

VALENCIA COUNTY BOARD OF COMMISSIONERS

Regular Meeting

February 4, 2004

Chairman Gary Daves called the Meeting to order at 5:15 PM.

PRESENT	ABSENT
Gary Daves, Chairman	
Paul Edward Trujillo, Vice-Chairman	
Aurelio H. Padilla, Member	
Alicia Aguilar, Member	
Mary J. Andersen, Member	
Art Castillo, Interim County Manager	
Wimberly Law Firm, County Attorney	
Tina Gallegos, County Clerk	
Press and Public	

Chairman Gary Daves called the meeting to order at 5:15PM. Chairman Daves read the agenda for executive session. Matters to be discussed were Personnel Matters, New Hires, Transfers, Resignations & Terminations and County Manager (Applications).

Executive Session

Commissioner Aguilar made a motion to go into Executive Session. Vice-Chairman Trujillo seconded it. Commissioner Andersen voted yes. Commissioner Padilla votes yes. Vice-Chair Trujillo voted yes. Commissioner Voted yes. Motion carried. 4-0.

Commissioner Padilla made a motion to re-convene as the Board of Commissioner Regular Meeting. Vice-Chair Trujillo seconded it. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Aguilar voted yes. Motion carried. 4-0.

Interim County Manager Art Castillo reported the following discussion: Temporarily part-time; Sharon Romero, Assessors office, Promotions; Theresa L. Sanchez, Clerks office, Simon Martinez, Sheriff’s office, Resignation of David Carr, Sheriff’s office.

Regarding litigation, Attorney Cynthia Wimberly reported that the Board was updated on the Solid Waste issue and the Aragon zone change matter. She asked that the Commission vote that, that was all that was discussed, and no action was taken as per New Mexico Statute 10-15-1. Commissioner Aguilar made the motion. Commissioner Padilla seconded it. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Aguilar voted yes. Motion carried. 4-0.

Pledge of Allegiance led by Dieter Hartenhoff

Approval of Agenda

Ruben Chavez asked that Item K be tabled. County Clerk Tina Gallegos read the agenda. Commissioner Padilla made a motion to approve the agenda. Commissioner Trujillo seconded it. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Aguilar votdd yes. Motion carried. 4-0.

Approval of Minutes

Commissioner Trujillo made a motion to approve the minutes of January 7, 2004 (Special/Regular Meeting) and the January 21, 2004 Regular Meeting. Commissioner Padilla seconded it. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Aguilar voted yes. Motion carried. 4-0.

Public Requests

Dr. Borum was requesting high speed Internet.

Gerri Rose was concerned that Waste Management does not recycle anything.

Action Items

Department Requests/Reports

Indigent Report & Appeals.....Barbara Baker  
Commissioner Padilla made a motion to convene as Indigent Board. Commissioner Aguilar seconded it.  
Ms. Baker presented the Indigent Claims from December 19, 2003 to January 22, 2004. There were 92 claims submitted. Total amount of claims submitted was \$389,123.21 and she asked the commission to approve \$71,957.47. Commissioner Andersen made a motion to approve the claims.

Commissioner Trujillo seconded it. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Andersen voted yes. Motion carried. 4-0.

Ms. Baker also informed the commission that Mr. Castillo had requested an appeal to the January 7, 2004 indigent denial for inmate Eric Jaramillo. The amount of \$540.54 would be paid to UNM Health Sciences Center, if approved. The bill from Cornell had been received after the 90-day limit. Commissioner Aguilar made a motion to approve the appeal on inmate Eric Jaramillo. Commissioner Andersen seconded it. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Aguilar voted yes. Motion carried. 4-0.

Commissioner Aguilar made a motion to re-convene as Board of Commissioners. Commissioner Andersen seconded it. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Aguilar voted yes. Motion carried. 4-0.

**Presentation of Proposed Bond Sale.....Charles Casey**

Mr. Casey, from Casey Financial Securities, had a contractual agreement with the county; to assist the county in selling the Bonds that the county had approved in the September 23<sup>rd</sup> Election, to provide a new judicial complex for Valencia County. Mr. Casey was here to provide the commission with direction on how to proceed in selling the bonds to finance the complex. Mr. Casey presented the commission a handout on Comparison of Bond Sale Alternatives. He recommended that they sell the bonds to the New Mexico Finance Authority, because, they are in a better position with rates. The economy is slowly improving, which will add up the pressure on interest rates and also this time of year, there is an influx of bonds into the market place, which bids up the price for the interest rates. For the next few months, they would see the bond market continue to increase. If they were to sell bonds to the New Mexico Finance Authority, the project has to be approved by the Legislature and he currently had the project in the bill for the Legislature. However, they could not sell the bonds to the Finance Authority until after the legislative session was over and after their first meeting, which would be on May 7<sup>th</sup>. They would then take action after their March meeting. He recommended that they continue along the path to sell the bonds to the New Mexico Finance Authority and keep an eye on the market place.

Chair Daves asked if the state legislature sometimes did not approve this. Mr. Casey said there has never been a rejection of a New Mexico Finance Project and he did not expect it to be rejected.

Chair Daves asked if he was asking for a decision to be made now. Mr. Casey said he was basically just informing them in the direction that they were moving and why they were going that way. If the market would reverse itself, he would then come back before the commission and probably take formal action in March. Chair asked if it would have to be through an action item. Mr. Casey said yes. Commissioner Aguilar asked Mr. Casey if this was going through the legislature, had the New Mexico Finance Authority already accepted this item as an agenda item for their next quarterly meeting. Mr. Casey said they planned to put it in the agenda and he would be submitting an application to the finance authority by February 20<sup>th</sup>. Commissioner Aguilar asked if all this work was included in his fee of \$15,000.00. Mr. Casey said yes.

