

VALENCIA COUNTY BOARD OF COMMISSIONERS

Regular Meeting

April 7, 2004

Chairman Gary Daves called the Meeting to order at 5:10PM

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

Chairman Gary Daves called the meeting to order. Pursuant to NMSA-1978.Section 10-15-1, the following items would be discussed in closed session; a) Limited Personnel Matters (Pursuant to 10-15-1-(h)-(2) and Pending Litigation (Pursuant to 10-15-1-(h)-(7). Commissioner Padilla made a motion to go into executive session. Commissioner Andersen second it. Commissioner Trujillo was excused for the vote. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Aguilar voted yes. Motion carried. 3-0.

Executive Session

Chairman Gary Daves called the meeting back to order. Chair Daves reported that as of Monday Mr. Michael Trujillo was the new County Manager. They were given a draft contract and they would act on it on the next commission meeting. Other personnel matters were discussed. Commissioner Trujillo made a motion to ratify that other than what was on the agenda, nothing else was discussed Commissioner Andersen 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 Mr. Titus

Approval of Agenda

Ms. Tina Gallegos, County Clerk read the agenda. Commissioner Aguilar asked that Item B, the voting machines contract purchase, be removed from the agenda. She said that the purchase was and had never been her contention or an issue. The issue was the process that was used. The item was advertised as an action item and also a public hearing. When they came to that, the chair had announced that he had signed the contract and that it would not make a difference. This was her contention. Chair Daves said it would be discussed in the context that she would like and there were others that would like to discuss it from other points of view. There would be no reason to discuss it now, unless she was recommending a change to the agenda. Commissioner Aguilar said she was, for the reason that it was advertised as voting machine contract purchase. She asked for the item to be removed from the agenda. Chair Daves said there were a number of people present because of that issue and there had been criticism of the chairman's action and, he thought, that was the focus of what she had wanted to discuss. Also there was an issue of the adequacy of the machine, the authority under which they were purchased and there were folks with information that had been prepared in anticipation of that discussion. He was happy not to have the discussion and he would regret the time that these people had spent in coming, and as far as he was concerned, he would hope that in removing it from the agenda it would put it to rest, and, if it doesn't, then they would need to discuss it tonight. Commissioner Aguilar said that the way it was advertised, it was not the purchase of the voting machines, and for her to hear that they are good machines; she did not have an issue with that. It was the process, and with just saying that, then we will put it to rest and she moved that Item B, be removed from the agenda and hoped that she had the support. Commissioner Padilla second it. Chair Daves asked if the indication was that it would be put to rest if it were removed from the agenda? Commissioner Aguilar said she was not an attorney, nor was she qualified to address open meetings act violations or statutes violations and she would think that it was up to the attorney's because they knew what her concerns were. If there were an issue with it, she would like the attorneys to send a letter to the Attorney General and clarify the fact that it is not the voting machines and this would put it to rest. Chair Daves asked if what she was suggesting was to let nature take its course? Commissioner Aguilar said, "we have a public, we have other attorneys, we have the Secretary of State and if the Attorney General says they don't want to address it, who was she to question it." Chair Daves said there was a motion and a second to remove from Item B, voting

machine contract purchase, from the agenda. Commissioner Trujillo said that back in December he had concerns about the purchase of the machines, which were not procedural, but rather concern about the operation of the machine as to whether it would leave a paper trail. He said the Attorney General's letter to our attorneys clarified that the legislature did not adopt the proposed legislation regarding the paper trail.

Cynthia Wimberly said that the legislation had not passed HB501. Commissioner Trujillo said this would take the matter out of their hands regarding that concern. The credibility of the machines, in speaking to different individuals, have indicated to him that further HAVA requirements could be met by these machines on an upgrade. The letter was fairly conclusive as to his concerns. He had no objection to removing the item from the agenda.

Commissioner Aguilar said another concern was that some of the monies being used to purchase these machines were coming from the filing and recording budget. Her understanding was that it can't purchase voting machines from this fund and she hopes that this is taken care of.

Commissioner Andersen said she was very uncomfortable with all of this. In all the times that they had discussed this, over and over again, now they had the opportunity to get it all cleared up as a formal agenda item and if they dropped it now and somebody brings it back again, they would be back in the same mess. She would like to see it spoken to and addressed.

Chair Daves said there was a motion and a second and the intent of the motion was that this issue be put to rest. As far as the propriety of what he had done, or, might do that can be followed through under appropriate process. He would be very happy for that to happen, but he concurred with Commissioner Andersen in that he hoped that the removal of this item would not pass. Commissioner Trujillo wanted to know what individuals were in the audience. The Honorable Ms. Rebecca Vigil Giron, Secretary of State, Mr. Hoyt Clifton, Bureau of Elections, Mr. Steve Fresquez, Bureau of Elections, Mr. Howard Cramer, Sequoia Voting Systems and Mr. Lawrence Kaneshiro, Valencia County Bureau of Elections were in the audience. Commissioner Trujillo said that for the sake of forming a better understanding, he would like some more facts and these individuals could provide them.

Commissioner Aguilar said she was the one that had asked for this item to be placed on the agenda and she felt that the issue was not the machines, it was the process and thereby her requesting it to be placed on the agenda is not being addressed. Something else was advertised and she apologized to the folks that had come for this, but apparently someone had misunderstood that it was the purchase of the machines. She said it would be best if they just move on. The purchase had been done, the machines have been used and she hoped they would remove it from the agenda as advertised.

Chair Daves called for the vote. Commissioner Andersen voted no. Commissioner Padilla voted yes. Commissioner Trujillo voted no. Commissioner Aguilar voted yes. Chair Daves voted no. Motion carried. 3-2.

Mr. Michael Trujillo, County Manager requested that on Item D, it be changed to; Approval of Resolution for Submission of RFP Response. This was after talking to the county attorneys.

