

VALENCIA COUNTY BOARD OF COMMISSIONERS

Regular Meeting

May 19, 2004

Chairman Gary Daves called the Meeting to order at 5:00 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. Under the authority of Section 10-15-1 NMSA 1978, Limited Personnel Matters (10-15-1-(h)-(2) NMSA 1978, and Pending or Threatened Litigation ((10-15-1-(h)-(7) NMSA 1978) would be discussed. Commissioner Andersen made a motion to go into Executive Session. Commissioner Padilla seconded. Motion carried. 2-0. Commissioner Aguilar and Commissioner were not present for the vote.

Executive Session

Chairman Daves called the meeting back to order. Commissioner Padilla made a motion to go back to regular session. Commissioner Andersen seconded. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Aguilar voted yes. Motion carried. 4-0.

County Manager, Michael Trujillo reported the following litigation were discussed; County versus Martinez, the Court of Appeals decision on Alba versus Board of County Commissioners, and the Conejo Transfer Station stipulated order would be sent to them in early June. Commission Padilla made a motion to ratify that this was all that was discussed and no final action was taken. Commissioner Trujillo seconded. 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 Adren Nance

Approval of Agenda

County Manager, Michael Trujillo said that number 2 in item G, Request Zone Change C-1 to PRO, should be noted as been tabled at the March 3<sup>rd</sup>, 2004 meeting and so for further action, it need to be taken off the table. It could be done when the item came up on the agenda.

Commissioner Trujillo made a recommendation that Item G, Public Hearings, be moved up to Action Item 10B. Commissioner Trujillo made a motion to approve the agenda with the changes. Commissioner Padilla seconded. This would become Item B under 10. Motion carried. 4-0.

Approval of Minutes

Commissioner Trujillo made a motion to approve the minutes of May 5, 2004. Commissioner Padilla seconded. Commissioner Aguilar asked that the Minutes of May 5, 2004, reflect the comments she had made, that, "Commissioner Aguilar requests that Senator Sanchez and the two Public Health Departments be included in the RFP, Planning, Design and Construction of the facility.

On the Auditor Services for FY2003-2004, "Commissioner Aguilar was concerned that last audit report had not been released to the commission. She had not seen it, so she was unaware of any findings and whether they had been corrected". Chair Daves asked if there were not objection, the minutes would be amended to reflect the changes. Motion carried. 4-0.

Public Requests

Mr. Joseph Griffenberg, from Meadow Lake had complaints about the roads being filled with potholes. Chair Daves said that the roads he was talking about were on the program. They had been set back with the rains in April, and with the price of gas now, it could limit how far the money goes.

Another resident said that Manzano Road was heavily traveled, is unpaved, has a 25-mile an hour speed limit and is used by school buses and he wanted to know how bad the roads had to be in order to get paved. Chair Daves said this is a road that has been recommended by staff and is on the program. Commissioner Trujillo explained that each commissioner receives \$100,000.00 per year, for roads, from the state and it costs \$85,000.00 to pave one mile of road. It is very difficult for each commissioner to properly address the road needs based on the amount of money. He was discussing the issue with Senator Sanchez and maybe the funding formula could be changed.

Mr. Dieter Hartenoff said that Ocha Road has been on the program for some time now and wanted to know who could fill a pothole. Commissioner Trujillo said when they do paving, they sub-contract it out and is done by professionals and when they do chip sealing, it is a very intensive labor and done

by our local crew, which is understaffed and under equipped. Although chip sealing is cheaper, it is more labor intensive from the county and so it takes longer to get to it. It is also not durable.

Commissioner Aguilar asked if the Road Superintendent could come and let them know what roads he would be working on within the next month. She said the money had come in two years ago and she has some roads that should have been chipped. Chair Daves said the money had come in too late, last year, to do chip sealing.

County Manager, Michael Trujillo said they were looking at an Albuquerque crew, under state contractor, that does chip sealing and see if it is cost effective. We have seven people to do all chip sealing including the road superintendent. He was going to see if they could come with a plan and ask for a workshop just on roads and then they would have the information on what days they plan to be on what roads.

Commissioner Andersen said that the fundamental fact was that they had 1,199 miles of dedicated roads in this county. Two hundred are paved and chip sealed and the rest are dirt roads and most of them probably don't have gravel. There are seven people in the Road Department and a budget of \$500,000.00. It's a monumental problem that won't be solved until we solve the issue of more money in revenue to the county coffers.

Commissioner Aguilar said that of the 1100 miles of road, about 500 of those are in the VIA Subdivision. They are platted and we are responsible for them, but we have requested that maybe a review of those roads or abandoning the roads that are not used will probably see the road responsibility cut in half.

**Discussion (Non-Action) Items:**

**Comments by Commission members.....County Commissioners**

Commissioner Aguilar said she had received a call from Jerry Rhodes and another individual, that as a taxpayer, a tax increase a few years back, had been approved, in which 70% was to go to the Sheriff's Dept., 30% would go to the Road Dept., and the last 30% was to go to the Fire Dept. Ms. Rhodes had a lengthy discussion with some deputies and that the gross receipts were now going to supplement the General Fund. She was bringing to Mr. Trujillo attention, as information, and to please look into it. Mr. Trujillo assured her that the money was committed, because it was set up as a separate account.

**ACTION ITEMS:**

**Board of Commissioners Convenes as Indigent Board**

**Indigent Report.....Barbara Baker**

Ms. Baker presented the Indigent Claims from March 26, 2004 to May 7, 2004. The total amount of claims submitted was \$507,090.17. She asked the commission to approve \$91,858.92 and to deny \$415,231.25. There were 139 claims submitted. Commissioner Andersen made a motion to approve. Commissioner Trujillo seconded. Motion carried. 4-0. **See Exhibit A.**

**Re-Convenes Board as Board of County Commissioners**

**Public Hearings**

**Request Zone Change RR2 to I-2: 599 Jarales Rd. Belen.....Ruben Chavez/Larry Miller**

Chair Gary Daves asked that anyone wishing to speak on this issue be sworn in, by County Clerk, Tina Gallegos.

