commission the authority, otherwise the Commission wouldn't have the authority to do impact fees unless there was a special district. This is not an impact fee. Commissioner Aguilar said that Mr. Garde is saying, "In reviewing the 3% option presented under the public improvement development act, the legislature has authorized a 3% limitation for impact fees for a project". Mr. Garde said the reason he inserted that language is that one of the options that Mr. Chavez presented was a total of 3%. Mr. Garde used the language in this statute that would basically justify the Commission imposing up to 3%. Mr. Garde did not have the fee structure. Mr. Chavez did not have the fee structure with him but he does have it. Mr. Garde said this should've been a request to publish with the portion of the ordinance that would be amended together with this document. Commissioner Pando made a motion to table this until the following meeting. Commissioner Aguilar seconded the motion. Mr. Garde said all that needs to be done is a request to publish with the attached language that is going to be published. Commissioner Pando asked if this is published and passed, could the County take action on it immediately and not wait the 30 days? Mr. Garde said there is no emergency clause that would authorize that so they have to follow publication. Motion carried with a vote of 4-0.

**Planning & Zoning Board of Commission Appointments.....Valencia County Board of Commissioners**

Commissioner Pando said that Commissioner Aguilar brought up the subject last meeting of going back to 5 Commissioners and Commissioner Baca had a concern because a lot of times they don't have five Commissioners show up. These Planning & Zoning Commissioners are paid \$50.00. Commissioner Pando agrees with having 5 Commissioners. Commissioner Aguilar said there has always been a quorum of at least 5 Planning & Zoning Commissioners. Commissioner Aguilar said it costs the County \$1,200.00 per member per year. With having 5 members, the Commission goes back to having one member that represents each district. Commissioner Daves does not think the Planning & Zoning Commissioners should be paid. Commissioner Aguilar made a motion to go back to a five-member board and that each Commissioner appoints one member tonight. Commissioner Pando seconded the motion. Motion carried with a vote of 4-0. Commissioner Pando appointed Jamie Goldberg. Commissioner Aguilar appointed Harold Maez. Commissioner Daves appointed Bill Holliday. Commissioner Baca appointed Herman Tabet. Commissioner Padilla appointed Martin Sisneros. Mr. Chavez said he was informed that under the ordinance, if a Planning & Zoning Commissioner misses 3 consecutive meeting, they're terminated. Mr. Sisneros falls under that. Mr. Chavez added that he did not speak with Mr. Sisneros personally, but he heard that Mr. Sisneros is pretty busy. Mr. Chavez did want to verify that but was not expecting this today. Chairman Padilla changed his appointment to George Koch. Commissioner Aguilar made a motion to approve the five to be Planning & Zoning Board Members. Commissioner Pando seconded the motion. Motion carried with a vote of 4-0. Charles Eaton said it seems like the Board is real concerned about financial status, he heard when Commissioner Aguilar brought up a point to the Zoning Administrator about businesses within the municipalities having to get registered to do business in the unincorporated areas, he said there is a financial source there.

**Request Dedication for County Maintenance San Marcos Place.....Salvatore Realyvasquez**

The Commission decided to go to the next item since Mr. Realyvasquez was not present for this case.

**Del Rio Senior Center Concerns.....Rudy Karson**

Rudy Karson, Representative for the Rio Communities Senior Center, told the Board about some grievances that the seniors would like addressed. Mr. Karson said Jenny Martinez and County Manager James Fernandez addressed most of this yesterday. Mr. Karson said the building in Rio Communities is a multi purpose building and can be used by more than one person. The seniors play Bingo there and would like a little more time to be able to play Bingo. Mr. Karson said these are all seniors and 90% of them don't have husbands and 90% of them don't have wives. This closes at 3:00 P.M. and the seniors would like it open until 4:00 or 4:30 P.M. Mr. Karson is willing to donate his time for that hour and a half without any pay. He will take care of the place for that time. Mr. Karson