Chair Daves agreed and called for the vote to approve the agenda as presented and clarified. Motion carried. 4-0.

### **Approval of Minutes**

Commissioner Padilla made a motion to approve the March 17, 2004 Regular Meeting. Commissioner Andersen second it. Motion carried. 4-0.

### **Public Requests**

Ms. Betty Mozio and others from Las Maravillas wanted to thank the commissioner for all the stop signs in their area.

Chirs Lucero, on behalf of his brother David Lucero, who works in the Assessors Office, was asking for handicap push buttons on the doors. His brother is handicap and had the door break on him sometime back. Mr. Trujillo, County Manager, said he would look at re-locating Mr. Lucero's handicap parking to the front doors.

Mr. Toomey had requested an ordinance to be placed on the agenda. He had been involved in several different advisory boards some of which had been tabled and some the commission had approved. He said now was the time to pass a decent animal control ordinance. There were many people that supported this. Chair Daves said that it would be resolved at the end of the meeting.

Mr. Trujillo said a carefully adapted ordinance should reflect the values of this geographical location. One of his concerns with some of the provision of the ordinance that's been proposed is that it does not reflect the values of Valencia County.

Commissioner Aguilar said she had read the draft and she did think that the commission should forward a copy to the committee and it should be addressed at the time that they are looking at the entire ordinance.

### **DEPARTMENT/REPORTS:**

#### **Environmental Impact Report.....Ruben Chavez/Salomon Romero/FrankTitus**

Ruben Chavez said that at the December 17, 2003 meeting, the commission had requested a zone change of five acres of the RR2, two-acre minimum, to RR1, one-acre minimum. During that request many comments by the commission, the applicant and the public were made and many issues were brought up such as protection to the families and the neighbors and cause of health problems. On

the instruction of the commission, he had prepared a study to give evidence as to what exactly was happening to our environment regarding the one and two acre definitions that they had. With the assistance of Mr. Frank Titus and Mr. Salomon Romero, he had prepared a demonstration. Recommendations were presented to the commission. **See exhibit A.**

After his presentation, Commissioner Aguilar asked if the two-acre minimum was for all of Valencia County or just in the valley? Mr. Titus said that the problem was in the valley. The water table was deeper and there is less evidence that contamination will occur. In no case would he recommend that they allow space less than about an acre. What Commissioner Aguilar had wanted was criteria that would address the density location, access and others, that if this commission had a request for something less than two acres they could look at it and they would be acting in a uniform manner on all lots splits and not make it a two acre minimum because the ordinance says so. The ordinance, as she understands it, was that the two-acre minimum was for subdivisions. They get lot splits and that's where the concern comes in. It is the jurisdiction of Environmental Department to identify lot sizes and better septic system.

One of the observations that Commissioner Trujillo had in regards with the two-acre minimum was that he repeatedly heard it referred to a two-acre separation. Some locations had a boundary between two pieces of property and they may be septic tanks that need ED requirements, however, they are adjacent to each other eventho they are two acre each. It seems that proximity or density would be the issue. To specify an area of two acres by no means guarantees proper distancing between someone's septic tank and someone else's well. There is nothing to prevent residents of adjacent lots to locate their septic tanks next door to someone else's well.

Mr. Titus was proposing that they establish a two-acre minimum and thereby restrict density. They have established a simple process whereby you cannot have a lot of septic tanks right close to each other. Two septic tanks close to each other would not create a problem, but half-acre space potentially is a real problem. Commissioner Trujillo said his concern was not septic tanks close to each other as much as a septic tank adjacent to a well. Mr. Titus was recommending to the county to require sealing of upper annulus (between wall of hole and casing) as a condition of permitting all new wells and keeping the two acre minimum lot size for homes with wells and septic systems except for the most unusual circumstances.

Commissioner Aguilar wanted to mention that in the Mesa most of that land was split into 1/4acre and 1/2acre lots. In Vegita, the contamination was not in the valley, but was coming from the Mesa.

Mr. Salomon Romero had an illustration showing that Environmental Division has spacing between well and septic tank regulation that is over and above the lot minimum.

**Commissioner's Request/Reports.....Board of Commissioner**  
Voting Machine, contract (purchase)

Chair Daves apologized for the language on the agenda not being what Commissioner Aguilar had wanted, but anything she wanted to discuss could be done at this time. Also, people were here to answer any question on what caused the issue of whether this contract should have been approved or not.

Commissioner Aguilar repeated that the item placed on the agenda was not the purchase of the voting machines. It was ironic that the whole discussion comes as a result of disenfranchising voters and not allowing voters to participate in democracy, so we need to buy new machines. It seems that the issue of the purchase machines was what was advertised on the agenda, yet it is not what she had requested or has been her concern. There are five commissioners and yet one commission took it upon him to sign the agreement, she said. The item was placed and advertised on the agenda as an action item and there was to be a public hearing and approval by the whole commission. This did not happen. That was her issue and as far as coming here and saying, "gee", you want to void the contract, "no". The subject is the purchase of the voting machines, but the whole concern and the issue is the fact that, I, as a commissioner, was not allowed to represent the public and the public was not allowed to come forth and have a public hearing on this issue. I think we did an injustice in the process in not allowing it to be a democratic process.

Chair Daves, in his discretion of being the chair, responded that there was as much discussion as those that were here wanted to give. There was also no attempt by the Chair to stop any motions whatsoever, including repudiating the Chair's signing of the agreement, which, would have in fact, could have been done legally in the sense of three members of the commission voted to disapprove his signature on the contract. The commission had an ability to vote three votes against what he had done and that would have had the legal effect of undoing what he had done, and, it did not occur.