Mr. Ruben Chavez, Planning & Zoning Superintendent, gave the commission a background of this request. This was a request to amend the zone maps from RR2 to I-2. Mr. Miller operated a feed hauling business along the railroad tracks in Jarales. His business is delivering feed ordered by area dairies and farmers, from the rail yard, to individual sites. Mr. Miller is proposing to relocate his business on land purchased from the Railroad across the tracks from his current location. The Planning Department has identified the current and proposed use as warehousing, storage and distribution as listed in Section 702 Light/General Industrial District.

On January 14, 2004, the Planning & Zoning Commission at a public hearing, reviewed the site plan and heard from both the applicant and surrounding neighbors. The commission denied the site plan and voted against this request by a 4-0 vote based on the following:

The site plan placed activity too close to the surrounding neighbors.

After receiving a denial from the Planning & Zoning Commission, the applicant withdrew his application and resubmitted a new site plan hoping to address the concerns from adjoining neighbors. The Commission heard the new proposal at a meeting on April 12, 2004 and approved the proposal due to the following:

Mr. Miller tried his best in modifying his site plan so that it would be compatible with the surrounding neighbors and the site plan places the activity in a more controlled environment.

The environmental issue with smoke, dust and noise are already there and uncontrolled.

The new site plan included landscaping and makes the plan more compatible with the residential area.

Included in the packet for the commissioners, was the Site Plan, the Minutes of the January 14, 2004 planning & Zoning Meeting, the application and a Petition of opposition.

Mr. Miller basically repeated what Mr. Ruben Chavez. He did say that there was a misconception that he was trying to put in a big company. He was trying to move about 100 feet. He said he has been there for 15 years and nobody had complained and he thought he was making it better.

Chair Daves asked him to characterize what the business was now. Mr. Miller said he unloads cars of cattle feed and delivers it to the dairies. Chair Daves asked if he was going to unload outdoors or into a structure. Mr. Miller said that at the end of the storage barn, it will have a track go through it,

so he will be unloading inside the structure from the trucks. Everything, now, is outdoors. He wants to move indoors.

Commissioner Aguilar asked how large and how high the storage barn that he was proposing to build was. Mr. Miller said 200 to 250 ft. large and about 20 high. How many trucks would be going to Jarales Road, she asked? Mr. Miller said he unloads about 10 to 12 cars a week and each car would have 3 truckloads. The closest resident is about 1500 feet. Commissioner Aguilar asked if there would be a septic tank and water there. Mr. Miller said his son-in-law lives there now and they would like to have a caretaker, if permitted. Is this part of the request, and would a residence be permitted, Commissioner Aguilar asked? Mr. Chavez said yes, it was allowed under I-2.

Chair Daves asked what was the zoning, on the land, that the tracks were on. Mr. Chavez said the railroad track that his operation was on now was I-1. Chair also asked if he knew why it was zoned residential, and, was it appropriate. Mr. Chavez said he did not know, he could only tell him that that railroad yards and both tracks that go through Jarales are all zoned I-1. Mr. Ed Landreph, who'd been with the Santa Fe Railway explained that the railroad had a 100 ft corridor on each side of the tracks. It had built a loop south and bought the property in between the tracks. For some years it was a no man's land in zoning, then one side became industrial and the south side 100-foot strip was not.

Commissioner Padilla said that there was an industrial site just for this matter and asked if had he looked into that. Mr. Miller said he had, but, it would take them an extra day to bring cars out to Solo Cup area and prices had doubled within the last three years. Commissioner asked if they would be loading outside or inside. Mr. Miller said inside.

Residents and neighbors of Mr. Miller had concerns about the integrity of their property. It was farmland and they would be opening it up to future uses that they were not sure about. Property value was another issue. It was also suggested that this was a grain elevator and it should be in an I-3 zone. Staff said it was appropriate. Explosives were done every day, but one day it was louder than usual. One resident said it would be a lot closer to the residents and why couldn't Mr. Miller build the structure where it was now. Another concern was rodents.

Chair Daves said that they were not here to put Mr. Miller out of business. His business was already there.

Mr. Scott Edeal said that Mr. Miller was the kind of person that if there was anything that he could do for anyone, he was the person. He was only trying to make it better for all by bringing the vibrator operation to the inside, even if it was closer.

In answer to everyone's concerns, Mr. Miller said that the vibrators did not go on all day long. They were used to loosen the feed and sometimes, they had to use explosives. In explaining how his revenue comes in, he said the product is sold to the dairy, and he is paid by the suppliers to deliver it. He is subject to income taxes, but not to gross receipt tax.

In answer to the noise, a planning company had suggested that trees could be used a buffer to the noise.

The elevations and the slopes will be required as part of the proposal. Chair Daves asked if the zoning ordinance required that money be spent before coming to the commission for a zone change. Mr. Chavez said that it be done through the process, but not specified, that, it be done before this meeting. He said that the site plan must be prepared because what they were approving was a land use and the site plan, which means, where the settings would be done. As for the 50-foot contours and the elevations, it seemed premature to bring them at this point.

Chair Daves said if the zone change was approved, what could Mr. Miller, or subsequent owners, do in terms of changing this operation. Mr. Chavez said it could be adjusted incidental to his use. Incidental in the ordinance was a judgment call. The request was a zone change to I-2 for the purpose of warehousing, wholesale storage and distribution and motor freight terminals contained within a building. He could do this use in accordance to the site plan and if it would vary substantially from that, but then it would not be what was approved.

Commissioner Trujillo said his interpretation was, that, if Mr. Miller were to come back and try to implement something other than what was approved, that substantially deviated from his proposal, he would, then, have to go back through the process.