**Request Approval Lease Purchase Agreement for Voting Machines.....Tina Gallegos**

Chair Daves, as an administrative action, signed the agreement. He said that the county clerk had an election coming up very soon, both early voting and then the primary election and in the need to have certainty, the machines had been ordered. He had signed the agreement because he believed that the commission agreed it. It was an agreement between the State and the County of Valencia. He explained that by a specific resolution, this commission had granted the approval to the County Clerk's request to purchase these machines. Conditions on the approval were that she tries to sell the old machines and that there be no budget impact on this year's budget. The first payment for the machines would be in December 2004, next budget year. The County Clerk had an election coming up and, on reliance of the commission approval of her request to authorize the purchase of the machines; she went before DFA, presented it and was granted the request. The order for the machines was made by the DFA approval of this request. This agreement was signed because he believed that the commission authorized it. It was an agreement between the State and the County of Valencia.

Ms. Gallegos agreed with the history that had taken place since the resolution was signed. The Resolution had been signed in July of 2003 and in working with James Fernandez, who was the County Manager at that time and with Edward Archuleta, Fiscal Manager, at that time, it was decided to postpone the order until December of 2003. What it did was allow the county to not make a payment until the fiscal year of 2004. Her 2004 preliminary budget showed the increase. All of this was made clear at the time the resolution was signed. By delaying the order of the voting machines from July to December, she assumed that the transfer was going to happen and the change was going to take place.

Ms Gallegos established a voting machine committee that has been working diligently to address the issues of training of poll workers, voter awareness and how to make the voter comfortable. This machine was used for the Special Election in September, in the early voting site, to allow the voters to get acquainted with the machines. She realized that this was a huge endeavor and not once has it ever been taken lightly, either by the department or the Elections Supervisor.

In December, Ms. Gallegos worked with the Secretary of State's office to go before the Department of Finance meeting on December 18<sup>th</sup>; DFA approved the resolution and was very impressed with Valencia County for taking these steps in moving forward. With this approval, and after that meeting, the Secretary of State made the order on behalf of the county, contacted us and we started working

on getting an approval on the machines. Tonight, she said, was a formality to sign the lease payment agreement with DFA. The machines have been ordered and are on their way.

On March 2<sup>nd</sup> the municipalities are having an election and were instructed that they would be using the new machines for their elections. As far as Ms. Gallegos knows, one of the municipalities has included it in their Election Proclamation and the other two are aware of the new voting equipment and have been working with her to make the transition smooth. Ms. Gallegos said she was very excited and that it was a positive move for Valencia County.

In December, Ms. Gallegos said, the county had paid \$41,332.00 to DFA for the 1242 machines that they have and are still paying on. This dropped our payment because the big amount of money that we borrowed in 1986 was paid off. What this meant is we now owe \$15,600.00 a year. Payoff now on the existing would be \$45,000.00. It was discussed with administration at that time, to hopefully come up with a way to pay off that loan, so that they would not have to increase payment too much. Assuming that this was not the case, then adding the \$15,600.00 to the payment of \$51,000.00, that will occur in 2004, the new payment would be in the amount of \$67,466.00. That's an annual increase of \$26,000.00. All of this was made clear at the time the resolution was approved and signed. She had authorization of the fiscal manager, the county manager, the director of elections and herself to approve this resolution and she had acted in good faith to move forward. Every procedure and guidelines administered to her had been followed.

Commissioner Aguilar brought attention to the fact that the resolution that had been signed in July 2003 called for the county's agreement to, (Lease Purchase Contract) not to exceed 10 years, but, attached to that, the payment was to be \$51,866.00 per year. The agreement that was before her, item number 6 read, "this agreement shall cease upon receipt of the total sum due under this agreement and in no event shall this agreement exceed 5 years". Ms. Gallegos explained that it was a typing error by DFA, they had corrected it and Chairman Daves had a corrected one that read 10 years. Commissioner Aguilar asked, what would happen if they waited on this? Her understanding was that it was not mandated to have this approval or these machines until 2006 and she also understood that there were funds that would be available then. Instead of paying \$500,000.000 for them now at 0%, there may be some monies coming at more like \$250,000.00 to help purchase these machines and comply with the mandate. Ms. Gallegos said that the Help America Vote Act (HAVA) legislation, that was passed after the 2000 election and finalized in 2002, allowed for a federal mandated law that encouraged handicap accessibility at each and every polling location. To purchase these machines now would help at the precinct level for reporting on election night and other issues. The HAVA money would still be available to the county for the handicap accessible machine and what the order to the Secretary of State's, per Ms. Gallegos' office is, to purchase 25 voting machines to meet the handicap accessibility part of the HAVA act. In talking with the Secretary of State the order will still happen. They were waiting funding from the federal government and waiting to see how much would go to the state. HAVA has also put in a little over \$4,000.00 to our county already to install a T-1 line. They have bought all the hardware that allows connection with the Secretary of State's office and will allow us to be a state- wide voter centralized system. So HAVA is already giving money to us, it has in the past for the statewide voters system, and will do so in the future. It was never implied that they would buy all of our voting equipment or that every county would get all their needs. The only thing that the HAVA money can do and the state will have available to them is enough money, for them to put this handicap unit in every polling location. Not every precinct, but polling location. As soon as that money becomes available, it will add up to bring our voting machine inventory to 140 machines and this will bring us into compliance way into 2006. Taken into consideration is our growth and population and having several voting machines available to the precincts that are the largest.