Ms. Rebecca Vigil Giron, Secretary of State on her third term, gave the commission, history of the revolving fund, which was created in 1969, when the State had the ability to purchase the mechanicals voting machines and 1982 the Shouptronic Electronic Voting Machines. The revolving fund was utilized to lease purchase a loan agreement with the State Board of Finance in order to acquire the voting machines. She had gone through this process in 1987 through 1990 and 1999 with the new technology that was introduced in the State of New Mexico and introduced nationally. We all know what Florida went through with their voting system, she said, so in 2001 as a member of the National Association of Secretaries of State, and a member of the task force for election reform, that was submitted to Congress, First to the House of Representatives, in form of the Martin Luther King Voting Rights Protection Act of 2001. It was passed unanimously in the House, with all board recommendation in regards to any type of uniformity that needed to exist throughout the United

States in regards to voting machines and a centralized voter registration management system. So, in going to the Senate and passing unanimously in the Senate, it took on a new name. It was called the Help America Vote Act (HAVA). Basically all the recommendation that they had made to Congress had created a new federal voting standards of 2002, this is separate from the HAVA. The HAVA does require the chief election officer, and that is who she is for the State of New Mexico, to purchase at least one HAVA compliant voting machine per polling place. What this means is that it must have the ability to be assessable to the disabled, the language minority community, it must have audio capability, capability for the physical handicap and it must go through the federal voting standard and be approved and certify their software and their hardware in order for the State of New Mexico to approve and test, again, based on New Mexico laws. Now the federal voting standards of 2002 had now created different standards for the new technology that is being certified for the states. In the State of New Mexico there are only two voting machines with the new technology that have been tested and certified based on the federal voting standards of 2002 that can be accepted and sold in the State of New Mexico right now. Those two voting machines systems are the Sequoia Voting Machine System and the ES&S Voting Machine System. They comply with the federal voting standards. These two voting machines have the capability of being HAVA compliant. They have other features that allow them to be heard over the audio for those people that want to hear the ballot in the various native languages of our state. We will be able to have that ability by the year 2006. The new voting machines that Valencia County, in purchasing the 115 voting machines based on being HAVA compliant and meeting the federal voting standards before the year 2005, because unfortunately they have over 1900 Shruponic voting machines systems in the State of New Mexico that will not meet and do not meet the federal voting standards of 2002. In the past they were grandfathered in with the last standards that were approved, but cannot be approved this time around. They will need to replace those 1900 machines by 2005. She congratulated Valencia County for taking that initiative and making that transition now. It's not an issue of disenfranchisement. It is an issue of complying with several laws. She read a letter from the Attorney General's Office to Adren Nance, County Attorney, in regards to the process of the purchase and the process that the commissioners went through in selecting and approving these Sequoia Edge Voting Machines. In her experience and the processes that she has in relationship with the State Board of Finance and with County Commissions, the practice has always been that after the resolution has been signed and obviously voted on, it is the practice that the County Chairman, always, is the representative of the commission and has the authority, always, to be the voice to sign these purchase agreements. She called to the commission's attention the latter part of the letter which suggested that the contract is somehow improper because the machines do not produce some sort of "paper trail" which would have required new voting machines & tabulators purchased after May 20, 2004 to report election results electronically in a standard format as well as on paper. HB501 died on the Senate floor upon adjournment. This was not true because in HB501, which was a bill that was created after the election taskforce, had no mention of anything dealing with paper trail or voting machine acquisition or what type of standards would directly relate to voting machines. There was nothing in HB501 that ever addressed that. Also, she mentions that every one of our machines in the State of New Mexico, especially in the new technology, that has been introduced in the State and accepted, must produce a paper trail. The 1242 Shouptronic, do not have the capability of ballot retention. They cannot produce a ballot for each individual voter, based on the 2002 federal voting standards, and this is a major requirement. So consequently, in regards to procedure, your County Commission Chairman acted as all county commission chairmen do in the stead of all and representing all the commission members.

Commissioner Aguilar thanked Ms. Giron, but she said that the resolution was done as part of budget identification and if she would look at the minutes of July 29<sup>th</sup>, a motion was made by Commissioner Andersen to not proceed with the purchase of the machines until the budget year 2004-2005. There was also a budget impact that they wanted to make sure that the old machines were sold and were also looking a \$1500.00 a month to store the machines. So it was more than what Ms. Giron was saying. She wanted her to know that the resolution came as a result of intent. Final budget approval said no. It was in December when she learned about this and she said, "if this was happening, why did they not come before us"? She did not know that they were buying the machines.

Chair Daves asked Ms. Tina Gallegos, County Clerk, if she would correct the statements that Commissioner Aguilar had made.

Ms. Gallegos thanked our Secretary of State for being here and said that the reason she had asked her and the others, was due to past conversations that they've had regarding the voting machines. In the best interest of the public and of the commission, she wanted to get some of these issues out and did not intentionally want to overshadow the issue of the contract, because that is the main reason that she understood it would be on the agenda. The resolution is very clear. It did give approval for the purchase of the 115 voting machines and it stated it very clear. There is no language that referred to a budget or refers to waiting until 2004-2005 budgets. After that meeting in July, when the resolution was approved, the next county commission meeting happened to be a budget meeting and there were several discussions about the voting machines and they then decided to wait until the end of December to progress for the reason of a payment being made to DFA on the existing loan that the county had for the 1242 voting machines that we have. This happened. The resolution did not go in front of DFA until December and there was never any indication made to her that it needed to come back to the commission, before it went to DFA. It was understood through the motion that was made by Commissioner Andersen that she would wait until December to move forward on that purchase and she had. DFA gave approval on December 18<sup>th</sup> and with municipal election in March, she worked with Sequoia to get some voting machines here, in place, and certified

so that they could be in operation for the municipal elections. The county had then taken receipt of the remaining voting machines and in their current inventory they have 115 Sequoia Edge voting machines awaiting certification by the Secretary of State's Office, which will happen this week. They are in our voting machine storage facility and they are prepared to move forward to use them in the Primary Election. Again, just to clarify the reason these individuals were here was to answer some of the technical questions on what these machines can and can't do and also to answer question on Federal laws and State laws. She did not want any misunderstanding as to why they were doing what they were doing and again, as far as the contract being signed by the Chairman of the Board, it was done correctly and legally and Valencia County should move forward and she wanted the citizens and the public to be very much aware that Valencia County is prepared to move forward with these machines and use them to the best of their ability and to have a successful election.

