

VALENCIA COUNTY BOARD OF COMMISSIONERS

Solid Waste Workshop Meeting

February 24, 2003

Chairman Gary Daves called the Meeting to order at 5:10 P.M.

PRESENT	ABSENT
Gary Daves, Chairman	
Paul Edward Trujillo, Vice-Chairman	
Aurelio H. Padilla, Member	
Alicia Aguilar, Member	
Mary J. Andersen, Member	
James Fernandez, County Manager	
Thomas Garde, County Attorney	
Tina Gallegos, County Clerk	
Press and Public	

Chairman Gary Daves called the Meeting to order at 5:10 P.M.

Chairman Daves asked Vonda Temple to lead the Pledge of Allegiance.

Approval of Agenda

Tina Gallegos, County Clerk read the agenda for the Solid Waste Workshop Meeting of February 24, 2003. Commissioner Trujillo made a motion for approval of the agenda as read. Seconded by Commissioner Padilla. Discussion. Commissioner Aguilar voted yes. Commissioner Trujillo voted yes. Commissioner Padilla voted yes. Commissioner Andersen voted yes. Motion carried. 4-0.

Chairman Daves said Commissioner Andersen mentioned that Valencia County has good employees and he will let her recognize three of them. Commissioner Andersen said she was pleased to see the Valencia newspaper showing the recognition of the helpfulness and the courtesy the people in the County feel that has been extended to them by James Fernandez, Tina Gallegos, and Barbara Baker. Commissioner Andersen said on behalf of the Commissioners she would like to congratulate all of them.

Chairman Daves asked Ruben Chavez to take the lead on this workshop and asked the haulers to introduce themselves. John Richardson, Western Disposal Service, Marlene Feuer, Waste Management of New Mexico, Mel Sisson, Superior Waste System, Charles Apodaca, Reliable Waste, and Randy Sanchez, Valley Disposal. Mr. Chavez said what we had done last September we extended the ordinance for six months and met with the current haulers and went over the agreement procedures. We discussed the concerns the haulers had within our ordinance. Mr. Chavez said the use of polycarts was discussed as well as payments and performance bonds. Mr. Chavez said some of these issues have still not been resolved so we were in a time frame to where we extended the ordinance but need to make changes for compliance purposes. Mr. Chavez said Mr. Garde had some comments he would like to make.

Mr. Garde said after meeting with the haulers the subject of the performance bond was discussed to modify the performance bond as per the request of the haulers to \$50,000. After the haulers met with their insurance companies determined they could not afford that bond payment. The bond is a performance bond and this insures performance whomever has the franchise. The only hauler that has been able to meet the performance bond payment is Waste Management. There are other issues within the ordinance that this Commission may want to look at is authority position, which is the County Manager, but it should be investigated by the Zoning Department.

Commissioner Aguilar said to her recollection the past workshops it was discussed that \$5,000 was recommended for a performance bond. That seemed to be an amount that was attainable. Commissioner Aguilar said she would like to hear from the haulers on their concerns with the ordinance pertaining to the performance bonds, what changes they recommend to the ordinance and if they are addressed this will be a start.

Charles Apodaca from Reliable Waste Disposal said his concern as far as a performance bond his insurance company can't issue him one. Mr. Apodaca said the insurance company wants specifics and the County has not been able to do this. Mr. Apodaca said what they have suggested is get a bank line of credit for \$5,000, \$50,000 or whatever the amount may be. Mr. Apodaca said in his case he does not do residential hauling only commercial hauling. Mr. Apodaca said he also does construction dumpsters. Mr. Apodaca said he doesn't bill in advance because in his operation is when the actual hauling is done the customer owes him. So his concern is still with the performance bond because in actuality he has already performed his duty for hauling. Chairman Daves asked if Mr. Apodaca does any hauling outside Valencia County. Mr. Apodaca said he hauls in Bernalillo County, Sandoval County, and Socorro County and all that is required is a business license.