said if he had a key he could close the place at 4:30 P.M. Mr. Karson said that in talking with Marianne Gonzales, there is a possibility that Jenny Martinez can take one of the people who clean up to go into her program, and if she can get her into the program, then they can adjust the time of the cleaning people. Another thing is that the center is being closed when there are affairs going on in other centers. The seniors would like to know why their facility has to be closed, as they would rather stay at their own center and play Bingo. The seniors also have problems with the transportation, they would like to know if there could be other solutions so that the seniors that use the transportation can stay and play Bingo instead of leaving after lunch. Ms. Gonzales said Mr. Karson spoke to her about this issue. Ms. Gonzales said she told Mr. Karson that once the center closes at 3:00 P.M. it reverts back to the County Administration and they schedule someone to open and close. Ms. Gonzales said she told Mr. Karson she would attempt to try to get a title 5 position to stay there to extend the hours because she feels that they need to have supervision in case there is an emergency. Ms. Gonzales also explained what they did in the past, since the program is for seniors to socialize, is they have five centers and have one center host a party for all the centers, all staff is utilized at that center. This is so that all the seniors can come together and socialize because the seniors want to stay in their center and don't want to get out and socialize, the program is for that purpose. Ms. Gonzales said they can have their own functions, but some of the other seniors enjoy that. About transportation, Ms. Gonzales said the drivers she has are all part time and their routes are scheduled accordingly. It the driver waits to take the seniors home later, that driver will go into overtime. Chairman Padilla believes that Ms. Gonzales should get together with Mr. Fernandez to discuss some of these matters. Commissioner Daves asked if the County owns this building. Ms. Gonzales said this is a multi purpose center. Mr. Fernandez said this building is utilized after hours for square dancing and card playing. The primary function of the building during the day is serving senior citizens. Commissioner Aguilar asked, since they get state funding for the program, have these issues been forwarded to the State? Ms. Gonzales said the way the State looks at it is that recreation isn't a priority, serving the frail and homebound is. Ms. Gonzales recommended trying to get a title 5 person to come in and stay a little longer to oversee those activities. Commissioner Aguilar asked about charging the seniors since 10% of what they get at yard sales, they have to give back. Ms. Gonzales said that any fundraising that is done at the centers, if the building was built with state appropriated money; they have to donate back into the program to keep that program going. Ms. Gonzales said the money is not that much its maybe \$85.00 for one year.

Bill Brown said that building was not built with County, State, or Federal money, VIA built the building. Mr. Fernandez said the County purchased the building, even though the County did not build it. Mr. Fernandez said it was legislative appropriations that were utilized for the purchase of the building.

#### **Request Dedication for County Maintenance San Marcos Place.....Salvatore Realyvasquez**

Commissioner Aguilar said that Mr. Realyvasquez was here earlier but left. Commissioner Aguilar said one of the streets, San Diego, is already dedicated to the County, the other one is San Marcos, and there is a portion of the road that does meet specks and there is conflicting information from Planning & Zoning. She said that Mr. Chavez said this serves as a collector for other roads and they're recommending acceptance of San Marcos Place for county maintenance. Commissioner Aguilar believes this road is heavily traveled and provides an arterial for other roads. Commissioner Aguilar made a motion to approve and accept San Marcos Place for dedication. Commissioner Daves seconded the motion. Motion carried with a vote of 4-0.

#### **Presentation-Declaration of Agricultural Emergency Resolution.....Russell Grider**

Russel Grider asked if the Commission has read the information that was provided concerning the declaration, historical overview, and white paper in support of the declaration. Mr. Grider told the public that he asked the Commission to approve a Declaration of Local Agricultural Emergency. What this declaration does is through the Commissioners; it directs the State of New Mexico to investigate whether or not the Federal Government is faithfully executing the laws that regulate agriculture. It directs the Attorney General to investigate the statutes that are defined in the declaration, it asks the Governor to coordinate and provide information to the various committees and Attorney General; they might need a request that his cabinet and different agencies might have. This declaration requests the State Legislature to form an interim committee, to hold hearings, and take testimony from local and county government across the state to see if, as far as their agriculture sector is concerned, if they have had a deteriorating tax base over the last 20 years or seen any common trends that they might be able to point to. This directs the Secretary of Agriculture to hold hearings and take testimony from producers across the State of New Mexico. This includes farming, cattle, vegetable, and whatever crops might be grown in this state to see if the producers can identify whether international trade agreements that they are now under or whether the fact that foreign counties are devaluing their currencies against us at will. If that is affecting the ability to market products into foreign markets and maintain practice for those that are above cost production, then it requests that the legislature appropriate money to cover the expenses of the interim committees, the Secretary of Agriculture holding hearings, and for the Attorney General to assign someone to this issue to investigate. That is essentially what the declaration is that Mr. Grider has asked the County to consider. The reason Mr. Grider came before the County Commissions is because the Commissions are the most important form of government that this country has. From his perspective, County Commissions truly speak for the people and citizens in their counties.



The following counties have approved the declaration: Colfax, DeBaca, Hidalgo, Lee, Lincoln, Mora, Otero, Rio Arriba, Quay, Roosevelt, San Miguel, Sierra, Union, and the Arizona/New Mexico Coalition of Counties. The declaration is pending in Chavez, Curry, Eddy, Guadalupe, Santa Fe, Taos, Torrance, and Valencia County. By the end of the month, Mr. Grider said Chavez, Guadalupe, and Torrance County will approve this. Mr. Grider has not spoken to Bernalillo County yet, as agriculture might not be as important there as it might be in some other counties. Mr. Grider would like to get two or three counties that border Bernalillo before he approaches Bernalillo. Mr. Grider called this an emergency resolution because the state that agriculture is in is an emergency and he felt that this is a derivative of Senate Bill 1. Senate Bill 1 was passed in the last legislative session and dealt specifically with the fire situation that the State encountered two summers ago. It was the fact that the Federal Government, through the National Forestry Service or BLM, have failed to control the National Forest Service and BLM lands but they are failing to assume the obligations that come along with that to make sure that the brush is cleaned out. They have taken away a major portion of the grazing that ranchers had on the land and a lot of cattle would go through it and they would keep a lot of the underbrush cleaned out from the forest. They reduced that substantially. They haven't done anything now to go in and take the place of those livestock cleaning the underbrush out. In response to those fires, Otero and some other counties last year declared an emergency. Basically what the bill says is that the County Commissions are empowered by the State that in the event that a situation specifically concerning the national forest and underbrush arises, they have the authority that the federal government advocated their responsibilities, that they had the authority to go in and remedy that situation and take care of the underbrush in order to maintain and protect the property and the lives of the citizens therein.