Chair Daves wanted to make it very clear that there was a motion by Commissioner Andersen within the budget approval process that was adapted, with Commissioner Aguilar abstaining, that stated, and, Tina had already volunteered to do it, that the purchase of the machines would be done such as that there would be no budget impact in the fiscal year that we are in now. **(refer to the July 15, 2003 and July 29, 2003 Meetings.)** Ms. Gallegos waited until December pursuant to that motion, and, pursuant to what she had already agreed to, and waited so that the budget impact of the purchase of these machines does not occur until the 2004-2005 budget, with the first payment due in December of 2004. Chair Daves thought this was an important point given the unequivocal statement that Commissioner Aguilar stated, that the commission had stated, there would be no action by the commission on it until that budget year. It stated that the purchase would be such that any impact of the purchase would not occur in the fiscal that we were entering.

Ms. Gallegos also mentioned, on the voting machine warehouse and the storage of the voting machines that the county was in a position to pay for that storage regardless of what voting equipment that they had in the storage facility. We are paying \$1500.00 a month to a warehouse on Hwy 47 to store these machines, she said. As far as the selling the 1242 machines, she was still working on it. She had indications on some counties that needed parts and possible voting equipment for the primary. This does not guarantee anything and she still has time to negotiate, but she was confident that if not all of these machines, some would be sold. This has never wavered, and she will continue to do that, so as not to burden the county with an additional expense. This was her commitment and she is still doing that.

Commissioner Aguilar said if they referred to the minutes of July 29<sup>th</sup>, 2003, a motion by Commissioner Andersen was made, and seconded it, and approved by this commission, to hold off on the purchase of these machines till 2004. Chair asked if she would read that language. She said she had not brought it. To her, what was on the agenda was the contract.

Chair Daves asked if anyone else had any other comments. The Chair's motivation was not improper and the chair had a very strong desire to accommodate a good county clerk's attempt to have some finality in a decision that the commission had made long before, such, as that her election not be upset and that her plans and training could go forward with some sense that it wasn't going to be upended. He stated again, that had three commissioners made a motion to deauthorize the agreement that he had just signed, and the commission had that authority, it clearly could have been done, and, it was not done. It was in effect, a political decision on the part of a political body, to make a decision to allow the county clerk to go forward with what this commission had authorized, very clearly, long before.

Commissioner Aguilar left the meeting.

Mr. Howard Cramer, vice-president of sales for Sequoia Voting Systems, thanked the commission for the selection of the Sequoia product that they had purchased. He said they had bought a product that Sequoia had been designing for many years. Many entrants had been made in the market place and Sequoia is a name that generally stays out of the press. They work diligently to provide successful elections to their customers. He was here to answer any questions that the commission might have. Commissioner Trujillo said there had been question on the HAVA compliance. The machine that they had purchased will remain compliant until what point in time, he asked? HAVA is already in compliance and it is clear that the product was certified in the State of New Mexico and it has proved itself to be HAVA compliant. Legislation is set off the HAVA Act that exists and is compliant. He could not say what future federal or state legislature may be passed. The "paper trail", he said, was a concept that they were reading about, had been debated, and it does not exist as a viable alternative in New Mexico. However, it is an upgrade that does exist for the product to be purchased. In other states, this very same machine that they were purchasing, did have the ability to upgrade. So if later on it becomes the law, it would be able to upgrade, without having to scrap the system. Commissioner Trujillo, to his understanding from other individuals, thought that these HAVA compliance standards are currently being upgraded and that the machines would probably not be compliant in a year or two. Mr. Cramer said he couldn't imagine why that would be the case.

Chair Daves asked what a voter verifiable paper trail would be. Ms. Giron had stated that the machines as they are now, could state that 500 people voted on it and is a fundamental element of the documentation and in fact votes are not lost. The distinction, Mr. Cramer said, that the Edge, by law, retains a copy of every ballot cast. As an audit point, you can print every one of these ballots. The voter verified piece, is different. It is a process in which the voter is able to see that variable piece of paper at the time that they are casting their ballot electronically.

Commissioner Andersen said that she agreed with what the Clerk, Tina, had done. What she reported was exactly what she remembered occurred. And she thanked Secretary of State, Ms. Giron and all of the others for coming this far and helping them to clear this issue. She would like to see it put to rest presently.

Commissioner Padilla asked Ms. Gallegos, were the voting machines that they have now, not in compliance? Ms. Gallegos answered that they would not be in compliance after 2005. Did he understand that people would want to buy these machines, even though they would not be in compliance by 2005. Ms. Gallegos said that two of the counties that are looking to buy want them for parts and standby. Commissioner Padilla asked Chair Daves to call Mr. Borman, as he had made the comments that there was software, for the 1242, that was required by law. Mr. Borman said he had written the software that is in the Shouptronic 1242 and are used in Philadelphia. You would have to change the hardware of the voting machine. Mr. Borman said that at the present time the 1242 machine could be retrofitted to house an audio devise and he would be guessing at the price. In terms of ballot retention, the machine already has it. It meets the standards with respect to visual and accessibility. With modification, whether or not the State of New Mexico has approved it or not, they can go and be HAVA compliant.

Chair Daves's comments were that in Mr. Borman's participation on this democracy that they had been having in the last few months, gave little or no credit to the professionalism of our county clerk and that it was unrelated to the fact of the past commission approval, that unfortunately he was not there to perhaps argue or differ and in that sense it had been very much besides the point in terms of where the commission should go and had already gone in regards to its decision. Commissioner Padilla said Chair's comments were unfair and that Mr. Borman as a citizen had as much right as anybody to come before them and state whatever he wanted. Chair said he had allowed him to state what he wanted to say and he was just commenting on his concern that it was a stepping into the process that had been completed.