Commissioner Aguilar asked staff if there are any fees due from Reliable Waste to the County? Mr. Chavez said to the Commission in your packets you will note the Zoning Department did an audit starting with November 1999 thru December 2002 and these payments have not been received. Mr. Apodaca said his records show payment so he feels there is a discrepancy and Mr. Chavez has asked him to get this information to him.

Chairman Daves said this matter should be left to staff for non-payment of fees and work with Mr. Apodaca and other haulers to see what the situation is and try to resolve this. Commissioner Aguilar said the discussion of collection of fees does need to take place because it is part of the ordinance and if the haulers are in non-compliance there is a procedure that takes place. Commissioner Aguilar said she would like to ask all haulers to see if they are in compliance and if not we need to see how to resolve this major concern.

Mr. Chavez said the DOT (Department of Transportation) inspections were an issue and addressed this to Mr. Apodaca. Mr. Apodaca said he was in compliance and his trucks were inspected. Chairman Daves asked is there any issue of an ordinance change pertaining to that? Chairman Daves said we are not here to be an enforcement body. Chairman Daves said he was interested in ordinance amendments only and would like to get rid of the extent the Commission is the enforcement body and would vote to get rid of this.

Commissioner Trujillo said he doesn't want to press the issue but his concern and in order to understand how this ordinance is drafted would like to know why so many haulers are in non-compliance in terms of payments. Commissioner Trujillo said he believes this goes to the heart of the issue. Are the fees too high? Are they not being properly noticed? Is there a situation within the ordinance that we need to address due to non-compliance with these periods of time? Commissioner Trujillo said he is not looking for it in terms of we are going to mandate some sort of enforcement tonight but in looking at the process come up with having the haulers effectively paying.

Marlene Feuer, Waste Management, Public and Government Affairs Manager said she would like to welcome the two new Commissioners and congratulate them on their election. Ms. Feuer said she received a letter from Mr. Chavez, as did all the haulers with the checklist that the Zoning Department felt it was lacking. Ms. Feuer said she came down to meet with Mr. Chavez and provided the necessary information that Waste Management was in full compliance. Ms. Feuer said one of the issues that have been discussed are performance bonds and we have been able to get one and yes we are a large company. The cost for the performance bond is \$7.00 per year per thousand and at one time we were issued a \$100,000 performance bond under the initial contract. Ms. Feuer said the term of the franchise agreement needs to be determined from one-month extension, the business that we are in is very capital intensive, we have to commit trucks and drivers and containers and carts to Valencia County. Ms. Feuer said it has been concern of the haulers provide containerized collection, which means 96-gallon carts, this has been done by two of the three haulers. It is expensive to provide those carts but it is a health concern to the County. Ms. Feuer said the franchise fees should be dedicated to the enforcement of the franchises and solid waste ordinance. Ms. Feuer said Waste Management on an average over the past three years has paid to the County in excess of \$60,000 a year in franchise fees. Ms. Feuer said they would hope that part of that would be used for enforcement of the ordinance to make sure the health and welfare of solid waste here in Valencia County. There is a concern on the uninsured motorist provision and the only thing we make sure is we have insurance protecting our drivers and they already have medical coverage, which we provide. Ms. Feuer said under the current contract that was provided to us and we have submitted to Mr. Garde there are some very minor corrections in the definitions of solid waste terms. We have one issue on the new wording on the indemnity provision and the sentence that we object to says the contractor agrees to indemnify the above person or entities whether or not County or any of its officers, agents, servant or employees are in any way at fault whether by active or passive negligence or are liable by way of strict liability or by way of omission to act. Ms. Feuer said Waste Management feels this is unfair to ask us to waive any liability by the County for any acts of its employees, etc, we do not object to having indemnity provision.

Commissioner Aguilar said the questions arises with the concern of insurances and the ordinance does state, the insurance coverage shall be with a carrier acceptable to the County and the County shall be named on the policy as the additional insured. A copy of the certificate of insurance shall be filed with the County Clerk annually. Commissioner Aguilar said so in order to be compliant this should be done.