Commissioner Pando asked who would get the funding. Mr. Grider said it would go to the interim committee to hold the hearings, if its required it would be to provide funding to the Attorney General to be able to put an Assistant Attorney General on this review full time. Mr. Grider has since been told that they have adequate money to provide those services. It was also stated that way in order to provide money for the Secretary of Agriculture to hold the hearings across the State. Every county in the State of Colorado, and over 71 counties in the State of Texas have approved this declaration. In Colorado, the legislation is required to implement this as being cared for by the Senate Majority Leader in the State Legislature for Colorado. In Texas, the Speaker of the House, Pete Laney, has committed to carry this legislation, and 13 of the 16 counties in his district have approved the declaration, according to Mr. Grider. Mr. Grider met with Dave Miller, the Governor's Legislative Liaison, two weeks ago to see about getting this placed on the Governor's call. Mr. Grider does not know if it will be on the call, but he said Mr. Miller felt that it would be made germane to the session. Since then, Mr. Grider has met with the Minority Floor Leader of the House, Stewart Ingle. Mr. Ingle will be sponsoring the legislation that's required. Mr. Grider met this morning with Majority Floor Leader Tim Jennings, and he will cosponsor the legislation along with Senator Ingle. Mr. Grider also met today with the Agriculture Coalition, which is made up of the conservation districts, Farm Bureau, New Mexico Cattle Growers Association, and others. They support the declaration and are going to help walk this through the process. Commissioner Aguilar said she has a concern that without the Attorney present, that the Commission is actually declaring a local agricultural emergency, and in order to declare an emergency her understanding is that it has to affect the health, safety, and welfare. Commissioner Aguilar said the Commission is also asking the Legislators to fund this and she would like to hear from the Legislators on this. Commissioner Pando said this sounds like Federal Emergency Management Association (FEMA), and the last time the Commission did something like that, they're still paying for it. Commissioner Pando has a concern about this, as he doesn't see an emergency at all.

Mr. Grider explained to the Commission that he and two other men have studied these laws for 20 years. In June of 1999, they filed a notice of petition with the USDA with the President and Secretary of the Treasury, stating that they were failing to faithfully execute the laws regulating agriculture. The response from Treasury was that yes the allegations are true. The USDA said that maybe prior to 1996 that was true but from 1996 forward, with the formalization that turned into the WTO of the World Trade Organization they think that is the governing rule of law, that superceded this. Mr. Grider went on to say that the point being in 1933, they passed the Agricultural Adjustment Act, which was a regulatory taking. At 7USC601, which is the taking portion of it, it impresses agriculture into the national public interest. If there's a taking for it to be constitutional compatible with the Fifth Amendment, it requires either direct compensation or a compensatory scheme. Congress at that time opted for the compensatory scheme. That was put into place with the formula for the implementation of that scheme at 7USC1301. Commissioner Aguilar asked Mr. Grider to simplify this.

Mr. Grider explained that if this Commission decides to put a road that goes straight north of this building, if there's a house or a business, the first thing that has to happen is through the power of eminent domain, the Commission has to take that property. By doing that it requires compensation to the landowners. Mr. Grider said that under the Agricultural Adjustment Act, that's exactly what they did to the transactions that took place in agriculture. Commissioner Aguilar said she would like to fax this to each of the Legislators and ask them what they think and address it at the next Meeting. Commissioner Daves is in support of this and believes what Mr. Grider is saying is that there needs to be some regulatory mechanism that the federal government has defaulted on with regard to the commodity prices. Mr. Grider said that in 1948, the price of wheat was \$2.58 a bushel; today the price is \$2.00 a bushel. Commissioner Daves said that cows have never been protected. Commissioner Daves said the taking and gain would be to have some protection for commodity price differential. Commissioner Daves understands that agriculture is not being compensated. The Agricultural Adjustment Act was not designed to make payments to agriculture; it was designed to

