

VALENCIA COUNTY BOARD OF COMMISSIONERS

Regular Meeting

August 18, 2004

The Meeting was called to order by Chairman Gary Daves at 5:00 P.M.

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

Chairman Gary Daves called the meeting to order. As per motion and pursuant to 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 Trujillo made a motion to go into executive session. Commissioner Andersen seconded. Motion carried. 3-0. Commissioner Aguilar was absent for the vote.

Executive Session

Chairman Daves called the meeting back to order and welcomed the public. Commissioner Padilla made a motion to go back into regular meeting. Commissioner Trujillo seconded. Motion carried. 4-0. County Manager, Mike Trujillo reported that personnel matters were brought up just for information. Also discussed was the Isleta Pueblo Comanche Ranch concerns and one lawsuit for information and that no action taken. Commissioner Andersen made a motion to ratify that this was all that was discussed. Commissioner Trujillo seconded. Motion carried. Commissioner Aguilar voted yes. Commissioner Trujillo voted yes. Commissioner Padilla voted yes. Commissioner Andersen voted yes. Motion carried. 4-0.

Pledge of Allegiance led by Diana Martinez-Coplen

Approval of Agenda

County Clerk, Tina Gallegos read the agenda. County Manager, Mike Trujillo asked that Item 11-C-4 be removed from the agenda. Ms. Gonzales had not been able to attend due to illness in her family Commissioner Trujillo made motion to approve the agenda. Commissioner Padilla seconded. Motion carried. 4-0.

Approval of Minutes

Commissioner Padilla made a motion to approve the July 21, 2004 Regular Meeting, July 28,2004 Special Meeting- Final Budget, August 4, 2004 Regular Meeting and the August 13, 2004 Special Meeting- Canvass Fire Excise Tax. Commissioner Trujillo seconded. Motion carried. 4-0.

Public Requests

Mr. Bill Hoag was concerned with illegal fireworks and was requesting passage of an ordinance that prohibits the sale of illegal fireworks in the county. He said Bosque Farms and Los Lunas had both passed ordinances. Chair said that if it was illegal, it was already prohibited, so was Mr. Hoag asking to prohibit all fireworks. Mr. Hoag said just illegal ones. This past fourth of July, it had not been illegal, and fireworks were coming in his yard. Chair suggested that Mr. Hoag go to the Fire Marshall's office to clarify what Los Lunas and what Bosque Farms were doing and what he was requesting.

Pat McElvey, President of Rio Communities Association, said that his constituents, change the oil of their cars at home and have no place to put the oil to be recycled. It was suggested that perhaps the Road Department would accept the old oil. County Manager, Mike Trujillo said recycled oil has specific statutory rules and regulations. He would check with some dealers to see if they would accept it, because they have to dispose of it properly. Another concern Mr. McElvey had was that there were street signs in Rio Community missing and he would like to get them replaced.

Discussion (Non-Action) Items

Presentation-Regional Transit District Format Process.....Bruce Rizzieri

Mr. Bruce Rizzieri from Mid-Region Council of Governments presented the commission with a brief summary on the Regional Transit District, RTD. He said that we were not the only region in the state looking at and discussing information on RTD and will not be the first region that will form the RTD. This district will probably go to Bureau Center of New Mexico RTD, which is comprised of Santa Fe, Espanola, Los Alamos and three or four pueblos within the geographical area. In 2003 the New

Mexico legislation and the Governor signed a Regional Transit Legislation, which says that two or more government entities can sign a contract to create a RTD. When it is created, it becomes a political subdivision in the state. This is to provide a regional transit service. The contract deals with powers of the Board of Directors. The second deals with directors of the RTD. Every entity who belongs to RTD is entitled to at least one member on the board. The Contract lays out in detail, how different jurisdiction gets signed a number of board members for the district. There is a provision in state legislation which allows an entity, which is a member of RTD, to also withdraw from the RTD. The procedure is, that entity wishing to withdraw, passes a resolution and they negotiate with the board of directors on the terms of withdrawal. Then the agreement has to get approved by State Transportation Commission.

Mr. Rizzieri was requesting action from the commission to join RTD. What he was suggesting was that this entity and other entities consider a draft RTD contract that meets the requirements of the state legislation. Once the RTD is created, the state has \$250,000 that is available to be used for service planning airports. There is no monies required for any entity to join the RTD. The state postes public notice before any meeting for consideration of RTD contract, is held.