Mel Sisson, Superior Waste System said his feeling on the ordinance is fine. Mr. Sisson said this ordinance was put together with a lot of work that was involved with people that did a good job. The concern he does have is with the performance bond and the uninsured motorist. Mr. Sisson said his insurance agent doesn't understand the magnitude of a performance bond. A few years back we did meet with our insurance agents, the haulers, Mr. Fernandez and Mr. Garde in a Special Meeting on the concern of the performance bond. Mr. Sisson said his insurance agent gave Mr. Garde a sample of something that they could work with in the amount of in the \$20,000 range, which more than covered, but then the amount of \$100,000 came about and this was difficult to obtain. The ordinance needs to be specific on this concern with the haulers. The franchise fee he felt was more than fair in the beginning and paid it for over a year every month, which it states in the ordinance and with his payment, supplied a list of customers. Mr. Sisson said by the reports he was receiving all of the haulers were not in compliance by not paying. Mr. Sisson said what he did and Mr. Fernandez and each of the Commissioners were notified that in protest his payments were held in escrow. Mr.

Sisson said he supplied the Manager's Office with a monthly report but held the payment in escrow until this ordinance can be enforced like it was intended to be.

Randy Sanchez, Valley Disposal said his concern is the same with some of the other haulers, the performance bond. Mr. Sanchez said his insurance wants more clarification and doesn't understand it. Mr. Sanchez said he does residential and commercial hauling within Valencia County. Chairman Daves asked Mr. Sanchez if he provided the poly carts. Mr. Sanchez said he has 10% of them but his customers don't want them. Mr. Sanchez said his payments are in full compliance with the ordinance. Mr. Sanchez said what he has done is what was discussed before was obtain with a local bank, a line of credit.

Commissioner Aguilar said we have had discussions at meetings on the concern of a performance bond and she thought the agreement was if you could do a performance bond that was fine but if not then the bank line of credit was in compliance.

Chairman Daves asked Commissioners if he could discuss what the trash committee's proposals were and the status at this time. Commissioner Aguilar objected to this because we have an ordinance that we need to address and we need to keep it clear and defined and only address the ordinance and the issues before us because that is what was published. Chairman Daves asked if any other Commissioners object to his discussion of the trash committee's recommendations and the resolution in support of that and issues along that line. Chairman Daves said he thought it was appropriate because it would be amendments to the solid waste ordinance and he doesn't see there would be confusion with discussion. Commissioner Andersen said she agreed with Commissioner Aguilar because we are here to discuss this ordinance if and when the bill you are referring to is passed in Santa Fe then we will have long involved discussions on this and it will have a bearing on this ordinance. Commissioner Andersen said but we are a long way from getting that bill through. Chairman Daves said he will overrule both Commissioners and proceed. Commissioner Aguilar said we need to ask our County attorney on this matter. Mr. Garde said this is a workshop and he couldn't say it was inappropriate but our problem is time and right now staff is looking at direction on issues that need to be dealt with in a timely manner.

Chairman Daves said we will discuss the trash committee initiatives and it will be very brief. He invited these people to be here to discuss this topic. The committee looked at other places and deliberated and thought and in effect chose a model from Dona Ana County with regard to a way of solving a fundamental element of the solid waste problem in the County and its revenue. In that proposal as it is done in Dona Ana County, residential properties that are occupied are billed monthly for a trash fee and since this has been initiated their billing about 1.2 million dollars a year and they are getting revenue about .8 or .9 million dollars a year. That money is used in an enterprise fund for solid waste management and the proposal of the committee was for that money to go toward creation of convenience stations, transfer stations and with a goal that people could use them County wide without costs and the revenue would be obtained up front for those. Chairman Daves said last year our Representative here introduced a bill the committee developed an amount that they felt was needed for seed money for starting the program. It was passed and then vetoed. Representative Kandy Cordova has introduced the bill again and Chairman Daves said he went to testify at her request to the Legislature to testify in favor of the bill. Chairman Daves said at this time we do not know if this has passed. If it is passed we will have to initiate a program along these lines that the trash committee recommended and that the Commission accepted in principal through a resolution was passed subsequently. Chairman Daves asked the committee members that are present if they would like to briefly state their comments.