Commissioner Andersen said to her understanding this operation is now in place and Mr. Miller wants permission to put up building. Mr. Miller said he is on Santa Fe property now and wants to move 100 feet to his property.

Commissioner Padilla agreed with the residents, in that this would be creating an industrial area. What would keep others from asking? It is a residential area and there is a noise level and pretty loud. Commissioner Padilla made a motion to deny the zone change request. Commissioner Trujillo seconded. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Aguilar voted yes. Commissioner Andersen voted no. Motion carried. 3-1.

Commissioner Aguilar wanted to qualify her vote and part of it was that there was a use for this. She could understand that and this was a very nice family, but as a commission, they had a responsibility to adhere to the laws of the zoning ordinance and also compatibility to the area. She had come into the meeting and listened to the facts. It was important, and zoning indicates, that even on an approval of a zone change, the site review should come back to them so that everyone is informed. This does not seem to be happening and that was one of the reasons that she was supporting the denial.

Commissioner Trujillo had concerns also. Creating an I-2 because they want to accommodate someone is not appropriate. It could have serious impact on the health of individuals. He saw nothing wrong with the plan; he just didn't think it was the place to put it.

**Ruben Chavez/Kenneth Knauber**

This item had been tabled at the previous meeting. Commissioner Padilla made a motion to untable it. Commissioner Aguilar seconded.

Mr. Ruben Chavez said this was a request to amend the zone maps from C-1 to PRO, Parks, Recreation and Open Space. This request comes from Dale Sergeant and Kenneth Knauber. The applicant was requesting to place an RV Park in the Meadow Lake area. RV Parks are mentioned in the PRO zoning district and directed to follow the criteria outlined in section 902. This section requires a two-acre minimum on lot size, of which the Planning I& Zoning Commission had granted a variance. The applicant is requesting a total of twelve RV spaces. The ordinance allows for twenty spaces per acre. This request was heard on February 11, 2004 and received a recommendation of approval with a vote of 5-0 on the following conditions:

That approval be granted for the four spaces approved by the Environmental Department for dumping hook-ups.

The applicant be allowed to expand to twelve spaces shall the applicant modify the system to meet Environmental Department approval

In order to monitor compliance with the proposed uses and its expansion the applicant shall submit Environmental Department compliance when renewing their annual business license.

On March 3, 2004, this request went before the Board of county Commission and was tabled until the Planning & Zoning minutes and more information from Environmental Department could be provided. There was confusion as to expanding those units before a not yet modified system was approved and Mr. Sergeant wanted to address that today.

Anyone speaking on this issue was sworn in by County Clerk, Tina Gallegos.

Mr. Sergeant said that the concern was that it was misunderstood that they wanted more than four spaces for sewer deposits. What they wanted was to have a vault that RV's could dump in.

Commissioner Andersen said she was the one that had tabled this until Mr. Knauber could go back and get a plan that would cover the twelve or twenty units that he wants to park there. It was her contention, at that time, that they could not control the fact that there are only four hooked to a sewer system and if there are twelve and the sewer is inadequate, where are they going to be. She had wanted some assurance that, that would not ever happen.

Commissioner Aguilar's recollection was that this gentleman had come before them wanting four and up to twelve spaces approved, but ED had only approved four and there was an application before ED for the other twelve. It had been tabled to allow time to get the response from ED on the twelve because they did not want to give an approval where it could go to twelve or twenty. Rather than limit it to four, they had given him the opportunity to wait for ED approval. Mr. Sergeant said that the State Engineer, that regulates EID, could not go any further as far as waste disposal was concerned. Chair Daves said, what he had was four RV's that could be attached to a sewer system and that the other eight would have to be self-contained.

Mr. Robert Skinner, a resident from Meadow Lake, said he has live in the area for about fourteen years and for many years they have been trying to bring in business that would improve the area. This was one of them and would bring revenue to the county.

Chair Daves asked Mr. Chavez, if it was his understanding that with this a posture of four spaces approved, and perhaps up to twelve spaces, and eight would be self contained, would this be within the parameters of the PRO zone change. Mr. Chavez said the zoning ordinance allowed for a maximum of twenty per acre. Mr. Knauber had one acre. Commissioner Andersen said ten should be all he could have. If they could approve four, it would be okay, but when he would have four spaces that could be served and the others that would not be, there was no one to check and make sure that it would happen. Commissioner Andersen said that if it were appropriate, she would make a motion to deny the request. Motion died for lack of a second.

Mr. Sergeant asked if it could be modified to just the four. Chair Daves said it was his district and if the ordinance said that it could be put in and ED says only four, but still meets with the ordinance, then, they should amend the ordinance and not assume that the folks coming in under this ordinance are bad citizens.

Commissioner Trujillo made a motion to approve four spaces with dumping hook-ups and six spaces that are self-contained. Commissioner Aguilar seconded.

Mr. Dieder Hartenhoff was against it and wanted the commission to really think about it before voting on it.

Mr. Casticha, from Meadow Lake, said Mr. Sergeant was a neighbor and, yes, there are many abandoned trailers, but they finally had someone that wanted to do something decent and he wanted to make sure that it got done.

Chair reminded the commission that there was a motion and a second and called for the vote. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Aguilar voted yes. Commissioner Andersen voted no. Motion carried. 3-1. **See Exhibit B.**

**Request to Zone Change RR2 to RR1;19512 Hwy 314, Belen.....tabled on Dec.17, 2003  
Ruben Chavez/Anthony Rodriguez**

This request was to amend the zone maps from RR2 to RR1. Anthony & Laura Rodriguez were seeking to divide their five acres in three parts for the purpose of giving land to their children. The property is located in the RR2 district, two-acre minimum area. In order to create three separate lots for each parcel, it would net less than the required two-acre minimum, thus a zone change request. The Planning & Zoning Commission heard this request at a public hearing on November 14, 2003, and after much controversy both from the audience and from the commission, a 2-2 vote sent this item to the Board of County Commissioners without a recommendation.