Commissioner Aguilar asked where the annual increase of \$26,134.00 would come from. Ms. Gallegos said it would come out of the General Fund to the Bureau of Elections line item. Mr. Castillo said he and Ms. Gallegos had discussed this briefly and had suggested to Ms. Gallegos that the additional cost of \$51,866.00 per year, so that it would not effect the general fund with such a great impact, and, if she was unable to sell the old machines, that this additional cost come from her special revenue fund.

Commissioner Aguilar said that her goal was to provide a salary increase to employees in this budget year and wanted an assurance. Mr. Castillo said, that was the reason; he was suggesting that they minimize the effect on the general fund so that they can make every attempt to provide additional resources for salary, for employees. He suggested that this be funded from the county clerks special revenue fund. Commissioner Aguilar asked what would happen if this matter was tabled, until they had an opportunity to look at the budget, and to look at all the expenditures that have come in, and that need to be paid. Mr. Castillo wanted to clarify that, by the time that the manager's staff would be able to present some solid budget figures, it would be in March.

Chair Daves wanted Ms. Gallegos to respond as to how it would upset her intent to use these machines, which they had approved. Ms. Gallegos answered that the governor had issued a proclamation the week before, the primary election was in full force, filing date was in March, the votine machine certification and procedures needed to be done by the state, as well as training of her staff, to be prepared to handle things. Postponing this any later, which had already been postponed six months, would hinder her election process and everything that they need to start preparing for in 2004.

Commissioner Padilla wanted to know what "request approval of lease purchase agreement for voting machines" meant. Did it mean that it had not been necessary to bring this in the agenda? Chair Daves said that was why he had signed it. He had promised some commissioners and the public that there would be an additional hearing on it, but he had the authority and the obligation to go

forward with the ministerial duties as chairman of this commission. To sign an agreement which was consistent totally with their approvals with Tina's going forward and having the machines ordered. The approval was made in July and the agreement ratifying that, in terms of the lease payback, was a ministerial action on his part and there was no need for further commission action on it.

Commission Aguilar said if she recalled, her motion specifically stated that he would not sign any agreement until it came before this commission. Chair Daves said it was before this commission. Commissioner Aguilar said, it was before this commission, but it was already signed. Chair Daves said if it was an admission, he admitted it, but it was an affirmative statement.

Commissioner Padilla said that to his understanding, to be in compliance, they did not need to purchase these machines until 2006. But since the agreement had already been signed, all this talking was not going to do any good. He would have liked to see how it was going to affect the budget. He said there were many pending things and one that came to mind was the closing of the dump grounds south of Belen. He had concerns that the state would come in and that would cost them over one million dollars. He would have liked to see this tabled. He also would have liked to see some raises for the employees.

He said that an amount of \$93,000.00 was going to be due on these machines, and \$31,000.00 of it had been paid. Where was the difference coming from? Ms. Gallegos explained that \$41,000.00 paid annually was put in her budget every year. This payment was made every year per budget based on a loan on a lease payment. So then out of the \$93,000.00, Commissioner Padilla asked, \$31,000.00 had been paid and an outstanding amount left. Ms. Gallegos said no, Mr. Padilla's numbers were incorrect, \$45,200.00. So then, Commissioner said, it would have to be wiped out, besides the \$51,000.00 due, and still have a balance of \$41,000.00, and still bring it to \$90 some thousand. Ms. Gallegos said, the \$45,000.00 balance, which, if it could not be paid off, and had been discussed at the fiscal preliminary budget at that time, with the fiscal agent, the county would then impose an additional \$15,600.00 payment on top of the \$51,000.00 payment. The annual payment now would be \$67,400.00. That's an increase of \$26,000.00 of what we are already paying. This payment has been made for twelve years.

Chair said that to clarify this, when they had approved the resolution, Ms. Gallegos had promised not to purchase for six months. It was also understood that if she wasn't able to sell them, and it was never a certainty, then that effect on the budget would be \$26,000.00 a year. Ms. Gallegos said that was right. She has worked very hard to try and sell the machines and it hasn't been easy. Several calls were made out of state and in state, to try to get them sold. At no time did she try to sell software or licensing agreement. She was looking for potential buyers for the voting machines. It was made clear to potential buyers that they would have to work with a company to program and get certified so that they could proceed with their elections. She still has the rest of this year before this payment is made, to try and sell them. And again, this was discussed at the time of promising to wait six months, because if she waited, in December that payments made, she has from January 2004 to December 2004 to continue to try to sell these machines.

Chair Daves empathized the fact that in July, they understood that if the machines were not sold, the effect on her budget and the general fund would be \$26,000.00 per year. Chair Daves also reminded the commission that on the July meeting, Commissioner Andersen had made a motion to approve the request that Ms. Gallegos had presented, which was Resolution 2003-38. Commissioner Trujillo seconded it. Commissioner Aguilar had voted yes, Commissioner Trujillo had voted yes, Commissioner Padilla had voted yes, and Commissioner Andersen had voted yes. Motion had carried, 4-0. In the budget hearing, Commissioner Andersen had made a motion to eliminate from the budget the lease payment for the purpose of the new voting machines for the fiscal year 2003-2004 budget. The purchase would be put off until the 2004 -2005 so that the first lease payment would take place then and that amount is \$51,866.00. Commissioner Padilla seconded this. Commissioner Andersen had voted yes, Commissioner Padilla had voted yes, Commissioner Trujillo had voted yes and Commissioner Aguilar had abstained. That was the position that our county clerk was in and what she had done was consistent. Chair Daves said he certainly appreciated the concerns with the budget, but that the decision had been made in July to bear a \$26,000.00 burden a year when the approval had been done. Ms. Gallegos had done much in reliance upon that, including postponing her action and he believed government needed to make decision and go forward and that was why he was signing the agreement.