Chair Daves asked what kind of time schedule was he on. Mr. Rizzieri said if he could get two or more government entities to sign this contract, then they could go through the process of going to the DOT, requesting that the commission, served by the RTD, be formed in the area. Then they can get on with the public enrollment portion to help assist and develop the service plan.

Chair Daves asked if any other entities had approved the contract. Mr. Rizzieri said that as of the month of August, no other entity has, but was anticipating getting on their September agenda.

County Manager, Mike Trujillo, declared that there may be a slight conflict of interest, as he was one of the chief lobbyist for the COG. He said this type of district has been tried for over ten years and the problem in the past, and, the reason it has never passed legislation, is that it always considered the City of Albuquerque pretty well geared towards that. Legislation was changed significantly when Mr. Lawrence Rael changed hats. So it became a statewide regional district. There is some allowance for taxing authority under the district. He said it fits well with the United We Ride program. First, was to determine a service plan. This was important, and, it helped the entire effort. Whether or not they wanted to join the district, is a later decision. Mr. Rizzieri said they needed to have an RTD created in order to receive the money, but as mentioned, they could withdraw from the RTD.

Commissioner Aguilar said she would be interested in learning more about the authority of the RTD.

Chair Daves asked Mike Trujillo to review the contract and be prepared to present it to the commission in a way that the concerns are addressed.

Fire Excise Protection Tax Election Results/Recognition for all Fire Volunteers, Emt Tina Gallegos

Ms. Gallegos presented the commission with the results of the Fire Excise Tax Election. It had passed, with an overwhelming response to the volunteer fire departments, in approving the bond election. There were 4300 votes in favor and 614 against, with 1 provisional yes vote. There were 1 over 20,000 ballots that were mailed out and about 5000 that came back.

Chair Daves said the voters had been pretty smart and the importance of the volunteers was critical. The commission had asked that recognition be given to the various departments and County Manager was prepared to do that. He stressed the help that the various volunteers had done in getting the vote out and getting the people to understand how important it was that the funding continue.

County Manager, Mike Trujillo read the Proclamation. Mr. John Cherry, Fire Marshall, said he had the privilege in presenting the most dedicated crew in Valencia County. The commissioners thanked Mr. John Cherry and Charles and all the volunteer fire fighters for their dedication. Chairman Gary Daves presented the Proclamation to each of the fire districts.

Charles said it was a team effort and thanked the Jane at the New Bulletin, the Commissioners, Mike Trujillo, County Manager and staff and Tina Gallegos, County Clerk and the Bureau of Election staff for their help and answers to their questions.

Mr. John Cherry said that in his eighteen years of being Fire Marshall, this was the first time that they had received total recognition and it went a long way and they were certainly appreciative.

See Exhibit.

Commission Communication/Questions.....County Commission

Commissioner Trujillo said he had attended a regional seminar and he had found it very informative and he would make it available if any commissioner wanted to talk to him about it.

Commissioner Andersen said that state legislators, in its last session, passed a bill which permits the counties and municipalities to enact a 1/16 additional gross receipts tax. The effective date of that act was July 1, 2004. 1/16 of 1% is .400 of a cent, which means if we enacted a 1/16 tax, we would be adding about four cents to a \$10.00 purchase. That four cents would earn us somewhere in the neighborhood of 180,000 a year, roughly. She asked the commission to consider this as an action item on the next agenda and would like for it to be included and be discussed. We have great needs in this county and none of them are going to be solved until we find more ways to increase our revenue, she said. One of the things that she would like to see this money used for, is to hire a professional grant writer, who has a real track record and help us get some of the things the county so desperately needs. Also she would like for them to consider a public works director. None of these people are going to work for \$5.00 an hour. We need some money and as we all know, there

is no extra dollars in this year’s budget. If we enact this now, it’s possible for it to take effect on the 1st of January, which means that sometime in 2005 we would begin to see some of those dollars come in. Commissioner asked to make it official, that they will discuss it at the next meeting.

County Manager, Mike Trujillo said that the appropriate thing to do would be a request to publish or a public hearing on that day. If they have to adopt it to be in effect prior to September 30th they’ll have to direct them to publish a proposed ordinance, which they have to get from the state. They can direct them to publish it and then they will have it for public hearing on the next agenda.

Commissioner Trujillo said that in light of some recent developments, regarding some issues, he agrees with Commissioner Andersen about the necessity, but, it is important that they approach this procedurally and in a correct way and it was his concern. He wanted the attorneys to make sure that they were approaching it procedurally. Based on that, he would support the recommendation.