Secretary of State Ms. Giron said that she it made her feel good to know that Mr. Borman had an idea on where they were going on evolution of the machine, although, until it is tested and based on the federal voting standards of 2002, it cannot be tested in New Mexico until we get the software and the firmware, because these are major changes to this particular system. Based on that, they were more than happy to bring that to the Voting Standard Commission with those certifications and look at it again for the future, since we are looking at replacing more than 1900 of types of machines that have not been tested and certified and have not yet been created as of yet.

Commissioner Trujillo stated that he was very comfortable with the process that had occurred over the past six months in which there had been much adversity and controversy. And rather than to be avoided, they were admirable qualities and he commended everyone that was involved in the democracy process. Tonight he was comfortable with the choice that the county clerk had made and that the commission had affirmed owing to the fact of statement being made one way or another and flushing the issue out, he felt very comfortable that the right decision was made. He did not think that they would have arrived at it, had there not being this controversy. It was a good process and thanked everyone. Commissioner Andersen agreed.

Chairman Daves called for a 15 minute break.  
Commissioner Aguilar returned to the meeting.

Chairman Daves called the meeting back to order. He hoped that everyone had a chance to look at the display and see the pump drawing the contaminates toward the well. He also said that Mr. Dale Jones wanted to speak on the environment impact report that Dr. Titus had given.

Mr. Dale Jones from the Valencia Soil and Conservation District wanted to call their attention to the day when the green belt was set up. What they had wanted then was a five-acre minimum green belt and that was mainly to protect the farms. When they went to two acres one of the important things was the business of contamination and he pointed to the display that Mr. Salomon had brought. He still supports that and does not want that kind of thing to happen. He said it didn't take rocket scientist to know that there would be more problems if they have a one-acre minimum for the green belt than a two-acre minimum. He recommended that Dr. Titus talk to the Planning & Zoning Commission, it would be helpful to them.

Commissioner Trujillo said he personally would have preferred a five-acre minimum a few years back, but his opinion had changed. He thought the two-acre minimum could be a burden to some people. There are individuals who cannot maintain two acres, which is not easy for a person living alone, and, who perhaps is advanced in years. This was one concern he had. The two-acre minimum, for some, perhaps came too late. There are houses on one acre or less, adjoining each other, and, high density, yet somebody next door to them, who just happened not to cut their pieces into smaller portions have been deprived of that opportunity, but the two-acre minimum serves no purpose in those areas, which are already at a density beyond one household per two acres. As Commissioner Aguilar has suggested in the past, they need to look at that more specifically and look at the density. The ordinance should play out in such a way that it is specific and takes into account the actual location and what is going on there. On the other hand, in order to prevent densities like in the Bernalillo area, we should also look at that. Is there legitimate farmland to be protected and are they going to be changing the nature of this area by allowing development below two acres?

Commissioner Aguilar said what they should be discussing and what was requested from Mr. Chavez was that they wanted to see about RR1 and setting criteria that they can follow in addressing some of those land splits. They know they have a two-acre minimum. All new subdivisions must have two acres. It is the land splits that they are looking at. In addition, it is important that the public know that the sheet that Dr. Titus had provided looks like part of the recommendation is to retain a consultant to develop an acceptable technology list and also for any exception to the two-acre lot size, require better waste treatment than simple septic systems. On this item it is an ED issue and is state

regulated. Her understanding is that ED has a three quarter acre minimum. The issue and concern was addressing a land split.

**ACTION ITEMS:**

**Board of Commissions Convenes as Indigent Board**

**Report/Appeal.....Barbara Baker**  
Commissioner Trujillo made a motion to convene as the Indigent Board. Commissioner Padilla second it. Motion carried.

Ms. Barbara Baker presented the commission with the Indigent Claims from February 20, 2004 to March 26, 2004. The total amount of claims submitted was \$374,780.13. There were 32 denials and asked the commission to approve \$54,524.86. Commissioner Andersen made a motion to approve. Commissioner Padilla seconded it. Commissioner Aguilar asked why the Pueblo of Isleta had a claim. Ms. Baker said sometimes Living Cross was busy and they don't have enough ambulances and so the Pueblo will help. Chair Daves asked for the vote. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Aguilar abstained. Motion carried. 3-0. **See exhibit B.**

Ms. Baker also had an appeal from Mr. Idelfonso Amador who had used the hospital. The county had to take the past twelve months income and he was employed part of that, which made him go over the maximum allowed. Mr. Amador is now a full time student and within the income guidelines. Ms. Baker recommended that the appeal be approved. Commissioner Padilla made a motion to approve. Commissioner Trujillo second it. Motion carried. 4-0. **See exhibit C.**

Commissioner Trujillo made a motion to re-convene as Commission Board. Commissioner Andersen second it. Motion carried.

**Approval 2004 Bond Resolution.....Charles Casey**

Mr. Charles Casey, with Casey Financial Consultant, said that in February, he had been to the commission to discuss the potential sale of the bonds. At that time he had discussed the market conditions and the direction given was that he was to precede to sell the bonds. Also at that time he had said that he would appear before the commission with a resolution for them to adapt. He also presented a comparison of the NMFA rates, which was recommended at the time. He went on to explain the handout in their packet. Commissioner Andersen asked what rate were they locked in? Mr. Casey said 3.46%.