maintain those market conditions that would provide the pricing in the market place, according to Mr. Grider. Commissioner Pando asked how this would help the small farmer. Mr. Grider said when he made the presentation to Rio Arriba County; their farms are from 2 acres to 20 acres. When Mr. Grider spoke to Sierra County, they raise lots of chile in the south part of that county and in essence they're at a point where the processors can go into Mexico and buy the chile and bring it here cheaper than what the producers can produce it here. That is a result of these bilateral trade agreements that we entered into with NAFTA, subsequent to that with the WTO. Mr. Grider said how it will help people here depends on what happens in the future. He explained that right now with most of agriculture, there are three international conglomerates that own everything from germ plasma to the retail market outlet. They're vertically and laterally integrated. Those three big companies control 8% of all the beef, feeding, slaughtering, and retail. Mr. Grider said that's a monopoly, that's against the law. About 3 years ago when the price of pork was at \$.08 a pound on the hoof, and they were killing millions of small pigs because they couldn't afford to feed them, ham in the retail outlet store was still \$3.50 a pound. The point being is that at some point, everybody is going to feel this. If this trend continues, Mr. Grider said we will no longer have production agriculture in this country, and if we do, it will be contract farming. Mr. Grider met last Spring with ranking Democrat Charlie Standoff with the House Act Committee, and with Chairman Larry Combiss, both of them said that the will of congress at this point, was they felt like we could import all of our food into this country.

Commissioner Daves asked to get back to what the Legislature could do in terms of dealing with this problem, if not go to congress. Mr. Grider said once the State investigates, and if they find that these allegations are true, then they can turn over these studies to the Attorney General. The Attorney General has the authority to go after them for anti-trust. Commissioner Daves asked Mr. Grider if he thinks there is a realistic matter in New Mexico that the Attorney General has defendants in anti-trust that potentially should be gone after. Mr. Grider said yes, that would be Conagra, ADM, and Cargial. Commissioner Daves made a motion to adopt this declaration. The resolution is 2002-04. Commissioner Aguilar seconded the motion. Commissioner Pando asked for clarification that by passing this, the State does not have the authority to go on a class action suit against these three outfits, and by passing this and the Legislature funds it, then Mr. Grider has the money necessary to go hire Lawyers and do these class action suits. Mr. Grider said the money is just a small part in case the Attorney General says she can't do this because she doesn't have the money to pay the staff, and they may have to hire an additional Assistant Attorney General to handle this particular investigation. Commissioner Aguilar understands that if the little farm wants to provide economic development, he can't compete with the big guy, and this would allow an investigation to bring some balance into the system. If there were such an allegation to be proven true, it would protect the small farmers, according to Commissioner Aguilar. Mr. Grider agreed and said that Valencia County is further removed from having agriculture as an active industry in the County itself, as with other counties, agriculture is their primary base. Commissioner Pando believes this is illegal, as he doesn't see an emergency and before they can pass an emergency resolution they have to look at the health, safety, and welfare. Motion carried with a vote of 3-1, as Commissioner Pando voted no. Mr. Grider said if the Commissioners would like him to discuss this in greater length, he would be more than glad to come back. His E-mail is [Synergy@Yucca.net](mailto:Synergy@Yucca.net).

#### **Request Approval to Adopt MCH Council Plan Update.....Leona Woelk**

Leona Woelk, Maternal Child Health Coordinator in Valencia County, told the Commission that earlier this month she submitted a draft version of the Maternal Child Health Plan update for 2002-2003. Ms. Woelk acknowledged other members of the MCH Council that are present tonight who are: Pat Ionita, Kathy Chavez, and Monica Mireles. Along with the draft version of the plan, Ms. Woelk submitted a summary of what the final version of the plan was going to include, including the priorities, goals, and recommendations established by the MCH Council that is going to guide their activities for the next four years. This updated plan will be submitted to the New Mexico Department of Health Maternal Child Health Bureau in February. Along with the plan, Youth Development Incorporated is going to submit a proposal for funding to continue to provide maternal child health coordination and information referral services in Valencia County. Ms. Woelk asked for two motions, the first is to approve that the Maternal Child Health Council submit this maternal child health plan update to the Department of Health in February, and also for the County to approve YDI submitting their proposal for funding to continue the services they provide under MCH. Along with the approval of the County Commission for the proposal, Ms. Woelk asked that the Chairman sign appendix B, which is included in the draft version of the plan update. Commissioner Aguilar made a motion to approve all three requests. Commissioner Pando seconded the motion. Motion carried with a vote of 4-0.

#### **Las Vegas NV/Western States Sheriff's Assoc.....Juan Julian**

County Manager James Fernandez told the Commission that Sheriff Juan Julian is requesting to attend a conference in Las Vegas. The Sheriff is requesting actual reimbursement for meals, hotel registration, and airfare in the estimated amount of \$821.50 plus a registration fee of \$115.00. The Sheriff is proposing to pay for these items out of the Law Enforcement Protection Fund, and it indicates that he does have money within the registration as well as the mileage and per-diem. Commissioner Pando thought that all travel was limited. Mr. Fernandez said the items that he took were under the general fund, and this is not a general fund item. Commissioner Pando said they have other programs that are very needy including the Extension Service, and yet it seems like they have money somewhere else. Commissioner Aguilar said she has a problem with this because the other elected officials and their travel got placed under the general fund, although the Sheriff's is not under the general fund, so now they can't travel. Commissioner Aguilar thinks the rules apply to everyone, and said that since the Sheriff can't run again, after March 5, 2002 he can't travel either.