Commissioner Aguilar said that in reading the minutes, "that expenditure is not to occur during this fiscal year". This fiscal year does not end until June 30<sup>th</sup>. It was postponed for consideration until the next fiscal year. She said that if they were in a position to pay \$45,200.00 and they waited until budget, then they would not have an expense of \$67,466.00, at which time they could look at the budget in 2004-2005 and really prioritize their goals and look at salary increase and whether there are speed humps and if they recalled, there was a back hoe that got purchased and also needed to be paid. There was only so much money and they needed to look at some expenditures and make a commitment to the employees and go from there and so she moved that they table this item. Commissioner Padilla seconded it. Chair Daves said that tabling the item did not undo the approval that this commission had made in July and that based upon that reliance by the county clerk and that commitment, he had preformed his ministerial duty of signing the agreement, and tabling the item simply meant that there would later be discussion, but no action, with regard on this agreement. And to make clear on that, the motion to table was on the floor. Commissioner Padilla said the reason he had seconded it was because it was still on the agenda as an action item.

Mr. Didier Hartenhoff, from the audience, said that the county was on a short budget and was against the approval of the agreement.

Mr. Borum, from the audience, said he was currently serving as a consultant to a company that is undergoing an independent technical authority examination for certification by the national association of state election directors. While in Denver, he discovered that there was no voting machine company, now, to have federal certification of meeting the HAVA act. The day he was there, he said, a new requirement had come up from the national association of state election directors. He said the requirements were still floating and if they were counting on getting HAVA money to pay for this purchase, you've got to have HAVA compliant machines. The new requirements, Sequia doesn't meet it, neither does Diebold, or any of the others. In talking to a Senator who is one of the major architects of the HAVA, he said that they were running out of money. The cost of putting in the statewide voter registration system, plus the cost of replacing voting machines, is taking more money than they thought it would. They are now looking at the new election requirements for HAVA until 2008. So that money could be delayed. He said that in verifying with the Secretary of State's office, in New Mexico, and the director of elections, there is no make-up money from HAVA. If the machines were bought now, the requirements of the HAVA act would be met, but, when the state is awarded the money from the federal government to disburse, they would be ineligible, because they would have already complied. This would amount to \$148,071.00.

Mr. Bill Brown's comment was that this topic had been extensive for the last three meetings and he commended the Chairman of the Commission to live up to its own resolution and its commitment to the county clerk. He said a lot of things were not good in this county, but our elections have gone well and he thanked the Chair for supporting Ms. Gallegos to keep it ongoing.

Charlie Sanchez's comment was that when the commission was dealing with budget issues, that they be very diligent with the taxpayer's dollars.

Julie Baca, deputy clerk from the City of Belen, said they were well into their election and had concerns with how this would affect them. Chair Daves said that the machines were already ordered and they would be used. Tabling this item on the agenda would not affect that. This was why he had stated, and to make it very clear, that it does not reverse the decision that this commission had made in July. He said they had to weigh the reliance upon their decision because of these commitments. It was very important that they support the county clerk.

He reminded that there was a motion to table this item. He had stated that it would not reverse the resolution, or Ms. Gallegos going before DFA and getting the grant and starting the process or his duties as Chairman of the Board.

Commissioner Trujillo said he could see the direction that this was going. It was unfortunate, but there was some partisan interest. He said he was hearing conflicting information. He had been reading information provided by both sides for some time and now he was not convinced either way. This information was involving approximately two thousand dollars going either way. He could not, at this point, call anyone and verify those statements. There were also statements made about the quality of the machine that have been purchased and he had discussed them with the county clerk. She was very frank with him, about them, but they continue to be a concern. He was also concerned about taking information from partisan interest and regarding it as being factual, simply as a statement, unless there was something to validate that, because he did not care what somebody's partisan interest is and he would not vote based on that. "There better be another principle beside whose pocket stands to benefit from it", he said. Politically, either, he said. He liked Tina, she was doing a good job, but he would vote against her if he thought the principal was such. Mr. Borum is an intelligent man and has made a good effort to present this case, which in his opinion was a partisan case. He saw nothing before him that justifies voting either way and it was a decision that Chairman Daves had followed through in keeping earlier commitments, and, validated that. If it was true and this machine is not necessarily HAVA compliant and there are additional requirements coming forward, then he would question the county clerks rational for having purchased them at this point. It was his impression that when they had made this decision, that clearly, there were specific requirements and criteria, and that this machine was going to bring us into compliance. His decision had been based on that. Some issues had been raised recently, and he had concerns about it, but both parties had addressed them. These were his comments on it. If it were an issue that he felt he could make a clear decision, he would certainly go forward and do that. Perhaps they should have referred it their attorney a long time ago and had them check out the requirements and have an objective legal opinion rendered to them, he said.