On December 17, 2003 the Board of County Commission, at a public hearing, heard the request from the Rodriguez's. The commission also debated the issue of, one-acre vs. two-acre, minimum standard. The commission, in attempting to understand the environmental impact on lot sizes, in the

valley, tabled the item and assigned staff to provide further information. On April 7, 2004, Frank Titus, PhD, an expert in hydrology and geology, gave a presentation on groundwater contamination in the valley.

Vice-Chair Trujillo took over the Chair. Anyone speaking on this item was sworn in by County Clerk, Tina Gallegos.

Mr. Rodriguez said Mr. Chavez had summarized the way it was and the decision was up to the commission now. Vice-Chair Trujillo said there was five acres that they wanted to divide three ways. 1.5 acres would go to each individual and they would retain two acres.

Charlie Sanchez, from Tome, said family was very important, but there was an ordinance with a two-acre minimum. Mr. Dale Jones, Soil & Conservation District, had gone to look at the property. He said he had never met two more honest people, but as Mr. Sanchez had said, there was an RR2 zoning regulations. He could not tell them why one person gets approved and others don't, which was one of the questions that the Rodriguez's had. But, as they had stated many time, they are trying to save the farm land and keep septic tanks down and so for that reason he hoped the commission would stay with the RR2 regulations. Mr. Donald Chavez, Belen, echoed Mr. Sanchez's remarks. In the interest of long-term welfare of our future generation, we need to keep the rural area in some sense of what it is now.

Steven Chavez an attorney representing Richard Brunicini, and who lives south of the property, said that Mr. Ron Curry, Secretary of Environment for Bill Richardson, had reported, in a press conference, that the leading source of ground water contamination, in the green belt, in New Mexico, is septic tank usage. He strongly demanded that the state begin implementing stricter standards for septic tanks sewer systems, for wellhead protection and for all other types of ground water contamination. From the time that this was tabled in December of 2003, nothing had changed other than Mr. Frank Titus's report, which supports denial of this request. Mr. Brunicini strongly supports denial of this request.

Mr. Rodriguez questioned the commission on why some requests were approved and others denied. Ms. Rodriguez said people couldn't afford to buy two acres at a time and they were trying to give their kids a place to build their house. What they wanted to get across was that Mr. Brunicini was not farming, he was raising horses. The rest of the neighbors are not farming either, she said, we are farming more than they are.

Commissioner Aguilar said that the Rodriguez's wanted 1.5 ac., and the commission needed to look at some common sense in addition to looking at the ordinance. The law say two-acre minimum RR2, but it also says that they can have one-acre minimum and that is RR1. This property was purchased prior to the ordinance and the intent was to give it to this family. In the past it had been the custom of the commission, that, if they were going to do a split like this, they would ask for the deeds to be provided, once the approval was granted. It is important to see that we are a tight knit community, and whatever we have is for our children, she said. They were not asking for half an acre, they were asking for 1.5 ac.

Vice-Chair Trujillo said this was in his district and additional information had been gathered since the December meeting regarding the two-acre minimum. Recommendations were made by Mr. Frank Titus. The considerations and reasons for the two-acre minimum were concerns about ground water contamination. It is pretty clear that ground water contamination is the primary underline issue, regarding, deviating from the two-acre minimum. In Mr. Titus evolution, it was clear that there are ways of dealing with the issue. He recommended, among other things, sealing of the wellhead.

Commissioner Andersen said that the other recommendation was cluster wastewater treatment. In a situation like this, maybe it is was something that might be required or recommend. There was no reason to have three separate wells or three separate septic tanks on a five-acre plot. They needed to start trying, to do cluster wastewater treatment. The time has got to come when they have sanitary improvement districts. She was not concerned about two acres been sacrosanct. What she was concerned about was polluting the water system in the valley and they were at the point where they had done that in too many places.

Vice-Chair Trujillo continued with Mr. Titus's four recommendations. First, He had required sealing of the upper annulus between the wall of hole and casing in permitting all new wells. Second, keep two-acre minimum lot size for homes with wells and septic systems except for the most unusual circumstances. Third recommendation was, for any exceptions, require better waste treatment. This pertained to preserving the quality of the water table and protecting the occupants. The first one safeguards people's health and well being by sealing the upper annulus of the well. Fourth, was when subdiving farms and creating cluster homes, multi home wells, cluster waste treatment, and farming of the common areas with alfalfa, seems that it was something that you would want to do anyway, just to maintain the land. He could not vote unless there was a tie, but his recommendation would be that they need to resolve the issue and provide some guidelines to address the concerns of why one person approved and another not. He recommended approval, with conditions, One, Three and Four.

Commissioner Andersen said she did not disagree with him, but what information could they give them, because they did not have any standards set up that specify what they need. If these restrictions were implemented, they had no way of telling people how they could meet them. Vice-Chair Trujillo agreed that there were no standards in place, but the recommendation was made in order to set precedence for developing standards for future use. Commissioner Andersen said they had done this exact thing in December 17<sup>th</sup>. as they are doing now, and had wanted Planning & Zoning to come back with recommendations on some standards. Chair Trujillo had said, then, that the RR2 zoning had been problematic and they needed to revisit the issue and look at the zoning, and, if they were going to deviate from it, they needed to make provision in order to protect the safety of the neighbors. They still did not have any standards to help the Rodriguez with their problem. Chair Trujillo said he believed that the recommendation from Mr. Titus did set some standards. The

implementation of the standards is something that they need to develop through regulation rather than policy. Regulations are developed by Planning & Zoning. The Commission sets policy. We are trying to move forward with the issue, through this recommendation, to establish some sort of policy that is clear.