Commissioner Aguilar said more discussions were needed on how the monies were to be used. They are still looking at a budget where expenditures exceed revenues. There are other projects that by law, through litigation, need to be taken care of. They need to look at the entire budget and take a look at what they can do for the employees.

Mike Trujillo said he generally recommends that it be dedicated for general county purposes, with the commission, afterwards, determining how it be set for that specific year, as whether it will be recurrent or non-recurrent.

Commissioner Aguilar asked to be given an update on the Health Department in Belen. She also said that Commissioner Trujillo and herself had met with Mike Trujillo and Michael Steininger regarding the adult detention facility and they had a very interesting and worthwhile conversation about the exciting contract. Michael Steininger had taken the old contract and the current contract and is looking to see what happened to the \$200,000 software expense and to see if they can get it back. The county would then own the tracking system software. This would give the county a lot more benefits and a better way of analyzing the facility on whether they go private or manage it themselves. Michael was also going to check with the Association of Counties on risk management. Chair Daves said there is a consensus that the county should go forward with running the jail and he wants to go forward with it, whichever way they decide. He is hoping that they are ready for whatever the committee and the administration propose.

Action Items:
Board of Commissioners convenes
Indigent Report/Appeals.....Barbara Baker

Board of Commissioners Convenes.
Ms. Baker presented the commissioners with the first appeal. Mr. Jerry Mendoza had been called to work, so his fiancé was present instead. Mr. Mendoza had denied because he did not have proof of residency. He had moved to Valencia County and had not had his license changed. He didn’t have any bills, was not renting, and didn’t have proof of residency, so she had denied it. His neighbors had wrote letters to her, saying he had been living there for the 45 days that was needed. Ms. Baker recommended approval of \$625.43. Commissioner Trujillo made a motion to approve. Commissioner Andersen seconded. Motion carried. 4-0.

The next appeal was for Jamey Cook, who was not aware of the program and had come to her after the 90 day limit. She qualifies in every other way. Commissioner Padilla made a motion to approve. Commissioner Trujillo seconded. Motion carried. 4-0.

The next appeal was for Arlene Lujan Martinez and she had come to Ms. Baker after the 90 day limit. She also was not aware of the program. If approved the total would \$4,830.00. Commissioner Trujillo made a motion to approve. Commissioner Padilla seconded. Motion carried. 4-0.

The last two items were appeals from Mr. Mike Trujillo, County Manager, for Arthur Jelly and Miguel Garcia, who was also after the 90 day limit. The total amount would be \$8.56 ea. Commissioner Andersen made a motion to approve each one. Commissioner Padilla seconded. Motion carried. 4-0.

Ms. Baker presented the Indigent Report from July 9th,through August 6th, 2004 . Total amount of claims submitted was \$533,530.45. She asked for approval on \$77,470.13. there were 112 claims submitted and 35 denials. Commissioner Padilla made a motion to approve payment of the claims. Commissioner Andersen seconded. Motion carried. 4-0. **See Exhibits**

Ms. Baker said that at the last meeting, they had discussed the state trying to get the Indigent monies from all the counties, to do a statewide health care program. She had gone to a meeting and learned that most all the counties were against it. There would be several more meetings and she would give them a report at that time.
Re-convenes as Board of County Commissioners.

Appointments:
Comprehensive Plan Steering Committee (tabled 8-4-04).....Mike Trujillo
Chair Daves said they had entered into an agreement with MRCOG and the plan was that P&Z members would be a core by virtue of their position, members of the steering committee and each

commissioner would name one person. Commissioner Padilla named Rita Padilla Gutierrez, and said she had accepted. Commissioner Aguilar named Janet Jarret, and she had accepted. Commissioner Andersen named Mr. Bill Brown, and he had accepted. Commissioner Trujillo said he would have a name the next day. Chair Daves had asked Mr. Edward Archuleta, and he had agreed. Chair Daves said there was a name forthcoming and asked for a motion to formalize and approve the choices of the commissioners. Commissioner Padilla made the motion. Commissioner Andersen seconded. Motion carried. 4-0.

Commissioner Aguilar asked that letters be sent to these individuals acknowledging them and to thank you for serving. Chair said that copies be sent to Mr. Quintana at the COG also.