Commissioner Andersen said they had signed a resolution, in which Ms. Gallegos had taken to the State and based upon that resolution, the State had purchased the equipment on their behalf. In her un-legal opinion, they had made a contract with the State, showed them a promise to buy, they purchased in good faith, and so, she thought, they were honored bound to do that. What she had heard tonight, correct me if I'm wrong, she said, was, that what will be coming out of the general fund budget, was exactly what was budgeted and the excess of that will come out of the special revenue fund. Ms. Gallegos said that was what had been recommended by the county manager and would be discussed at budget time. Commissioner asked if there was money in that fund to cover that payment. Ms. Gallegos answered yes.

Chairman Daves then called for the vote. Commissioner Padilla voted yes. Commissioner Aguilar voted yes. Commissioner Andersen voted no. Commissioner Trujillo abstained. Chairman Daves said if this had any meaning at all, he would, to the extent that there would be inference that this amounts to a tie, he would vote no. So, he said there are three votes against the motion. Commissioner Aguilar said there was an abstention and he could vote no which would tie it and the matter would die. Chair Daves thanked her for explaining it and so the matter died. Commissioner

Aguilar then said there was no vote or no approval of this resolution. Chair Daves said the motion did not carried. Commissioner Trujillo said he agreed with Chair Daves in that the motion did not carry, it was a motion to table this item.

Commission took a 15-minute break.

**Request Approval for Review & Consideration for removal on Structure.....Charles Eaton**

Deputy Fire Marshall, Charles Eaton was requesting consideration for approval for removing an old adobe structure at District two in the Tome-Adelino Fire Station on Hwy 47. Two years ago they had legislature appropriation for paving, for four fire stations, and Tome-Adelino was one. Their plans were to knock it down and provide for a drainage pond. Commissioner Aguilar wanted to know, if in the removal of the structure, did they need to have a Phase I or Phase II in Risk Environmental study to determine if there is asbestos. Mr. Eaton said that Mr. Romero, with the State Environmental Office had inspected and identified the hazards and been taken out of the facility. This facility has been used for fire fighting training.

Commissioner Andersen asked if they needed the motion to include a statement to remove it from the fixed asset. Mr. Castillo answered yes. Commissioner Trujillo made a motion to approve. Commission Padilla seconded it. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Aguilar voted yes. Motion carried. 4-0.

**Approval of Property Donated to County of Valencia.....Art Castillo**

Mr. Castillo wanted direction on property that is donated to the county. Did the commission want these accepted as an administrative point of view or bring them to the attention of the commission? Commissioner Aguilar's concern were, if these were located in the Rio Del Oro subdivision, were they subject to VIA assessment and, or are there taxes due? Is there a title search done prior to acceptance and should there be a survey done. She would want to make sure that it is clear title and not subject to any type of future litigation. Mr. Castillo understood that in the future, they, as an administrator's standpoint, do a background investigation before it is brought to the commission. Commissioner Andersen was also interested in knowing as to the use of the land, as a public owner. If there was any use for it publicly. Was it something they could sell or would they be hampered from doing that. She did not see the county as being a landowner and did not think it was proper. If it was worth anything at all, it should be privately owned, unless they could use it as parks and fire stations. Commissioner Trujillo said he would like to know if there was any contaminates or anything else that would become a liability for the county.

Mr. Castillo said he understands what the commission wants and after the completion of all of this, did they want him to bring it back to them? Chair Daves said that they would like it to come back to them. Mr. Castillo said his office would do the investigation and bring it back to the commission.

**Approval of Resolution (Support Pueblo of Isleta Legislative Request).....Art Castillo**

Mr. Castillo said he had spoke to Luitenant Governor Jojola who apologized for not being able to attend. The proposal and the legislation that the Pueblo of Isleta was presenting to the state legislators was to extend the northern boundary of Valencia County to the northern boundary of Isleta Pueblo. Chair Daves said this was not stated in the legislation. Mr. Castillo said, that in the proposed legislation, no, but in talking to two legislative panelists, that was the request. To Chair Daves understanding, the legislature would allow the a process between, pueblos and counties, in cases where a pueblo has land in more than one county, to start a process to see whether, with mutual agreement, the county boundaries might be shifted. The way he understands it, is that they want the entire pueblo in Valencia County, which is what they've asked in the past. Legislation would move the process forward, in the sense, it gives it a statutory mechanism, but wouldn't commit the county to anything beyond that.

Commissioner Padilla said this was a very important request and he would have liked to see some representative from Isleta. What would be the liabilities, and what would the county benefit, he asked? Possibly the matter could be tabled until they could come and give the presentation themselves. Chair Daves said that it created a process where, the pueblo and the county could create some process under which the county lines might change, and that this process would not create an involuntary commitment. This did not aviate Mr. Padilla's concerns, but he wanted them to fairly characterize the legislation as best that they could.

Attorney Cynthia Wimberly said that they had reviewed the proposed act and it provides for an expedited process for any kind of reservation or pueblo land to become part of fewer counties than what it presently is, wherever it is in the State of New Mexico. It is not a specific act just focused on Isleta Pueblo. The way that it is expedited is that any affected county, plus the governing body of the reservation or pueblo lands, so long as all of that government is in agreement, may, by agreement, change the boundaries of those counties to encompass. So that way, one county would encompass the entire reservation of pueblo land. Its expedited because, changing those county boundaries, it would not necessarily have to go before the state legislature for approval, whereas now, it has to go before them for approval on a case by case bases. Chair Daves believed that it was not just a vote up at one meeting of the county commission. It would be a process that would involve public hearings.