Commissioner Aguilar said that when he had been here in February, the total amount that he had presented to them on the General Obligation Bonds then, versus today, was about \$750,000. difference. Mr. Casey said he had the incorrect figure. The amount given to him by the bond council was the one that had been approved by the voters, but the interest rates remained the same. Commissioner Aguilar said that back then he was not going through the NMFA, he was recommending selling the bonds and that was why the county had employed him. Now they were going through the NMFA. She asked if they were hiring him to continue acting as the county's council or, is he in addition to, their procedures and payments to them? Mr. Casey said he was hired by the county to sell the bonds. They could either sell them at the market place or they could sell at NMFA. He was recommending that they sell the bonds to NMFA at that time. That's the way they were proceeding from that part forward and this is a combination of that direction. What fee was the NMFA charging to do the financing, Commissioner Aguilar asked? There is no administration cost as far as their bond council or any of their people. They do charge and is included in the interest rates a one quarter of one percent administrative fee and that is included in the interest rates. Ms. Aguilar asked what had happened to the first attorney. Mr. Casey said they were two separate entities. He was a financial advisor, not a bond council. The bond council prepares all the documents that are before them. Would the NMFA not have done this for us, Ms. Aguilar asked? Mr. Casey said not to his knowledge. They have their own council in addition to our council, he said.

Mr. Casey turned it over to Mr. Hughs, who is the bond council on the bond issue. Mr. Hughs said the action item was the adaptation of the sale resolution and they had a draft of it. It awarded the bond to the New Mexico Finance Authority at the interest rate of 3.46%. The form of the bond provides details such as the record date; interest payment dates and provides that the county's business manager act as the registrar and the paying agent for the bond. It also provides that the county will abide by the necessary federal tax requirements to keep these bonds exempt.

Commissioner Andersen asked what they needed to do to continue to maintain the tax-exempt bond. Mr. Hugh said that under the federal rules it's the way they spend the bond proceeds and the time of spending those. If they invest the money of the bond proceeds, they don't get the whole thing built in two years or get it all spent in two years you earn what's called arbitrage, where you invest the bond proceeds. If you make money on that, over what you're paying in interest, you would have to repay the government.

Chair Daves asked what the resolution was for and what did it allow. Mr. Hugh said that the main point of the resolution was awarding the bonds to the NMFA and then setting forth the details. Chair Daves said he understood that, but in terms of the process what steps occur then. Are the bonds sold then? Mr. Hugh said yes, they would execute the bond purchase agreement, which says the NMFA is buying the bonds on the basis of those interest rates that Mr. Casey had given them and are included in the resolution. At that point they would move forward to the closing, and they anticipated having it on May 14<sup>th</sup>, so they would have the money on May 14<sup>th</sup>. They would be asked to sign some closing documents and certificates. The resolution authorizes the appropriate officers of the

commission to sign the necessary documents. Commissioner Padilla made a motion to approve **Resolution 2004-17**. Commissioner Andersen second it. Motion carried. 4-0. **See exhibit D.**

**Approval of Architect.....Judge William Sanchez**

Judge William Sanchez, Senior Judge and former Chief Judge of the District, was part of the committee that the commission had appointed by resolution in November of last year. The committee has had numerous meetings and had appeared before the commission in January to request an RFP for architectural services. The resolution was approved and an RFP was issued on February 7, 2004 and a deadline for submission for proposals was on March 2<sup>nd</sup>, 2004. They did receive four proposals. The committee met and reviewed the proposals, then, had an interview on March 21<sup>st</sup>. After the interviews, the committee deliberated for evaluating the architect. They looked at different criteria, such as specialized design and technical competence, capacity and capability, past record and performance, familiarly with contracting agencies, other relevant factors and letters of recommendations. The firm that they chose to recommend to the commission, subject to the fee, was DCSW. Judge Sanchez informed the commission that the three sitting judges were at the presentations and interviews of the four presenters and all three judges voted for DCSW. Aside from that, of the eleven-committee members, they had nine of the members vote DCSW as the number one choice. The other two members were split between two other firms. He wanted to express to the commission that the committee had evaluated DCSW as their top choice and was an overwhelming favorite as far as their selection. DCSW had just completed the Metropolitan Court Building, a forty million dollar project in Albuquerque. They are also three quarters of the way in completing a fourteen million dollar courthouse project in Roswell and were selected in the Judicial District in Sandoval County to do that project, which is an eight million dollar project. He knew that there were some concerns on technicalities as far as having engineer or architect on board with the selection committee, but as he reads that statute, this commission can waive that. He hoped that the commission had the faith in the three judges that sat on this committee.

Chair Daves said Judge Sanchez had mentioned some criteria and he believed that there are statutory criteria and asked if they had used it as bases for rating the candidate? Judge Sanchez said yes. Chair also asked if they had a ranking of the four proposals, with DCSW ranking number one? Judge said they did have an evaluation sheet and each one of the committee members had filled one with a possible 100 points. Chair Daves said this was important for the commissioner to understand that the process did comport with the statutory guidelines and requirements.

County Manager, Michael Trujillo, said that the recommendations that Judge Sanchez was making is that DCSW is ranked number one, that NCA is two and Patrick Lynch, is number three. In terms of the technical issue, under the statute, under the code, there is a requirement that "we shall have" approval or the assessments of a professional technical advisor from the New Mexico Society of Architects and we have not done that. He had not looked at the evaluation criteria. He would then send a letter to the New Mexico Society of Architects and ask them to waive that if he felt that all the process had been followed appropriately and he believed that they would grant it. Chair Daves asked if he was asking the commission not to approve negotiations with any contractors. Mr. Trujillo said that would be his recommendations only in that it says, "shall have appointed" to it. This would delay them about two weeks.

Commissioner Aguilar asked if what Mr. Trujillo was saying was that the commission could not give approval, just, for the committee to proceed to discuss this with DCSW and try and negotiate a fee? Mr. Trujillo said if the commission were to approve the recommendation of the first three firms, he would ask them to "condition" upon getting a waiver from the New Mexico Society of Architects. It would be easier in terms of how the Society looks at it.