Commissioner Pando said that although the budget is spread out to several funds, it still comes from one place. Mr. Fernandez said that funding sources come from any number of places and to say that they're from one place would be incorrect as some of these are from state funded sources and others come from local generated revenues. Commissioner Pando was concerned about where this funding came from. Mr. Fernandez said there are state funds that come in for this particular travel. Commissioner Aguilar had a concern that there might be other expenses that the Sheriff might need that affects public safety. Gary Hall, Lieutenant with the Sheriff's Department, said that Sheriff Julian is either the Vice President or President of this Association. The training issues that are included in this issue deal with some legislation on gun issues which there is one that former Mayor Baca has in arbitration right now over concealed weapons and such, according to Mr. Hall. Mr. Hall also said there are some issues about school security programs. Mr. Hall explained that the fund that the Sheriff gets this money from is from the State and based on the number of certified deputies he has. Most of the money has been used for the purchase of vehicles but they had to make a budget for that particular grant so that Santa Fe knows where this money is going to be expended. Commissioner Daves asked if this money is total discretion to use within the Sheriff's Office. Mr. Hall said the Law Enforcement Protection Grant is basically designed for training; it cannot pay any kind of overtime or salaries. Commissioner Daves asked if it could fund a trip to Las Vegas. Mr. Hall answered yes. Commissioner Daves asked if there was any possibility that the general fund would be tapped for this training. Mr. Fernandez said if this item were coming out of the general fund, he would be the first to tell the Commission he doesn't think it should be approved. Commissioner Daves made a motion to approve this request, as he understands this won't hurt the general fund at all. Commissioner Pando seconded the motion. Commissioner Aguilar said a month and a half ago the Sheriff came before the Commission to go on a trip to look at grazing violations on BLM lands, so he went on that trip, now he's going on another trip, and they've already depleted the capital outlay, firearms, ammunitions, and computer budget, but the Commission was told there may be a shortage of \$2,500.00 for firearms. Commissioner Aguilar said some deputies would love to have some training and she would like to look at the entire department and for training for other deputies. Commissioner Pando asked if this money could be used to pay deductibles. Mr. Fernandez said no. Mr. Hall said the training for the deputies is considerably less cost, as a lot of that is free. Mr. Hall said there are a lot of deputies that would love to go to training, but they fail to submit the applications. According to Mr. Hall, he provides all the documentation that is required to attend the training and he goes every year at the end of the year and forces deputies to go to training. Mr. Hall said there is training available for deputies in Santa Fe and Albuquerque, but he can't provide that training if the deputies don't submit the application. Motion carried with a vote of 3-0, as Commissioner Aguilar passed on the vote.

**Public Hearing/Final Consideration Amendment to Personnel Ordinance No. 93-03**

**Sec. 6.3.....J. Fernandez**

James Fernandez, County Manager, presented a proposed amendment to the Valencia County Personnel Policy, Ordinance No. 93-03 Sec. 6.3 adding subsection D, Election to Office. The particular section that is being proposed reads "If an employee is elected to the following offices, County Clerk, County Assessor, County Treasurer, County Sheriff, County Commissioner, Probate Judge, and Magistrate Judge that employee shall resign his/her position as a county employee before taking office". Commissioner Daves asked how that would change the existing ordinance. Mr. Fernandez said that it is not specifically addressed of the election of office of any particular department, so this would be a clarification of that issue. Commissioner Aguilar asked if there has ever been a problem with this. Mr. Fernandez said there have been county employees in the past who were elected to specific county offices who were county employees and that is a contention. Mr. Fernandez said there is a current county employee who is the Probate Judge and it has created some difficulty in terms of scheduling. Commissioner Pando asked why Municipal Offices were eliminated. Mr. Fernandez thinks that these individuals would actually be conducting county business and they'd be a county employee as well as an elected official, so that is the concern. Commissioner Pando said he would support this but will not support the Probate Judge part of this. Commissioner Pando said the Probate Judge is a very low paying position and so is a Commissioner's position, but said that is where they need to use common sense. Commissioner Pando does not have a problem with this if they take the Probate Judge out but would like to add Municipal Judge or Council. Chairman Padilla asked for Mr. Fernandez's recommendation. Mr. Fernandez said it does serve to clarify and eliminate the possible conflict, so he suggested that it be approved. Commissioner Baca made a motion to approve. Chairman Padilla seconded the motion. Tina Gallegos, County Clerk, asked if this was to pass would it affect the current Probate Judge's position. Mr. Fernandez said the current Probate Judge cannot seek election for the position of Probate Judge again, so he does not know how it would affect her. Ms. Gallegos asked that since she is currently an elected official, would that matter? Ms. Gallegos added that she currently has two employees that are currently looking at this as an avenue for them, and should they go that route, she is looking at having to let go of a very good employee regardless of which one would win because of this. Ms. Gallegos said she did get the scheduling issue addressed and it is working fine and she thinks the Probate Judge being on staff has been more of a convenience not only to her employees but also to the constituents that come into her office. Commissioner Daves said that with regard to the existing Probate Judge being a County employee as well, he thinks that could be addressed to the extent that this could be construed to force her to resign from one or the other immediately. Commissioner Daves thinks they could put in some conditioning language. Commissioner Pando voted no. Commissioner Aguilar voted no. Commissioner Daves voted no. Commissioner Baca voted yes. Chairman Padilla voted yes. Motion was denied.