Commissioner Trujillo wanted to re-enforce Commissioner Padilla's concerns. He would like to know what benefits and deficits could accrue to the county as a result of this before voicing support on it.

Commissioner Aguilar said she fully agreed that, what the pueblo was asking was just to let the legislature know that they were in agreement for this process to begin. It did not mean that they automatically accept them. Once it goes through the legislature, and before they do this, there will be additional questions as to the benefits. Bernalillo County was also involved in this. This was a long process and she believed that Isleta had been very good to them, in the schools and they have been

a good neighbor. She would like to afford them the opportunity to come forth with the process and see if it can work.

Commissioner Andersen said that in essence, all this did, was open the door for them to talk to Isleta about whether or not they wanted them in our county, but without this legislation, the possibility was not there.

Commissioner Padilla said he still had a problem with it, in that, they don't pay taxes on some property that they already have in our county. It was just not fair to the taxpayers of Valencia County. That was one of the questions he would like for them to answer.

Commissioner Trujillo wanted to respond to some of the comments of the resolution. For example, on one of the paragraphs, it simply did not open doors for talks. There were certain rights that are conferred by virtue of this proposed legislation. If the county had 90 days to respond to the petition and in that response, if approved, the county resolution includes the description of the tribal land to be transferred. If it's denied, the county has to state the bases of the county's denial. He didn't think it was a friendly opening of doors, it was granting some rights to the tribe regarding petition & appeal procedural rights. He was not prepared to vote for approval.

Commissioner Padilla pointed out that it read, "If you fail to respond to this, it would automatically be approved."

Commissioner Andersen wanted to clarify what Commissioner Padilla said. The statement that he was quoting actually read; "if an affected county fails to respond to the petition within the ninety-day period, the petition shall be deemed approved". What it meant, is that they want to know within 90 days, and if they don't answer it's approved. It behooved this commission to act promptly. It didn't mean that it was going to happen without them saying anything, unless they sit back and let it happen and she, for one, would not let it happen.

Commissioner Aguilar said that in paragraph A, it said that the tribe would be coming to them and saying, that they wanted to be part of the county, conditions that they wanted. It was more of a dialogue at that time, so that was the time to ask about the benefits for the county, maybe even make request.

Chair Daves was disappointed that there was no representation from the pueblo. They are good neighbors and he suggested that he would vote to break a tie, if, in the resolution the word deemed "disapproved" were to be put in. He believed it inappropriate to have a law that the pueblo could set a process in motion, that by default this county could in fact have its boundaries changed, so he said, it doesn't commit the county and that there shouldn't be any default commitment. And as the attorney had stated, this was not an Isleta piece of legislation on its terms, but he suspected that they were the authors of it.

Commissioner Padilla made a motion to table this matter until Isleta could come and answer questions and concerns that they had. Commissioner Trujillo seconded it. Mr. Castillo, County Manager, reminded the commission that if this were tabled, the legislation session would have expired. He would then invite the Governor's office to come and make a presentation to the commission. But, he reminded them that with or without the county's support, it could still be passed by legislature.

Chair Daves had a concern, that if all of the population of Isleta Pueblo was in Valencia County, as far as political power, there would be one commission seat that in effect would be an Isleta position and it would be a critical one, whereas if they went to Bernalillo County it would be very different and the total population of Isleta wouldn't have that political affect. The impact of an Isleta commissioner voting on laws that would effect the county and as far as he knew there was no county authority for any action taken on the pueblo. He would support the legislation to allow the debates on these kinds of issues.

Commissioner Trujillo pointed out that Isleta was a sovereign nation. There are legal implications on the domestic level and even in terms of law enforcement; they were a step away of opening Pandora's box, if they proceeded on these issues. He emphasized that this was not as simple as it appeared. The ramifications were broad, not only politically or socially and he strongly advised against approving it before they got a lot more information as to the impact.

Mr. Dale Jones, chair of the Valencia Soil and Water Conservation District gave them an example that involved the farm bill. Our district has all the Isleta under its jurisdiction, but the payment, made with ASA office, are by counties, so they have to work with two counties, to get anything done with the farm bill. This is one of the reasons why they are trying to do this, because of working with two parts of government to get things done.

Commissioner Padilla still had a problem with "failing to respond within a 90 day period the petition shall be deemed approved". This was giving them a lot of power. He said.

Chair Daves was prepared to support the resolution that, this county supports action, if the word is changed to "disapprove".

Commissioner Trujillo pointed out, that, above the statement that Commissioner Padilla was concerned with, it said, "If the request is denied the county resolution shall state the basis of the county's denial. To him it implied a right of appeal, since they had to state a basis for the denial. This could throw it into some court. Also, it said that they could petition again, within a 90-day period, if the petition was denied. This may not be so easy to say no.

Commissioner Aguilar called for the vote. Chair said there was a motion and a second. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Andersen voted no. Commissioner Aguilar voted no. Chair Daves voted no to break the tie. Commissioner

Andersen then made a motion to approve the resolution with the stipulation that the word “approves” is changed to “disapprove”. This was on page 3, line 21 within section 4B of the proposed legislation. Commissioner Aguilar was not prepared to second the motion, because if they could not approve what was before them, they shouldn’t act on it. She was concerned with their procedure.