Request In-State & Out-of-State Travel:

Secretary of State Election School Sept. 14-17th Santa Fe, NM.....Tina Gallegos

Ms. Gallegos requested in-state travel for the Bureau of Elections Department to attend the Secretary of States Election School in Santa Fe, which is mandatory, prior to every Statewide or Federal Election. This school will be held on September 14th, through September 17th. Registration fee is \$100.00 each with four employees attending. Per Diem for two employees only, Secretary of State will pay for two, and she requested 80% paid before going to school and the 20% when they return. Total amount for registration would be \$400.00 and \$600.00 for Per Diem. These would come from the 401 line item. Commissioner Trujillo made a motion to approve. Commissioner Padilla seconded. Motion carried. 4-0. **See Exhibit.**

Commissioner Andersen commented on the information that Ms. Gallegos presents, because it lets them know exactly what it is that she is requesting. She appreciated it and thanked her.

Revenue Stabilization & Tax Policy Aug. 25, Ruidoso, NM.....Beverly Gonzales

Mike Trujillo presented the request to the commission and said that Ms. Gonzales represents Valencia County on the Association of Counties Board of Directors and also, there were some issues regarding assessments on the agenda. She asked that she be able to attend and it would come out of her re-appraisal fund. Commissioner Andersen asked that Beverly give the commission a report, being that there were some things on this agenda that were of interest to them and they seldom get this kind of information. Commissioner Andersen made a motion to approve travel. Commissioner Trujillo seconded. Motion carried. 4-0. **See Exhibit.**

Court Security Seminar Oct. 18th –22nd, Las Vegas, NV.....Sheriff Richard Perea

Sheriff Perea requested travel to a seminar that deals with court security, sight surveys, etc, and being that he is a member of the Judicial Complex Committee, he feels that it would be beneficial for him to attend and get some insight on new techniques. This money would come out of his 424 budget, which is for law enforcement protection and is 100%, for both, mileage and per diem and registration fees. Commissioner Andersen made a motion to approve. Commissioner Aguilar seconded. Motion carried. 4-0. **See Exhibit.**

Request Approval Mutual Assistance Agreement with Central NM Correctional Facility And Valencia County Sheriff Department.....Sheriff Richard Perea

This agreement is something that the corrections department new warden had been working on and is currently on hold. This updates all the necessities that they might need from him and it also gives them the training that they need and will benefit the county.

Commissioner Padilla asked if this was something new. Sheriff Perea said it was new to him but not to the county. Sheriff Juan Julian, the sheriff before him had one. Chair asked if he wasn't ready to sign off on this. County Manager, Mike Trujillo said that two of the five recommendations or analyses by the attorney, they would only recommend two of those. On paragraph three, it should read "as soon as possible" instead of "will immediately". On paragraph four, instead of "the Valencia County Sheriff Department will provide" it should read "will provide if the resources and staff are available". Paragraph ten, the word "draft", in lieu of the word "draft". Because of the way that the statutes are written, a Mutual Assistance Agreement between the state agency and local entity has to be signed by the Governor. Sheriff Perea was aware of the changes and had no objection. Commissioner Aguilar said that on page two, paragraph four, it said "use of jail beds" and asked if they were paying for them. Mike Trujillo said this has been an issue of discussion for many years, in that they house their prisoners in our facility and not re-imbrues. He said changing it from "use of jail beds" to "use of jail beds if such space is available" would help. Commissioner Aguilar thanked him and asked that on paragraph eleven, they add a termination date, then it could come back for review. Mike said based on that comment, they could add, "for a two year term". Commissioner Trujillo made a motion to approve. Commissioner Padilla seconded. Motion carried. 4-0. **See Exhibit.**

Request Approval of Memorandum of Understanding w/Los Lunas School

New Deputy.....Sheriff Richard Perea

Sheriff Perea said this Memorandum was between County of Valencia and the Los Lunas School Board of Education. This was for providing one certified officer to the career academy at the Century High Campus, from July 1, 2004 to June 30, 2005. According to the Memorandum, the Los Lunas Schools will pay Valencia County \$40,000 for one certified officer. When there is no school, the officer will be part of the county sheriff's dept. Commissioner Andersen asked if this was new,