**Jail Monitor's Report.....Larry Garcia**

James Fernandez, County Manager, presented the Jail Monitor's Report to the Commission. In the Commissioner's packets is a Jail Monitor's Report that was submitted to the Manager's Office on January 10, 2002, attached is a Jail Monitor's Report for December 1, 2001-December 31, 2001 submitted, also is a yearly summary of the total inmate count. The daily average for the month of December was 129, the high for that particular period was on December 31<sup>st</sup> at 140. Mr. Fernandez read the report for the total number of inmates by month during the last calendar year. Commissioner Pando asked where the County is at with the bracelet program. Mr. Fernandez has met with some individuals from Cornell and some District Judges who have provided him with information that will be forwarded on to the Commissioners.

**Indigent Appeals & Report.....Barbara Baker**  
Commissioner Pando made a motion to convene as the Indigent Board. Commissioner Aguilar seconded the motion. Motion carried with a vote of 4-0.

Barbara Baker, Indigent Administrator, presented her indigent appeals. The first appeal was by Robin Howard. Ms. Howard is here on behalf of her father who is 81 years old, he does have Medicare, which paid 80% of the bill and he owes \$834.48, his monthly income is \$753.00. Originally Ms. Baker told Ms. Howard she couldn't pay the bill because it was over the 90 days and also because he does have insurance and she has to deny them. Ms. Howard wanted to appeal because her father felt very strongly that the people who took care of him need to get paid and yet he doesn't have the money to pay them. Ms. Baker said in a case like this in which this man feels obligated to pay the people who took care of him, and since they didn't know about the program and he earns \$753.00 a month, she recommended approval. Commissioner Pando made a motion to approve the appeal. Commissioner Aguilar seconded the motion. Motion carried with a vote of 4-0.

Michael Montano was the next person to appeal for his indigent denial. Ms. Baker said she received correspondence in an application from Presbyterian Hospital. Ms. Baker sent Mr. Montano several letters and they all came back as she had a P.O. Box and not his address. When it came back Ms. Baker had already denied Mr. Montano since it was over the 90-day limit. Mr. Montano called about a week after the meeting and said he hadn't received anything from Ms. Baker and he called the hospital and they said he should have. Ms. Baker said she had the wrong address. Except for that, if it weren't passed the 90-day limit, this would've been approved. Ms. Baker said the address was messed up by the provider. Commissioner Pando made a motion to approve Mr. Montano's appeal. Commissioner Aguilar seconded the motion. Motion carried with a vote of 4-0.

The next appeal was by Sally Moreno. Ms. Baker said she assumed the meeting was at 10:00 A.M. Ms. Moreno told Ms. Baker that she would be at the meeting at 6:00 P.M. Ms. Baker said Ms. Moreno could've called her recording because she didn't get in touch with Ms. Moreno until yesterday. Ms. Baker asked since that could be the case could she put Ms. Moreno down for February 5, 2002. Commissioner Aguilar asked Ms. Baker for her recommendation on this. Ms. Baker recommended approving as her child had Medicaid but Medicaid won't approve unless someone is dying in route to the hospital. Commissioner Aguilar seconded the motion. Commissioner Pando seconded the motion. Motion carried with a vote of 4-0.

Ms. Baker presented her Indigent Report. The report is for indigent claims from November 19, 2001-January 3, 2002. The total amount of claims submitted is \$82,069.85. There were 56 claims submitted and Ms. Baker asked the Commission to approve \$25,378.12. Commissioner Aguilar made a motion to approve. Commissioner Pando seconded the motion. Motion carried with a vote of 4-0.

Commissioner Aguilar made a motion to reconvene as the Board of Commissioners. Commissioner Pando seconded the motion. Motion carried with a vote of 4-0.

**Request Signature & Approval.....John Cherry**

**DFA E-911 Grant**

John Cherry, Valencia County Fire Marshall, asked for signature approval on a DFA E-911 Grant proposal. This proposal is for \$121,000.00, \$100,000.00 of that is for the 911 service data, phone bills, and all that goes with it. The projection is that there should be some funds left over and Mr. Cherry is projecting to provide and put in a computer aided dispatch system in the Sheriff's Department along with the new GIS program. This does not have a fiscal impact on the budget, according to Mr. Cherry. Mr. Cherry said he submits the bills to DFA, and they pay them. Mr. Cherry recommended approval. Commissioner Aguilar made a motion to approve. Along with that Mr. Cherry was allowed \$21,000.00 for training of the Dispatchers and he said they are going into Medical Priority Dispatch System for the Fire/Rescues for Belen, Los Lunas, and Valencia County. Mr. Cherry will be holding training courses, which will be \$160.00 per Dispatcher, and DFA will reimburse that one. That bill will be close to \$3,800.00. Commissioner Daves seconded the motion. Motion carried with a vote of 4-0.