Commissioner Aguilar made a motion on Vice-Chair's recommendation, of this family's split, with the condition that there be well head protection and that the septic system conform with ED regulations. Commissioner Padilla seconded. Ruben Chavez said that on wellhead protection they could pour concrete on either fifty feet or one hundred feet so that they do it in two different ways. If they were going to require this, he needed to know what type of well drilling. Commissioner Aguilar said when she was talking about wellhead protection, she was talking concrete casing around the wellhead and it could be thirty-six inches. This would protect the well from any contamination. The depth was about eight inches. She did not wish to amend the motion, as this was the law. Commissioner Andersen was concerned that they were making ordinance changes without proper public hearings. Commissioner Aguilar called for the vote. Commissioner Andersen voted no. Commissioner Padilla voted yes. Commissioner Aguilar voted yes. Motion carried. 2-1. **See Exhibit C.**

**Request Zone Change AP to RR2: 42 Whitehouse Rd. LL.....Ruben Chavez/James Blea**  
Chairman Daves resumed the Chair.

This request was to amend the Zone Maps from RR2 to RR1. Mr. Blea had been under the impression that upon building a home for his in-laws in the 1970's he had given them a  $\frac{3}{4}$  acre at the southwest corner of his property. After the passing of his in-laws, his home was subsequently sold to another individual. Mr. Blea later discovered that county was assessing the new owner for almost ten acres. After further investigation, no previous documentation was available to collaborate the existence of a  $\frac{3}{4}$  acre lot. This request was heard on March 10, 2004 by the Planning & Zoning Commission and was tabled for 30 days so that Mr. Blea could bring back more information. On April, this request was heard again by P & Z Commission and received a recommendation of approval with a vote of 4-0 due to the following;

It is sensible to give a zone change since there are two separate owners.

A lot of times old surveys were not recorded by the surveyor, and this was no fault of the Subsequent owner.

Mr. Blea took the oath from County Clerk, Tina Gallegos. Mr. Blea said that when he had it surveyed, he was under the impression that it was one acre and assumed that the surveyor had recorded it. He realized that he was not paying enough taxes and that the new owners were being assessed for ten acres, which were his. This was a good time to correct everything, he said.

He had a new survey and he was willing to give his neighbor the additional land to make it a one-acre parcel. There would be a forty-foot road, which was standard, with a fifty-foot cul-de-sac.

This request was to apply the zone change on, Tr. 1, only, to what will become one acre.

Because of the litigation on Berber Road, Commissioner Aguilar had a concern, that a property owner would come along and fence his property line, which would then create a twenty-foot road, or, create an issue. The policy for road maintenance agreement is that when they do a lot split, they should have an agreement as to who is going to maintain these properties. To clarify, rather than say its net four acres after the easement, she would rather see the easement as a public road with a road maintenance agreement attached to it. She asked Mr. Chavez to clarify. Mr. Chavez said it had been done. He had talked to the surveyor that had done the plat and the easement agreement would be recorded and the language would be placed on the plat before they sign off, on the plat.

On her other concern, on a new owner fencing the property line, Mr. Chavez said if they made the property line outside of each of the twenty feet, it make it nice for dedication, because it becomes no-mans land, but what they start doing is taking property out of the tax rolls. This question is, do they want to have unassessed property in the county? Commissioner Aguilar said that conditions of the split, road maintenance agreement, says it has to be forty-feet and it indicates that there's ownership of all the parcels. She wanted it clear on the plat that it was a forty-feet road and seven or ten feet of utility easement, because if the power lines go through, are they creating a narrower road. Mr. Chavez said it was twenty-four feet of crown and the rest of it is left for bar ditch and easement for the utilities. So, then, the cross section of the road takes the forty feet into consideration. A perfect design would be seven feet, bar ditch and twenty-four crown. That was the intention of the forty feet. Mr. Chavez said the utilities would also sign off on it.

Chair Daves commented that taxation is based on appraised value and if a piece of land has a dotted line, which means you own from the dotted line to the center of the road, it should not appraise higher, it should appraise lower, because what it means is that, potentially, there are problems with this road becoming maintained by the government. To that extent, the property value would tend to be lower. This is with regards to residential properties. Agricultural properties are appraised on a per acre amount, which then taxes would be higher. One of the things he would like to leave this with is the policy, where they are not accepting public roads where the owner owns to the center of the road, but it's a public road anyway. It is confusing and leads to the problems that Commissioner Aguilar was talking about.

Commissioner Aguilar made a motion of approval of the RR1 for Tr.1, with Tr. 2,3,4 remaining RR2 on condition, upon the remarks mentioned, be on the final survey, as far as road maintenance agreement, in clarification that the easement is for public use. Not accepted by the county for maintenance, it's a private road, used for public use of the property owners. Commissioner Andersen seconded. Motion carried. 4-0. **See Exhibit D.**

Commissioner took a five-minute break.

**Request Zone change AP to RR2: Apache Lane, Belen,.....Ruben Chavez/Everett Ingram**

Mr. Ingram owns approximately fifteen acres in Jarales off Maestas Road. Legal description is Lot 108/109, Map 102 of MRGCD. Direct access to this property is off a side road called Apache Road. Currently the property is zoned as Agricultural Preservation. AP, as defined in Section 401 of our ordinance, requires a ten-acre minimum lot size. This would require changing the zone designation. Changing property out of AP classification is outlined in Section 1107.03 of our ordinance.

On April 14, 2004, the Planning & Zoning Commission held a public hearing and took testimony from both the applicant and concerned individuals. The commission voted against the request 3-0 with only three commissioners voting. They stated their rationale for voting against the zone change, by claiming that, the removing of land out of AP should be a policy decision made by the policy makers and not the P & Z Commission.

Everyone wishing to speak on this issue was sworn in by County Clerk, Tina Gallegos.