Chair Daves said that, first of all, the commission was recommended a choice and as he understands of the law, the commission has the discretion to choose one of the top three. Were they under the obligation to pick the first? Mr. Trujillo said what the law says is to recommend to them rank in order of score. Chair Daves said he was comfortable with the choice; he is not comfortable after reading the statute. He really had questions, that, by their rating they are in a position that the committee rating dictates the choice of who the architect is. He did not understand how they consciously delegated that authority to the committee when they issued the RFP.

Commissioner Andersen said this was a huge project for Valencia County and was uncomfortable being asked to make any decisions given twenty minutes to look at something. She was not even aware that they had chosen a site for this building. She would not vote to approve in view of the fact that they are not following the New Mexico Statute. The bonds were not going to be sold until May, so if they could table this action and get all the questions answered so that they don't have a big mismatch again. She didn't have a problem with what the committee wanted to recommend. She would like to know more about the selection process, detail on how it was handled, and what the interviews were. It was essential that they do a good job of building this, because they had spent so many years trying to get a bond issue passed. For these reasons she would make a motion to table this item for two weeks. Commissioner Trujillo second it. Commissioner Trujillo said that in addition to the concerns of the other commissioners, he had concerns that they do not run over the amount of money allocated by the taxpayers for this project. He did not see any guarantees in place and no fund out of which they could draw money should the project overrun. Another concern was any design flaws in the building. If the steel that is specified turns out to be half the size that it should be, if other flaws occurs during the process, who is going to bear the cost of it. It was an obligation to his constituents who have chosen to place their confidence in them with the largest undertaking this



county has undertaken in history. Between hesitating too long, if the state were to enforce this requirement and cause a delay of sixty days, it would severely impact the process. On the other a two-week delay in order to properly pursue a waiver is not too long.

Mr. Michael Trujillo said that if they did not get the waiver, they would then be asked to cancel the bid and go out on an RFP again. This would be the sixty-day delay.

Judge Sanchez reminded the commission that this process had been entrusted to the committee and he had hoped that the commission would have had the confidence that the right choices were made. If he can be back on the agenda in two weeks he would be happy to do so.

Commissioner Andersen's comment was that all the people in the committee had good qualifications, but there was no architect, no engineer and no professional person for construction there. She was asking that they follow the statutes of the State of New Mexico, wait two weeks for Mr. Trujillo to get the waiver and then they would not have any rocky ground to walk on. Commissioner Andersen then called for the vote to table for two weeks. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Aguilar voted no. Motion carried. 3-1.

Commissioner Andersen left the meeting.

Commissioner Trujillo left the meeting.

#### **Request Approval of Resolution for Submission of RFP Response.....Mary Ann Gonzales North Central New Mexico Economic Development District (Agency on Aging)**

Ms. Mary Ann Gonzales was requesting approval of resolution for submission of RFP response on the agency on aging. She reminded the commission that Valencia County had now entered into the competition. There was another entity that was competing. She needed approval so that she could submit the proposal.

Chair Daves said that, as he understood it, the county manager, both Mr. Castillo and Mr. Trujillo, were recommending that items, that in fact had been going towards senior citizens cost, but hidden in other budget items, be explicitly placed in your budget and if that is done, instead of getting \$138,000.00 of county money, but, in addition to that, the county managers recommended that they do it at \$150,000.00, so that would amount to actual increase of \$12,000.00 for the program and was it part of the approval? Ms. Gonzales said yes. Mr. Trujillo said that in terms of budget request, it is what was asked of the commission to approve to submit to the State. He said it concerned him that this was the first time that the North Central New Mexico Economic Development District had gone out for an RFP, because Presbyterian and others now want part of the action and so there was a possibility that they would not accept the proposal and then we would lose that project. Ms. Gonzales said that they had gone out for an RFP before, but this year they had competition. She also explained that the resolution needed to be signed so that it could be included in the proposal. The decision for the commission to make was to approve the resolution as recommended by staff, that it include the total of \$150,000.00 of which \$12,000.00 is a net increase in the obligation on the general fund. Mr. Trujillo said should they have budgetary constraints, when the contract comes back; they have the ability to tell the state that they are going reduce the contribution. Commissioner Aguilar said this had happened before, where the budget had to be approved by the state and in addressing it, the state had said no. If they were going to cut it, service would be cut. Chair Daves again asked, if they submitted the proposal based upon a participation of the county in the amount of \$150,000.00, and a contract would come and the county would be part of that contract, aren't we contractually bonded to that money? County Manager Michael Trujillo said technically, yes.

Commissioner Padilla made a motion to approve **Resolution 2004-18**. This approval, if it should happen, commits to an increment of about \$12,000.00 to the program, Chair said. Only three commissioners were present. Chair Daves second it. Commissioner Aguilar said "part of her reason for voting against it was that every year this department comes before them at the last minute and says they need something approved today because its due in Santa Fe tomorrow. There was a budget hearing that was held and it already reflects, that, expenditures exceed revenues by half a million. The budget is not yet done and in all fairness every department should be judged equally". She does not feel comfortable approving an increase without having DFA approval and there is an impact on the budget. Commissioner Padilla said there was no other way to do this if they wanted the program. Chair Daves called for the vote. Commissioner Padilla voted yes. Commissioner Aguilar voted no. Chairman Daves voted yes. Motion carried. 2-1. **See exhibit E.**

#### **Approval Budget Increase Resolution/Permanent Cash.....Michael Steininger**

Mr. Michael Steininger presented the commission with a budget adjustment. On September 16<sup>th</sup>, 2003 the commission had approved a resolution for an application for LLEBG funds. An application was submitted for \$30,261.00 and it has been received. Before them now was the authorization to submit for a budget adjustment allowing the Sheriff's office to use those funds in addition to the \$3,362.00 that the county is required to match. The difference between the packets that they were originally given is that the original one had money coming from General Fund and in re-viewing the minutes from the September 16<sup>th</sup> meeting, it was noted that the Sheriff's office had said that they would provide the matching funds out of their gross receipts. Commissioner Padilla made a motion to approve. Commissioner Aguilar second it. Motion carried. 2-0. **Resolution 2004-19.**

**See exhibit F.**

#### **Approval Resolution to Participate 2004/2005 County Road Improvements.....Dan Trujillo**

Mr. Dan Trujillo was asking the commission to approve **Resolution 2004-20**.