**Fire Rescue EMS Fund Applications**

Mr. Cherry said it is that time of year where Fire/Rescues are plotting for their annual funds and he needs to have the fund applications signed by the Chairman. Chairman Padilla signed the applications.

**Amendment to Resolution 2000-48**

Mr. Cherry presented an amendment to Resolution 2000-48. Resolution 200-48 was a resolution when they split the El Cerro Mission Fire Department and formed the Manzano Vista. Mr. Cherry needed to include the legal descriptions of the Fire District and everything else that the State Fire Marshall requires. Mr. Cherry said the State Fire Marshall agreed, as long as the Commission signs off on the amendment, and presents that to him, everything would be fine. Commissioner Aguilar made a motion to approve the amendment to Resolution 2000-48. Commissioner Pando seconded the motion. Motion carried with a vote of 4-0.

**Review Highland Meadows Fire Department Report**

Mr. Cherry gave a report on the Highland Meadows Fire Department, which is being established on the western end of the County. Mr. Cherry introduced James Ashmore, President of the Highland Meadows Homeowners Association and a member of the Fire Department. Mr. Cherry included a copy of the membership rosters in the letter and said they are working on putting heat in Buddy Major's barn so they need a fire truck established there, as the report states, they are sending out a 1,000-gallon pumper. Mr. Cherry met last Friday night with the Homeowners Association and the Fire Department members on a combined effort to go over the building for the Highland Meadows Fire Department. The Homeowners Association has also applied for 501C3 so that they can accept donations. Mr. Ashmore expressed his appreciation for the great support of Mr. Cherry, Charles Eaton, and the Fire Department volunteers throughout the County.

**Request Signature on Sublease Agreement Between Valencia County & Village of Los Lunas.....J. Fernandez**

James Fernandez, County Manager, presented a sublease agreement between Valencia County and the Village of Los Lunas specifically for tracts 44A, 26A4 and a portion of 43A. When this originally was brought to the County, it did not reflect what was actually out there, it has been corrected to show the addition of a portion of 43A. Commissioner Pando made a motion to sign the sublease agreement. Commissioner Daves seconded the motion. Commissioner Aguilar asked if they were getting a survey on this because originally part of the Road Department was in the tract of the ball fields. Mr. Fernandez said he had the Assessor's Office go out and stake out where each of these items was. That's why the exhibit has been modified. Motion carried with a vote of 4-0.

**Request Approval of Payroll & Warrants.....James Fernandez**

James Fernandez, County Manager, presented a computer printout that lists all checks issued by the Fiscal Office on January 11, 2002 covering vendor bills processed on that date including warrants #67260-#67336 inclusive for a listing total of \$415,793.97, of that \$339,458.21 is from the general fund. Commissioner Aguilar asked about a deductible for Heinz Wollman for \$10,000.00 for a claim, and another one for Charles Berry where on one they paid \$10,000.00 and the other they paid \$7,987.00. Mr. Fernandez said those are both claims that have been suits that were brought against the Sheriff's Office. Commissioner Pando made a motion to approve warrants #67260-#67336. Commissioner Baca seconded the motion. Commissioner Aguilar asked if this is all considered essential and within the budget. Mr. Fernandez said yes, otherwise he didn't think it would've been approved. Motion carried with a vote of 3-0, as Commissioner Aguilar passed on the vote. Mr. Fernandez provided the Commission with a cash balance as of today. The general fund cash balance after the payment of the warrants and payroll, as of today is \$1,511,772.59. Mr. Fernandez said that every month there is revenue coming in and there is a second half collection of property taxes in May. Commissioner Daves asked about gross receipts revenues. Mr. Fernandez said gross receipts revenues normally come in about the 20<sup>th</sup> of each month and they go into the gross receipts fund except for those items that are being intercepted by the State. The State intercepts the county correctional gross receipts and the 1st 1/8 gross receipts. The unused portion of the first 1/8<sup>th</sup> should be released to the County about the 20<sup>th</sup> of June.

Mr. Fernandez presented a computer printout that lists all the checks issued by the Fiscal Office on January 11, 2002 covering payroll processed on that date of warrant #67230-#67259 inclusive and payroll check #50538-#50725 for a listing total of \$171,705.35, of that \$107,371.86 is from the general fund. Commissioner Aguilar made a motion to approve. Commissioner Pando seconded the motion. Motion carried with a vote of 4-0.

**Managers Report.....James Fernandez**

**Accreditation Update for the Valencia County Detention Center**

James Fernandez, County Manager, presented a copy of a packet that was submitted to his office by Cornell Corrections in regards to the accreditation for the medical section of the adult detention facility. Mr. Fernandez read the cover letter to the Commission. Commissioner Pando asked how many more is there besides health to get full accreditation. Mr. Fernandez said his understanding is there are two accreditations, one for the facility, the medical portion, and the adult detention facility as a whole. Commissioner Pando asked when they apply for the other one. Mr. Fernandez believes that has to take place by June. Mr. Fernandez has a checklist of the items that had to be provided and will verify that all items were presented. Commissioner Aguilar asked, doesn't the contract state that it has to have full health accreditation no later than December 31, 2001? Mr. Fernandez will check on that.