Mr. Ingram said that this request was under the guideline of the county ordinance and was attempting to follow procedures. His problem, he said, was that the property was too hard to sell at a reasonably price and too small to buy. The zoning surrounding the property is RR2. The history of the property was that his mother had acquired the property from his father in the early 1960's and had not been farmed since then. In 2002, he had inherited it from his mother. It is his intention to divide this property into four acre tracts and according to the zoning regulations, he could divide it five times.

The petition that his sister-in-law had presented said "housing development" and to him this means six homes per acre, which would be sixty to seventy homes. His plan was to divide it into four ways. He mentioned that out of twenty-two people that had signed the petition there were only ten addresses.

In looking at the zoning map, the other areas are zoned RR2 and to the east, the property is zoned AP. Most of the tracts are less than 10 acres. Farther south is the Santa Fe railroad and is zoned light industrial. At the corner of Apache Lane and Maestas Road is a small auto repair business. The area is all mixed use and lots range from less than one acre to ten acres.

Planning & Zoning was concerned about the roads in the area. It was his opinion that this was a public road and could handle the low volume of traffic created by four homes.

Mr. Ingram said as owner of this land, he had the right to develop the land the best way to improve his family's well being.

Commissioner Trujillo said that to the east, one parcel is 2.83 Ac., another is 1.77 Ac. and another is 3.5 Ac., and, all of them carry the designation AP. This looked like a discrepancy, in terms that there are parcels much smaller that are designated AP, and he asked Mr. Chavez to explain. Mr. Chavez said that when AP was created back in 1987 in the original zoning ordinance, and as he understood it, areas were blocked out and designated as AP to preserve agriculture. Within those areas were existing pre-plotted lots that did not meet the standard. It was set for ten-acre minimum, thus all the smaller lots become non-conforming lots. The ordinance identifies it as ten-acre minimum. That would apply to newly developed lots. Commissioner Trujillo asked Mr. Chavez if an individual owner could place a residence on a smaller 1.77 Ac, for example. Mr. Chavez said he could, despite the fact that it was designated AP. That goes for the other lots also, he said, and this would not have to come back to the commission, this would be an administrative decision.

Commissioner Aguilar said that in looking at the plat that was filed in 1995, the road identified, as Gopher Road is now Apache Road and was it a private or a public road. Mr. Ingram said it was a public lane, and it was approximately 32 ft. but it varied in width.

Mr. Donald Chavez, whose property was adjacent to Mr. Ingram's, was opposed to the zone change. Mr. Ingram had indicated that 15.53 Ac. was too big to sell, but he had proposed to buy it at whatever price. He had talked to some investors that were interested in establishing a foundation to preserve wild life. Mr. Ingram was unresponsive to his offer. He wanted to encourage the commission to deny the request. This property was part of the Belen Land Grant in 1742 and we have been here all this time, he said. He wanted to keep the integrity of country living as much as possible.

Virginia Ingram said they lived in a rural community because they wanted to be rural. Apache Lane is an Ingress and Egress road only and not a public road. She said they, in that area, would like to keep it the way it is. Fifteen acres is a beautiful farm and she would hate to see it go to homes. They also farm the twenty-two acres off Apache Lane. Would people be happy when they are out at all hours of the night irrigating or baling. Farmers and ranchers are losing their property and they did not want to lose what they had. She opposed the zone change.

Mr. Jones said there were alternatives. This commission could handle it with a variance. He had a problem with this going from AP to RR2, as it is a big change, whereas, if he wants to put five-acre tracts, they could make a variance of the AP, then the people that get the five acres, can't split it.

Commissioner Aguilar said this acreage had not been irrigated in over thirty years. It were split into four or five acre parcels, they may have someone come in that would be able to irrigate it and improve the area. They have to look at compatibility and also consider adjoining properties, which are RR2. In putting the emotions aside, and looking at the ordinance, this individual is entitled to come before them and ask for a split. She didn't think it could accommodate small two-acre parcels, but, if he could assure them that it wouldn't be more than four splits and that's where it stays, she would be willing to support it.

Commissioner Andersen asked Mr. Ruben Chavez about Mr. Jones variance idea. Mr. Chavez said that typically, they shouldn't give a variance if it meant "in-lieu" of a zone change. If they gave a variance from ten acres to fifty per cent, which would be five-acre tracts, it would still leave it as AP. Now, if someone wanted to change it, they would come before them saying, they have five acres and want to get them out of AP.

Commissioner Trujillo respected that the land was designated as AP. It seemed that P & Z had some intent towards preserving a particular nature on that land and he respected that fact that Mr. Ingram is in a position where it's more economical feasible, to divide the land and exercise a greater profit, but, It looks like this area is being preserved in a rural fashion. His inclination is that here is an

instant where they would be substantially changing the nature of that area. He thought that by granting the zone change, that would be going too far. He would prefer, if this were going to be changed, that it be done in the manner that Mr. Jones had described, as a variance to the AP, allowing it to be brought down to five-acre sites. This would allow Mr. Ingram to put the land to, what he feels is, more financially lucrative use. At the same time it would limit dividing it down into two acre pieces.

After more discussion, Commissioner Trujillo made a motion to table the item. Commissioner Aguilar seconded the motion, but she wanted clarification as to why they were tabling, as far as conditions coming before them and a date.

Commissioner Trujillo said, that based on the information that would allow Mr. Ingram to pursue a subdivision, after they granted the change from AP to RR2, a subdivision would greatly change the nature of the use of the land. And he would not vote for that. If it could be limited to something that more suited the area, then he would have a lot less concern about what they were doing.

Commissioner Aguilar said tabling it to the second meeting in July would give Mr. Ingram an opportunity to withdraw the application and pursue another avenue. She would also like to know about Apache Lane and how the land is going to be split.

Chair Daves said there was a motion and a second to table to July. Motion carried. 4-0.