This was for the acceptance of roads for 2005. This was their choice for their districts. Commissioner Padilla made a motion to approve. Commissioner Aguilar second it. Commissioner

Aguilar asked Mr. Dan Trujillo the difference of increase of mileage from the previous year. Mr. Trujillo said 61/2 miles. Commissioner Padilla voted yes. Commissioner Aguilar voted yes. Motion carried. 2-0. **See exhibit G.**

Mr. Dan Trujillo asked the commission for approval of Road Mileage (Map). Commissioner Padilla made a motion to approve. Commissioner Aguilar second it. Motion carried. 2-0. **Refer to Plat Cab**

**Request for Acceptance of Roads (tabled March 3, 2004).....Dan Trujillo/Shawn Kiehne  
Camion De Manzano, Mountain Shadow Drive.**

Chair Daves said this had been before them and the question was Connor Road and the clarification of the acceptance of roads in that area. Commissioner Aguilar's concern was that the gravel pit was to the south of it and asked if trucks would travel these roads? Chair Daves asked Mr. Kiehne to confirm, but he said that Lakeview is a dead end and to the south is a parallel road that went to the gravel pit. Chair Daves said that Conner Road was dedicated to the county. Mr. Dan Trujillo said it was a good road. According to Ruben Chavez's memo, both Camion de Manzano & Mountain Shadow Dr. are egressed off Conner Rd, a private non-dedicated road in Unit 13. Have we just learned that it is a dedicated road, she asked? Mr. Chavez said it was not. She asked how were they addressing that per ordinance. They have a road that is dedicated, a piece of road, that is not, and, being asked to accept two more roads for dedication. Chair Daves said that in three separate instruments, the language says they hereby dedicate the public rights of way and that's the operative language. What they were being asked was to accept the road as dedicated.

Commissioner Aguilar said that Conner Road is a dedicated Road, but has never come before them for maintained. Now they a county road that's being maintained, a stretch of road that's not and being asked to maintain two other roads. So in order to solve it, she thought that Conner Road would be included, and then they would have continuity and no disruption in the maintenance. Chair Daves said that the reason Conner Road was not included in the request is because it's a connector road. It's a green sign road and so there was an assumption that it had been accepted. There is no one that lives on that road and he suggested that they have two possibilities. They could put this off until the word Conner Road is put in the agenda and or they vote to accept Conner Road along with the rest of them. Chairman Daves asked for a motion to approve. There was no motion. Commissioner Aguilar wanted to give Mr. Kiehne an opportunity to come back with Conner road corrected. She made a motion to table the item. Commissioner Padilla second it. Motion carried. 2-0.

Chair Daves said it was his plan that without that motion, it would be back in two weeks and as far as he was concerned, the applicants did not need to show up. They needed to write the county a letter stating that they want Conner Road included in the acceptance. No one lives on that road, so they do not need petitions.

**Accept Bid Awards.....Michael Steininger/Jacqueline Guilbault  
Bid #511.....Rio Del Oro  
Bid #552.....Greenways**

Ms. Jacqueline Guilbault was asking the commission to accept the bid and to award the contract Commissioner Padilla made a motion to accept the request. Commissioner Aguilar second it. Motion carried. 2-0.

**Approval of Payroll & Warrants.....Michael Trujillo**

Mr. Michael Trujillo, County Manager, presented the commission with a printout of the Payroll & Warrants for 4-2-04. Commissioner Aguilar asked about a new P.C. that was bought for Rural Addressing out of the Data Processing Fund for \$2,745. Mr. Michael Steininger said that system had crashed. Commissioner Aguilar made a motion to approve payroll and warrants. Commissioner Padilla second it. Motion carried. 2-0.

**County Manager's Report**

**Jail Report**

**Schedule workshop regarding Animal Control Ordinance**

Mr. Michael Trujillo reported on the inmate count, which was 166.05. Male count was 148.75 and female count was 17.15. The committee to review Jail RFP would be meeting on Thursday at 9:00 in the conference room. Commissioner Aguilar asked if she could get information as to what the original bids were. Mr. Trujillo said yes, but only with the provide that she cannot release information.

Mr. Trujillo reported that the balance in the general fund was \$1,866,042.89. The next big revenue will be coming in May.

There was talk about having workshops, but Commissioner Aguilar did not want to schedule any without all the commissioners agreeing to the date and time.

County Manager last item was to close the courthouse building at noon for spring break.

Commissioner Aguilar wanted to see Garley Road come back on the agenda. Also, Mr. Gallegos from High Road, had submitted a petition to have the road come before the commission for acceptance for acceptance for maintenance. He had gone through the process, but P & Z had denied him. The commission should make the decision. Mr. Trujillo said he would look into it.

Mr. Trujillo said it was only his third day working for the county and he was excited about being here. He thanked the commission for allowing him the opportunity to serve this county.

The next Regular Meeting of the Valencia County Board of County Commission will be held on April 21, 2004 at 6:00 PM in the Los Lunas Consolidated Schools Board Meeting Room.

**Adjournment**

Commissioner Aguilar made a motion to adjourn. Commissioner Padilla second it. Motion carried. 2-0.

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the, April 7, 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**

**AURELIO H. PADILLA, MEMBER**

**ss/  
ALICIA AGUILAR, MEMBER**

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

**ATTEST: ss/**

**TINA GALLEGOS, COUNTY CLERK**

**DATE: April 21, 2004**