and Sheriff Perea said it was the first time that it's been done with Valencia County. He recommended it. Last year they were providing part time assistance after school, because of the traffic and the gang problems. This Memorandum will provide full time. Commissioner Trujillo asked if the \$40,000 compensates for the service of one deputy. Sheriff Perea said it did. \$30,000 was for pay and benefits, and, \$10,000 was for any training that was needed, and this would not affect his budget. Commissioner Trujillo asked about liability issue. Who would be responsible for the actions of the deputy. County Attorney, Cynthia Wimberly, said that under the MOU, it states that each entities employee, will be the actions of the employer, both the county and the school district. The liability issues in this MOU are not specific enough and her recommendation is to have it in the form of a JPA, where there are more specific liability provisions. Chair Daves asked that in terms of timing, did the Sheriff need it to go forward. Sheriff said yes. Attorney Cynthia said that under general principal of premises liability and under the terms of this MOU, it would be a shared liability at this time. Chair Daves asked whose supervision would the deputy be under. Sheriff Perea said he would be under the sheriff's supervision, but he would also take direction from the principal at that school. Chair Daves said he would like to see this approved now for the sake of the process, with all that needs to be fixed, done. This program is a lot more important that the other elements and he is aware that governments deal with each other all the time and the JPA process is a tedious process, and after awhile, they get away with it and it becomes the law.

Commissioner Trujillo said he understood the good will of the sheriff in wanting to provide these services to the Los Lunas School, but he feel uncomfortable with this agreement. He did not support the idea of a sheriff's deputy being on the campus. The intentions are good, but with all due respect, he feels that they are stepping into a bad area.

Commissioner Aguilar agreed with Commissioner Trujillo. They would also be eliminating one officer that protects the public and did not know if they were replacing him. In reading the MOU, it said that the liability is on the county, so, do they need approval from risk management insurance on this JPA, so that they are aware that if there is something that goes on, it addresses the concerns.

Sheriff Perea said that they enter the schools all the time and the liability is always there for the officers

Commissioner Andersen said it didn't seem logical to her that the risk would be any higher by having someone there or by having them go out whenever they are called. It is still the same sheriff and still doing his job. The one thing about this MOU, is that it will pay for another person to be there and it won't take someone off their regular route to be there, and also give us the advantage of having an extra person for a least a few days a year. If Ms. Wimberly would come up with a liability phrase that she would be comfortable with, I will support it, Commissioner Andersen said.

Sheriff Perea said that there is a school resource class that will be coming up soon. They will take bids for any officer that wants to go and they will be evaluated and sent to the school. The officer will learn the liability aspect of being in the school.

Commissioner Padilla asked Attorney Cynthia what her recommendation was. Ms. Wimberly said that if she was taking in the consideration of practical matters in addition of legal matters, what Chairman Daves had suggested was a good one and that was if the commissioner believes that the program is more important than the details that she brings to them as legal council, they she would say to sign the Memorandum of Understanding, with the understanding that she will work towards solving those other details that were talked about.

Commissioner Padilla made a motion to approve the Memorandum of Understanding, as presented. Commissioner Andersen seconded. Commissioner Trujillo agreed with all of Commissioner Andersen's statements, she is right in that there is a benefit to accrue, in that the Los Lunas Schools will pick up the tab on the officer and he recognized the benefit there. He also thinks there may be, questionably, a benefit in terms of security, but he feels that the presence of a uniformed officer there on a Constance bases, may actually have the opposite effect. He asked Sheriff Perea, what difficulty issues would this officer be dealing with, were they traffic issues, or drug related issues, or issues of student violence. Sheriff said they would be dealing with gang members coming on to the school grounds and traffic issues. Commissioner Trujillo asked about students, internally, fighting amongst themselves. Sheriff said, not much. Most of the dealing were with drugs dealers in the school. Chair Daves said there was a motion and asked for the vote. Motion carried. 3-0. Commissioner Aguilar abstained. **See Exhibit.**

Consideration of Resolutions:

Resolution 2004-43, Establish Penalty for Delinquent Property Taxes.....

Diana Martinez-Coplen

Ms. Coplen requested to establish penalty level for the 2004 property taxes that become delinquent, also known as \$5.00 Minimum Penalty Resolution. Each county commission throughout the state of New Mexico must either adopt or waive the \$5.00 Minimum Penalty pursuant to Section 7-38-50 NMSA by no later than September 1st of each year. It is the recommendation of the Treasurer's Office that the \$5.00 minimum penalty shall not be imposed (waived) for the year of 2004. Rationale

is that the \$5.00 minimum penalty is not equitable and penalizes the small taxpayer disproportionately to a larger taxpayer. We believe that the current method of charging a taxpayer a 1% penalty per month, up to a maximum of 5% is more equitable.