Vonda Temple said in talking about the ordinance is so important in supporting any kind of solid waste program that will be instilled or put in place later. The recommendation that we came up with as a committee is based on the solid ordinance, one of the big issues is mainly making sure everything gets done. That has been brought up several times here, enforcement. Ms. Temple said the concerns here tonight are good but we need to get them fixed, get it understood. Ms. Temple said she would like some clarification on surety under this performance bond in Section 19. There are copies available on the recommendations that the committee worked on, it is fairly intensive and covers all the areas of what has been discussed here tonight.

Michael Landmar from Los Chavez said he was also a committee member and will keep it brief. He would like to see an exclusive hauler and mandate every resident have a trash hauling because we don't have it here. Mr. Landmar doesn't see a performance bond requirement is a necessity. He employs a trash hauler and if they don't meet his specifications and customer satisfaction, he gets rid of them. That would become an undue hardship for an entrepreneurial endeavor by a citizen of this County to participate in this industry. Mr. Landmar asked how much does it cost in the ordinance for a trash pickup here in the County? Mr. Chavez answered approximately \$13.00 a month. Mr. Landmar said he doesn't see of anywhere in the ordinance that it allows for a company to fluctuate the price on the quarterly billing. Mr. Landmar said he likes the cart but sees that it is an expensive and costly requirement. The bigger haulers can afford this but some of the smaller business haulers have said it gets to be costly and impossible for a small company to handle.

Chairman Daves said he appreciates the Commissioners, perhaps under some duress, letting the committee express their concerns to the solid waste ordinance.

Chairman Daves asked the public if they had any questions and then will ask the Commissioners if they have any questions.

Commissioner Andersen said she doesn't understand how this operates, the hauler can go out and pick up trash and they can haul it anywhere they want to not necessarily go to any landfill that we control, so how do you know how much they are doing and how do we come up with the franchise fee quarterly or monthly billing cycle? And this question is probably to Mr. Chavez. Mr. Chavez said there are some haulers out there that we have caught from time to time that only pick up 5 or 10 people but then they go throw it out on the mesa. We have tried to stop those that are in violation. The franchise fees are 4% of the residential and 5% if is commercial. When they send the check they state they have 110 customers at \$13.90 x this amount and 4% of that is \$600.00 and here is your check. Commissioner Andersen said she understands this but she finds this a little nebulous because she could tell you she has 100 customers and really have 500 customers, is this not true? Mr. Chavez said this is true and what we are supposed to be doing are quarterly reports and go through the books and go to the haulers offices and check on this. Commissioner Andersen said the ordinance was written and adopted in 1999 has there ever been that type of check on anybody? Commissioner Andersen asked Mr. Garde on the insurances when it talks about insuring the need for insuring the vehicles that pick up the trash, there is no provision in the ordinance for proof of insurance to be submitted for that franchise to stay in effect. Is there a provision in the ordinance for a line of credit? Mr. Garde said there is a second amendment to the ordinance that deals specifically to this issue on the bonds and a letter of a line of credit was authorized.

Commissioner Aguilar said in the ordinance as she had mentioned before and in response to Commissioner Andersen's question on insurances it does state in the ordinance in Section 4.1.4, which reads a copy of the certificate of insurance shall be filed with the County Clerk annually. And the contractor/hauler shall provide a copy of NM Environmental Department permit.

Chairman Daves asked staff to explain in response to Commissioner Andersen's question on insurances, apparently we have an amendment that we've forgotten about and need to look at. Mr. Garde said he was mistaken in looking at the amendment it provides for each contractor to post with the County cash, surety, and/or performance bond. Chairman Daves said he wants to get away from the Commission being the enforcement body because it needs to be specific in the ordinance. Commissioner Aguilar said in the ordinance it could state only if they have proven to be in default and the haulers want to appeal it then they have 30 days for this appeal to the Commission. But the Commissioners are not responsible for any enforcement of this ordinance that would be Planning and Zoning and if they need the help of the Sheriff that would also be in the ordinance.