**Budgeted Fund Transfer-Older American (Informational)**

Mr. Fernandez said that when the county budget was approved in July, there was a budgeted transfer from the general fund to the Older American fund in the total of \$100,000.00. Mr. Fernandez explained that the first portion of that transfer in the amount of \$40,000.00 took place on July 24<sup>th</sup>, the

second portion of that transfer took place on September 6<sup>th</sup> in the amount of \$30,000.00, and the last portion of the transfer took place on January 3<sup>rd</sup>, meeting the full budget transfer of \$100,000.00.

**Bureau of Elections Employees.....Tina Gallegos**

Mr. Fernandez said that the County Clerk has started an election cycle and she is requesting that four employees under the Bureau of Elections be placed on 40 hours. Mr. Fernandez passed out the information that County Clerk Tina Gallegos has provided him with. Ms. Gallegos told the Commission that what they have in their packets are correspondence that she has made to the Secretary of State's Office, County Attorney, and County Manager. Ms. Gallegos requested some guidance from Tom Garde, County Attorney, as far as charging the municipalities and the local School Board for personnel time, employee time, overtime, and comp-time. Mr. Garde sent Ms. Gallegos a letter and she will be able to charge for that. According to Ms. Gallegos, Mr. Garde is recommending that she give them notice that they will be charged for that. Ms. Gallegos said that during the time they were discussing cutting hours, she mentioned to the Commission that with four elections between now and June, a 40 hour work week for four employees to cover all those elections, is impossible. Ms. Gallegos received a letter from the Secretary of State's Office backing her up on that saying that there are some statute requirements that she doesn't feel that Ms. Gallegos can meet with a four person team at 32 hours a week. Ms. Gallegos said she couldn't run an election on 40 hours a week much less 32 hours. The school election has begun and absentee voting started on Friday of last week, which means Ms. Gallegos's office needs to be open from 8:00 A.M. to 5:00 P.M. Monday through Friday. Ms. Gallegos's employees will start generating comp time effective immediately. Ms. Gallegos asked for guidance on this, she said she could bill the entities, regardless if they pay or not, the County would be responsible. Ms. Gallegos asked that four employees of the Bureau of Elections be put back on 40 hours a week immediately and continue until June. Ms. Gallegos was anticipating billing the entities for that extra day in the week and any comp time and or overtime that may come from that election. Commissioner Daves asked how much this would cost from the general fund. Mr. Fernandez is anticipating with 11 remaining pay periods in the fiscal year the amount would be \$8,096.11. The primary election is totally up to the County to pay. Commissioner Aguilar made a motion to approve this request. Commissioner Daves seconded the motion. Commissioner Daves asked how the billing would take place. Ms. Gallegos explained that what she does is at the end of the election cycle, and when the canvass is done, she accumulates the bill and sends it to the entity. Ms. Gallegos said she has never had problems or questions on that bill, but she will inform the cities that this is what she anticipates doing. The County's role on city elections is to be available for voter registration at all times, it provides voting machines, election training of poll workers, certification of all their machines, and the Bureau of Elections is open election day for the twelve hours of the election. Motion carried with a vote of 3-0. Commissioner Baca was not present for this vote. This is effective the start of the next pay period.

**Budget Information Request.....James Fernandez**

Mr. Fernandez said that at the last County Commission Meeting there was a request by Dotie Hoffman in regards to a request for some information as to where the money went. Ms. Hoffman wanted pie charts, but according to Mr. Fernandez they were not very informative so he tried to create an analysis for the County Commission. Mr. Fernandez gave this information to the Board to review; he will give it to the press and to the Clerk's Office for public record. Ms. Hoffman requested that this item be on the agenda for the February 5<sup>th</sup> Meeting, according to Mr. Fernandez. The information was prepared from two source documents that have been provided to the Commission before which was the Valencia County Budget Report for the period ending June 30, 2001 and the Valencia County Treasurer's Financial Report for the period ending June 30, 2001.

The next Regular Meeting of the Valencia County Board of County Commission will be held on February 5, 2002 at 10:00 A.M. with Executive Session beginning at 9:00 A.M. in the County Commission Room at the Valencia County Courthouse.

**Adjournment**

Commissioner Pando made a motion to adjourn. Commissioner Aguilar seconded the motion. Motion carried.

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the January 15, 2002 Regular Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

**VALENCIA COUNTY BOARD OF COMMISSIONERS**

ss/  
AURELIO H. PADILLA, CHAIRMAN

ss/  
ALICIA AGUILAR, MEMBER

ss/  
S. T. FRANK PANDO, MEMBER

**ss/  
GARY DAVES, VICE-CHAIRMAN**

**ss/  
HELEN BACA, MEMBER**

**ATTEST: ss/**

**TINA GALLEGOS, COUNTY CLERK**

**DATE: February 5, 2002**