#### **Request to Appeal Conditional use Permit Home Occupation.....**

##### **Ruben Chavez/Richard Abeita**

Mr. Abeita had come in for a business license to produce gun ammunition at his home on Behnke Rd. The Planning & Zoning heard the request and denied it by a 4-0 vote for the following reasons: That it is a residential neighborhood and should remain residential in nature and that the impact from the proposed business would be more suited in an area more appropriate for commercial use. Mr. Abeita believes that his denial was based on the personal issues and believes that his business will have no impact on the neighborhood.

Mr. Tom Vereecke a residents from Behnke Road apposed the business, as this was a residential area. There were other residents, from the area, that were opposed to it.

Mr. Abeita said he has been in business for years and now he wants to sell his products. Nothing was going to change. Ammunition would not be an inviting target for a thief and as for the danger of fire, that volume of pistol and small caliber rifle ammunition does not have the destructive power of a butane tank, he said.

Commissioner Aguilar said that Behnke Road was not a wide road. The back of it was beautiful property, and for safety reason, and this was a residential area, she could not support this request.

Mr. Abeita said he had not applied for a license to deal with firearms. His application was for manufacturing of ammunition. Class six, which is the license he had applied for, from ATF, only authorizes him to manufacture small caliber ammunition. He could not apply for another license, because he did not have the facility for it. Mr. Ruben Chavez said that this license would not allow him to sell rifles. ATF requires zoning approval before issuing that license.

Mr. John Cherry, Valencia County Fire Marshall, said he was certain that there were regulations as to how the components would be stored, maintained and kept. There would be fire code requirements, also. In answer to Commissioner Andersen question, Mr. Abeita said this would be done in a room over his garage and his house was made of adobe.

Chair Daves asked Mr. Abeita if he was aware of the concerns that Mr. Cherry had raised. Mr. Abeita said he did and he knew that ATF did not impose storage regulations and the powder is shipped in department of transportation approved shipping containers.

Commissioner Andersen was not concerned about the shipping, but what she was concerned about was the fire codes and what it might mean to Mr. Abeita. Planning & Zoning had voted unanimously to deny the request and she made a motion to deny. Commissioner Padilla seconded. Commissioner Andersen called for the vote. Commissioner Aguilar said that in all fairness and after all the concerns that were raised, Mr. Abeita should be made aware of what his rights were and he could explore it further and reapply. Mr. Ruben Chavez said they would do that. Commissioner Andersen voted yes. Commissioner Padilla voted yes. Commissioner Trujillo voted yes. Commissioner Aguilar voted yes. Motion carried. 4-0.

#### **Request Approval on procedure of Canvass for the Primary Election 2004.....Tina Gallegos**

Ms. Gallegos wanted some recommendation as to how the commission wanted to handle the canvass for the primary election. There had been some changes from the Secretary of States office, as to how the commission acts, as a canvassing board, but first, she wanted to direct them to item C, of the rules of the SOS, that reads, that, "the canvassing board is the county commissioners and that they should direct the county clerk to prepare a tally sheet of the provisional ballots". For the Special Election there were 120 provisional ballots and we are anticipating more for both primary and general elections. The commission would be the one approving and disapproving the envelopes and whether or not the votes get counted. In some counties, commissioners do it and in others, they give it to the clerks. Ms. Gallegos recommended that they convene as a canvassing board at the June 2<sup>nd</sup> Regular Meeting and allow either her or themselves to canvass. They would then have to meet and finalize the canvass on June 11<sup>th</sup> and the time would be up to them. Three commissioners would have to be available. The reason that Ms. Gallegos was before them was because they would be relinquishing some of the duties to her as a canvassing board. This was not new, but based off the provisional voting rules that the Secretary of State's office issued, and the paragraph that she guided them to, say the county canvassing board shall do this. And so if they were going to direct her to do it, she would request a motion.

Commissioner Andersen made a motion to direct the County Clerk to canvass and prepare the tally of the provisional ballots. Commissioner Padilla seconded. Motion carried. 3-0. **See Exhibit E.**

Commissioner Aguilar left the meeting.



**Request to Publish:****Fire Protection Excise Tax Ordinance.....Cynthia Wimberly/John Cherry**

Mr. Cherry said that the fire excise tax expires on December of 2004. Did they need to put it out for referendum or could the commission, as for HB88, pass a resolution reenacting. County Attorney Adren Nance said that the outline that they had prepared was to adapt an ordinance and pass a resolution. There would have to be a special election. They had discussed it with the County Clerk and there were funds to do a mail election. They would then certify it and provide a certified copy of the ordinance to the Department of Taxation and Revenue before October 1<sup>st</sup>. This would have to be done soon, in order to meet the deadline of October. Ms. Gallegos said that in working with the county manager and the attorneys, as far as the money being available, it would be requested in her next year's budget. They would have the election on August 10<sup>th</sup>, which means that if they agreed tonight and approve the request to publish, they would be ready to publish the ordinance on May 15<sup>th</sup> and then enact the ordinance on June 2<sup>nd</sup> meeting. All registered voters within the county, this does not include the city, would then get a ballot. Chair Daves had never had an answer of what had happened with the intended legislation that would have made the need for election to go away. County Manager, Michael Trujillo, said that according to the bill sponsor, Mr. Sisneros, the intent was that they would be able to pass a resolution. However, in the bill, there were several taxes that were amended and in order to allow for passing by resolution, in the language in the tax, it had to have an optional clause, and in this fire excise tax, it did not have that clause inserted, therefore it cannot be adapted it by resolution. This had been an oversight.