Chairman Daves felt this was reasonable and the final subject to appeal would be maybe to District Court. This would be a fair policy and the Commission not be party to any hearing process with regard to enforcement of this ordinance. Commissioner Andersen said the \$100,000 performance bond and we might set a reasonable fee. Some bigger companies might be able to afford this so \$50,000 would be a more reasonable amount for any individual hauler.

Commissioner Aguilar commented since we are amending the ordinance she would like to see one document and incorporate any amendments into the one document and repeal everything and just have the ordinance as one. Chairman Daves agreed because we did have some add on amendments that are not within the body of the document and would ask staff how to give this specific direction.

Mr. Chavez said in listening to the haulers, enforcement has been an issue and we have created some voids in the ordinance. Mr. Chavez said so to meet with the haulers and their concerns to move forward is a process we need to know in what direction are we going. Mr. Chavez said we need direction on whose authority is it to enforce anything as well as payments, be it the County Manager, himself or any designated assignee. Mr. Chavez said the terms of the length of the contract; right now it is three years, the poly carts vs. no poly carts, uninsured motorists, these are just some of the issues we need for clarification purposes.

Commissioner Andersen said in listening to the discussions tonight she feels there is direction in the sense we want a definition in the performance bonds or surety bonds or letters of guarantee, we have a sense of how much that has to be and we would like that to come from staff. Commissioner Andersen said we want all the provision of the ordinance enforced and we want to know how this can be accomplished. The haulers want them enforced in listening to them this evening and the Commissioners of course want them enforced. They signed a contractual agreement so if they are in violation then their license is suspended or whatever just so they know there is an enforcement body out in this ordinance process.

Commissioner Trujillo said he doesn't like the idea of the Commission proposing to management and then having you come back to tell us. What he would like to see is they come to the Commission and say this is what we have proposed and if they don't have a bond, then we cut them off or we do away with the bond. On the issue of non-payment then we pull the contract and stop if they are in violation.

Commissioner Padilla commented we do have a solid waste ordinance that we need to enforce, but the Commission can't do it, the haulers still have to comply with the contract and if there is a question they can appeal it.

Commissioner Andersen said we can't cancel anybody's contract until we have the proper procedures in place that are necessary for operation of this ordinance.

Commissioner Aguilar said this contract is already in place; a letter was given to each of the haulers so they could be in compliance in doing business in the County. The changes here are in the performance bond, letter of guarantee and that needs to come from our attorney or staff and we should leave that up to them to recommend an amount, poly carts vs. poly carts; that has been discussed by being a health issue that poly carts are supposed to be provided. If there needs to be a provision for some reason, then some form of procedure should be followed.

Chairman Daves said there are some elements of the ordinance that need to be clarified and or amended with regard to performance bonds and so forth. There has been some progress made here tonight with issues that need to be resolved with staff.

The next Regular Meeting of the Valencia County Board of County Commission will be held on March 4, 2003 at 5:00 PM Executive Session and 6:00 PM Regular Session in the County Commission Room at the Valencia County Courthouse.

Adjournment

Commissioner Andersen made a motion to adjourn. Seconded by Commissioner Aguilar. Discussion. Commissioner Aguilar voted yes. Commissioner Trujillo voted yes. Commissioner Padilla voted yes. Commissioner Andersen voted yes. Motion carried. 4-0. Time being 8:05 PM.

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

VALENCIA COUNTY BOARD OF COMMISSIONERS

**ss/
GARY DAVES, CHAIRMAN**

PAUL EDWARD TRUJILLO, VICE-CHAIRMAN

**ss/
AURELIO H. PADILLA, MEMBER**

**ss/
ALICIA AGUILAR, MEMBER**

**ss/
MARY J. ANDERSEN, MEMBER**

ATTEST: ss/

TINA GALLEGOS, COUNTY CLERK

DATE: April 1, 2003