Attorney Wimberly said she had drafted the resolution and the commissioner could change it at their will. She wanted to make it clear, because she had understood that they provided the resolution to us, but they hadn’t. Commissioner Aguilar said they had provided the copy of the legislation. Commissioner Aguilar seconded the motion to pass the resolution with the amendment. Commissioner Andersen voted yes. Commissioner Aguilar voted yes. Commissioner Padilla voted no. Commissioner Trujillo voted no. Chair Daves voted yes. Motion carried. 3-2.

**Approval of Resolution to Support the Bill of Rights.....Paul Edward/William B. Pratt**

William Pratt, a resident of Valencia, said this resolution included twelve communities of New Mexico, including Albuquerque and Socorro. The point was that the revolution was fought to free our forbearers and the victors then had the task of establishing a new government to keep the people from internal and external threat. Details, he said, were in the resolution.

Commissioner Andersen asked who had written the resolution, because on the second page, second paragraph, it was directing the County Clerk to transmit to the Commission, a summary information obtained pursuant to the USA Patriot Act, every six month. How does the county clerk get this information, she asked. Was this something she receives? Mr. Pratt said no. She would have to ask the US Attorney for any information.

Chair Daves said he was not prepared to sign it, without that paragraph removed. He said it would put a burden on the county clerk, on doing something, that neither one of them knew how to do.

Commissioner Trujillo agreed that the paragraph was also a concern to him. He had no problem on it being deleted.

Commissioner Aguilar had to leave, but she was in support of this resolution. Being in real estate, she said, when the individual goes to closing, the title company needs to ask for two forms of photo ID. The closer now has to describe the individual in case there is suspicion of terrorism. They also have to report that, and it is extremely serious and she hoped that part of the legislation got changed. She would vote yes. Commissioner Aguilar left the meeting.

Joseph Harville, in the audience, was against taking out the paragraph that involved the county clerk. Mr. Adrian Gabaldon was in support of the resolution.

Sheriff Perea said there should be more time to study this resolution and to see where it places the sheriff’s department.

Another member from the audience said she was concerned about the person designated to do the research. She said maybe the commission could appoint a citizens group of volunteers.

Commissioner Andersen said she supported the resolution with the one exception. The most important paragraph, to her, was the third paragraph on the second page, which she read. She submitted that they could keep all the records that they wanted and would have some nice statistics about somebody who was stopped, but what they needed to do was to co-ordinate an effort to get to our congressional legislation and tell them what we want changed. This resolution tells them that we are concerned, but it is only a resolution that she doesn’t know where it is going once they sign it. What matters are the phone calls to the legislators telling them of the concerns. Your force on those elected officials that we sent to Washington is the only way that the federal legislation can change, she said.

Chair Daves said a horror had been inflicted on this country on September 11<sup>th</sup> and we shared that memory. The ones that voted for that act did it in good faith, on the other hand he was leery of when it was drafted, because it was drafted so quickly, but he would give them the benefit of the doubt. He was a prisoner of war in a communist country for five years and one word that he disliked was Department of Homeland Security. He said all of those countries have their tribunals of controlling their people under the metaphor of Homeland Security. Our country decided that our courts were not good enough to try people, they needed a military tribunal. Valencia county residents are concerned, not that we don’t have a problem, but adding more security requirements, some of it has gone too far. They didn’t want to do anything that would keep homeland security money coming to the Sheriff. He said Commissioner Trujillo and the Mr. Pratt had provided him an opportunity to comment and to vote in support of it on conditions that they remove the paragraph on the county clerk.

Commissioner Trujillo wanted to address the concerns that the commission and the sheriff’ had. He assured the Sheriff that there was nothing in the paragraph that requires him to go through anything other than what he has been doing. He referred to the first paragraph that says, “local law shall continue”. He made a motion to approve the resolution as it stands, in light of Commissioner Andersen’s concern about the addition burden on the county clerk, in hopes that it would pass, which would provide them with some mechanism, for, keeping an eye on those who are keeping an eye on them. He didn’t mean it capriciously; he thought it was very serious. It was a nation worth protecting, because of the rights and privileges. Motion died for lack of second.

Commissioner Trujillo proposed an amendment, rather than directing the county clerk, “the Valencia Board of County Commissioner shall direct a special committee of citizens to transmit to the Valencia County Commission” the same information that we are replacing on the county clerk. With that amendment, he made a motion to approve the resolution. Commissioner Padilla seconded it. Chair Daves said they would have made their point if they had passed the resolution without any creation of a committee and without duties on the county clerk. Chair then asked for a vote. Commissioner



Andersen voted no. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Chair voted no, on the suggestion that he would vote yes on a motion that would delete that paragraph. Commissioner Andersen made a motion to approve the resolution with the elimination of paragraph two on page two. Commissioner Trujillo seconded it. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Motion carried. 3-0. Chair Daves was on record as approving and glad that Commissioner Trujillo had brought this to them. Commissioner Trujillo extended his heartfelt appreciation to all that had worked so hard on this and also to his fellow commissioners. Chair Daves wanted it on record that Commissioner Aguilar, who was absent, also supported it. Commissioner Trujillo pointed out that there was a typographical error on the third paragraph. It said enumerated I the Constitution, it should read as, enumerated in the Constitution.

**Commissioner s Request/Reports.....Board of Commissioners**  
Chair Daves said that at the last meeting they had created a moratorium committee and he was prepared to name his. Eric Eichwald and William Dean had agreed to serve. Commissioner Trujillo named Dr. Steven Cohen, from Jarales and he will submit the other name to the county manager within the next two days. Commissioner Padilla had appointed Mr. Rizzo and he named Martin Sisneros. Commissioner Andersen had mentioned George Koch and she also added James Hoffman.