Commissioner Padilla made a motion to publish. Commissioner Andersen seconded. Motion carried. 3-0. **See Exhibit F.**

**ITB on a new pumper for Valencia El Cerro Fire Department.....Michael Steininger**

John Cherry for Tim Martinez was asking permission to go to bid on a new pumper for the Valencia El Cerro Fire Department. Commissioner Andersen made a motion to approve the request. Commissioner Trujillo seconded. Motion carried. 3-0. **See Exhibit G.**

**Request Approval of Agreement with DCSW, Architects for Judicial Complex.....Mike Trujillo**

Mr. Trujillo was requesting approval of the Agreement between Owner & Architect for planning, design and construction of the Judicial Complex plus existing courthouse renovation with Design Collaborative Southwest Architects, Inc. Commissioner Andersen made a motion to approve the Agreement. Commissioner Trujillo seconded. He said that the committee had discussed who would come forward with the recommendation on the project representative. The indication from the committee was that our County Manager, Mr. Trujillo, would present the commission with perspective project representatives. Motion carried. 3-0. **See Exhibit H.**

**Financial Matters:****Request Approval of Award #149 Audit Services Contract for FY 2003/2004.....Michael Steininger**

The next item was a request to approve 2003/2004-audit contract. Mr. Trujillo said that Mr. Steininger, Wilma Abril and himself were the evaluation committee and staff recommends Hinkle & Landers, P.C. auditors for the next three years for Valencia County. Commissioner Andersen asked what factors made Hinkle & Landers the choice. Mr. Trujillo said experience and the number auditing hours. Commissioner Trujillo made a motion to approve. Commissioner Andersen seconded. Motion carried. 3-0. **See Exhibit I.**

**Request Approval of Resolution to Increase Revenues Expenditures.....Michael Steininger**  
**Highland Meadows Fire District**  
**Judicial Complex (GO Bonds)**

**Older American Program with NCNMEDD Area Agency on Aging**

Mr. Michael Steininger had three proposals. He said that the PRC and the State Fire Marshall's office has officially recognized the Highland Meadows Fire Department as an official fire department that is now eligible for state fire funds. The amount that they had received was \$4811.00 for May through June30<sup>th</sup>. He was asking for approval of acceptance of these funds and the ability to expend those funds to continue the construction project. Commissioner Trujillo made a motion to approve **Resolution 2004-25**. Commissioner Andersen seconded. Motion carried. 3-0. **See Exhibit J.**

The next item was for the Judicial Complex. Based on the proposed budget, between now and June 30<sup>th</sup>, they expected to spend \$91,638.00. This covers attorney's fees, Mr. Casey's fees, and starts the soil testing and some other items that are necessary to begin site selection. Commissioner Trujillo made a motion to approve **Resolution 2004-26**. Commissioner Andersen seconded. Motion carried. 3-0. **See Exhibit K.**

The next item was on the North Central New Mexico Economic Development District area agency on aging has determined that they have excess funds. They contacted program participants to see if they were interested and Mary Ann Gonzales, Older American Director, was interested in obtaining the \$7,683.00 that they have awarded her. They were asking for approval for the ability to request and receive the money and also to expend, as required under the cash in lieu program. Commissioner Andersen said cash in lieu was money that we take instead of commodities, so how could we expend it there. Mr. Steininger said is that she is buying food with money that is specific

called cash in lieu. She is adding this to the line item. Commissioner Trujillo made a motion to approve **Resolution 2004-27**. Commissioner Andersen seconded. Motion carried. 3-0.  
**See Exhibit L.**

**Request Approval of Expenses incurred for 2004 NACo Legislative Washington DC.....**  
**Michael Trujillo**

Mr. Trujillo was requesting approval of expenses incurred for the 2004 NACo conference for Commissioner Aguilar and Commissioner Padilla. There is no record of county commission approval for this trip as required by the County Travel Policy. Approval is needed to pay the MasterCard bill for the hotel. Airfare was paid in January. Commissioner Trujillo made a motion to approve. Commissioner Andersen seconded. Motion carried. 3-0.

**Request permission to open a Bank/Investment Account (judicial complex) .....**  
**Michael Steininger**

Mr. Steininger said that on Friday morning they had taken possession of \$9,870,000.00 in GO bonds proceeds to be applied toward the judicial complex. These funds were sitting in the general treasury due to timing issue and while searching for a place that was more economical beneficial for us. After talking with the Treasurers Office, it was put out to bid with the Bank of the West, primary bank of the county, Bank of Albuquerque, no prior dealing with the county since the bank as its called now only existed since 1999, and Wells Fargo, who has a relation with the county in a minor way. His recommendation was to go with Wells Fargo pending resolution of their proposing handling through one of their brokers out of California and he preferred to keep it in New Mexico, because he wants the official bank of records to be in New Mexico. Commissioner Padilla made a motion to approve Michael's recommendation. Commissioner Trujillo seconded. Motion carried. 3-0. **See Exhibit M.**

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

Mr. Trujillo asked for approval of both Payroll and Warrants. Commissioner Andersen made a motion to approve. Commissioner Trujillo seconded. Motion carried. 3-0.

**Adult Detention Facility Report**

Mr. Trujillo said that the Joint Powers Agreement on the Juvenile Detention Center with Sandoval County and Bernalillo County expires on June 17<sup>th</sup>. He and Michael Steininger would be extensive review and then meeting with those counties and expressing some concerns.

Budget Hearing & Commission Workshop/Meeting was planned for May 26<sup>th</sup> at 1:00PM in the afternoon to go through the initial budget. Then they could look at concerns and address them by June 2<sup>nd</sup> which is the next commission meeting at this point they would be asked to adopt the budget.

Commissioner Aguilar had inquired as to Audit Status. State Auditors had not released the audit. On May 25<sup>th</sup>, the jail committee will meet.  
Next meeting will be on May 26, 2004 (Budget) at 1:00 PM.

The next Regular Meeting of the Valencia County Board of County Commission will be held on June 2, 2004 at 6:00 PM in the Los Lunas Consolidated Schools, Board Meeting Room.

**Adjournment** Motion by Commissioner Andersen. Commissioner Padilla seconded.  
Motion carried. 3-0.

<b>NOTE:</b> All proposals, documents, items, etc., pertaining to items on the agenda of the, May 19, 2004 Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.
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**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: June 2, 2004**