**Planning & Zoning Matters:**  
**Discussion/Approval of Zone change request process.....Cynthia Wimberly**  
Tabled-January 21, 2004 Meeting  
Vice-Chair Trujillo took over the meeting.

Vice Chair Trujillo reminded the commission that this item had been tabled on the previous meeting and asked Ms. Wimberly to give them a brief introduction. Ms. Wimberly said that they have an issue, where every time that have a zone change request, that comes before the commission, they have a public hearing on it, the commission makes a verbal decision, then they still have to come up with a written finding of facts and conclusion of law, upon where the commission bases its decision. That results in a process where the zone change is coming before the commission twice. She was asked to find a process so that it would only come up once. What they had come up with, was to have some kind of a check list from the public hearing on the zone change request and at that time, and the commissioner could work that out, she could have some criteria to put into the findings & decisions, but they don't need to come before a motion and vote the second time. They would be signing off on the findings & decisions insuring that they comport with the decision that they make based on the worksheet.  
Commissioner Daves wanted to make a point that when it comes to them the second time, he didn't believe that they have the discretion to re-visit the decision, but rather to confirm the bases for doing it and to have it articulated in a form, that for the record, they agree with it and that it's available for those who might disagree with their decision. A concern he had with the form was that, it seemed to him that it ought to have, perhaps, more than just the criteria that comes out of the ordinance for justification, for a zone change or a justification for denial. That was more of a factual predicate as far as leading to traffic problems. What they had received in the past was a combination of findings of fact on which the criteria were applied. This was not a fatal flaw, but a concern he had.

Commissioner Padilla wanted to know what if there was a difference of opinion on the facts and findings when it comes back.  
Commissioner Andersen said all the form did, in her opinion, was do an administrative paper work so that it makes things a little clearer and is a big support for the formal facts and findings, that the legal staff has to come up with. She said perhaps that should have some spaces where they can put their denial. Not for the reasons for denial, but just space so that somebody can add it during a meeting.  
Chair Daves made a motion to approve on the condition that, they approve the form on the bases that it contain room for findings and fact and subsequent. The findings & fact can be leading to an approval or disapproval. His motion would be that the form be approved with space for the attorneys to fill out as they listen to them. The motion had been made. Commissioner Andersen seconded it. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Daves voted yes. Motion carried. 3-0.

Chair Daves resumed the chair.

**Request to Amend Zone Map from RR2 to RR1 splitting property**  
**Ruben Chavez/Leonella Montano**  
Tr. 13B2B Land of Charlie/Mary Carrejo

Chair Daves asked to table this item until the next meeting so that all the commissioners could be present. Commissioner Trujillo made a motion to table. Commissioner Padilla seconded it. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Motion carried. 3-0.

**Request to Amend Zone change from RR1 to C1purpose.....Ruben Chavez/Juan Gomez**  
**Restaurant/Tortilla Store**  
**Tr. 7a2 E1 El Cerro Mission Ranchetts Subdivision**  
Tabled.

**Financial/Business Matters:**

**Approval of Budget Resolution Highland Meadows Fire Department.....Art Castillo**

Art Castillo presented the commission with a resolution of a budget increase concerning current construction project at Highland Meadows. Commissioner Andersen made a motion to approve. Commissioner Padilla seconded it. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo was absent for the vote.. Motion carried. 2-0.

**Mid-Year Expenditure (General Fund 401).....Art Castillo**

Mr. Castillo Presented the commission with a a print-out of projected budget and said it was a net positive. He said all the departments were within their budgets. Commissioner Andersen thanked Mr. Castillo for all his work. She said that maybe in the future they could have a workshop and do some future planning. Commissioner Trujillo said he supported that suggestion. He welcomed Mr. Michael Steininger, our new business manager, and said he looked forward to working with him. Chair asked Commissioner Andersen to work with Mr. Castillo on planning this.

**Approval of Payroll & Warrants.....Art Castillo**

Mr. Castillo presented Payroll & Warrants printout to the commission. Commissioner Andersen made a motion to approve both. Commissioner Trujillo seconded it. Chair Daves said that before they voted, Commissione Aguilar had asked Mr. Castillo about several items and her concerns had been addressed and explained. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Motion carried. 3-0.

**Manager's Report.....Art Castillo**

Jail Monitor's Report-Informational

Mr. Castillo presented a hand-out which was a little behind the projections revenue. Mr. Castillo had established a committee to assess the proposals for RFP for the jail contract and had asked Chair Daves to appoint a member to be on the committee. He appointed Commissioner Andersen. Commissioner Trujillo suggested Mr. Rudy Gallegos. The other member appointed were, Michael Steininger, Art Castillo, Steve Koppell, Bruce Swingler, John Jack Daley. He had set up a meeting on February 19<sup>th</sup> to begin the process.

Mr. Castilo said that on the jail proposals that the county had asked for, they had received three. One was from Cornell, one for CSI Incorporated and the other was GRW.

The next regular meeting will be held on February 18<sup>th</sup>, with Executive Session starting at 4:00PM based upon the County Manager's discussion, with regular meeting starting at 6:00PM

The next Regular Meeting of the Valencia County Board of County Commission will be held on February 18, 2004 at 4:00 PM in the Los Lunas Consolidated School Board Meeting Room.

**Adjournment**

Commissioner Andersen made a motion to adjourn. Commissioner Padilla seconded it. Motion carried. 3-0

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the February 4, 2004 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**

ss/  
**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: February 18, 2004**