Commissioner Trujillo asked about collect ability and how she intended to collect. Ms. Coplen said that the penalty goes to the state. She mails one tax bill in November and one delinquent bill in June. If taxpayers get behind four years of taxes the state come in to collect. Right now the State of New Mexico has two full time employees in our county. They have been here since March and have brought in \$519,419.52 . They have worked on 470 accounts and have gotten 398 accounts paid. There are another 555 delinquent accounts to work on in this county. These full time employees should be here for at least another two years.

Chair Daves asked for a motion. Commissioner Trujillo made the motion to approve. Commissioner Andersen seconded. Motion carried. 4-0. **Resolution 2004-43. See Exhibit.**

Resolution 2004-44, Travel Policy.....Mike Trujillo

Mike Trujillo passed out a revised Travel Policy. The state Department of Finance and Administration adopted a revised rule relating to Travel and Per Diem (2.42.2 NMAC) superceding the DFA rule 95-1. the new state rule increases the mileage and per diem rates allowed under section 10-8-1 to 10-8-8 NMSA 1978. the mileage per diem was increased in June 2003 while the per diem rates were increased this past January. Due to increases in general travel expenses, especially in gasoline and car insurance premiums for individuals for mileage purposes and in lodging and related expenses for per diem expenses, the increase is necessary to allow employees and public officers to travel without having to expend personal funds while on County business. He recommended approval of the revised travel policy. Commissioner Padilla made a motion to approve. Commissioner Andersen seconded. Motion carried. 3-0. Commissioner Trujillo had taken over the Chair.

Resolution 2004-44. See Exhibit.

Commission took a 10 min. break.

Resolution 2004-45, Moratorium on Building Permits in Industrial Zones.....

Paul Trujillo

Commissioner Trujillo made a motion to adopt resolution 2004, declaring a moratorium on the issuance of building permits in the industrial zones of Valencia County. County Manager Mike Trujillo asked, based on the commissions direction, that the words "sixty days" on page two, be changed to six months. Commissioner Trujillo said that "six months" does show on his copy and his motion was made based on the understanding that it was six months. Commissioner Padilla seconded.

Chair Daves said it was the policy of this commissioner to allow comments and he believed it was an important issue that perhaps there should be comments from those that are interested in it. He suggested that if there are three commissioner that don't want a debate to come forward with a motion, a second and the votes to bypass public input on this issue, by virtue of having a vote. None.

John Kelly, attorney for Peoples Energy Resources Corporation, the developer of the Valencia Energy facility, went through the first "Whereas" on the resolution and said this was not a remotely accurate statement. Industrial land use has not increased. The same land zones were the same as five years ago. Mr. Kerry went on to read the rest of the "Whereas" and determined that none of them had any structure. Not permitting any construction permits within the Industrial zones, both private and public was a direct challenge, to every industrial site plan that they had ever approved in the county. You're telling my clients, and everyone else, he said, who already has an approved project, and in the case of his client, twice being challenged in court, in which the county commission has taken the position that, that project was duly approved, consistent with their own ordinances. The commission took the position in court, that, that plan is final, and in accordance with the law, the courts agreed with their position, and now, you're taking the position, that what they did in 2002 was lawful and consistent with their own regulations and now they were saying that permit not be issued. You already have a policy regulating specifically industrial zoning and its called, comprehensive zoning ordinance, he said, and it has regulated land uses for the last five years. You don't need a moratorium to change the zoning ordinance, he said, just change it. If you want to abolish I-3 zoning, then just do it. If they want to change, what's a permanent use in an I-3 zone, then make a proposal to change the uses in the I-3. If they want impose an additional test or study, then propose one.

His client has, under the US Constitution and under their ordinance, a right to develop this project. A moratorium will not change this. The commission has a right, to how best, to improve land use control, within the county. As his letter stated, under applicable law, Peoples Energy's developing rights to construct the Valencia Energy facility, has the right to obtain a building permit and commence construction of this facility. Any ordinance, any ordinance amendment of any resolution, any direction to staff, or other action by the county commission, or management and employees of the county, to avrigate limited compromise, modify or otherwise interfere with the Peoples Energy developing right, will be regarded as tortuous conduct, in violation of Peoples Energy constitutional rights. They do not challenge the county to amend the county ordinances, prospectively, but if this moratorium is anything, it is a, not very veiled, attempt to major ordinances retroactive.

This project will bring significant construction jobs and will constitute a steady source of tax revenue for state and local government, as well as the school district. He urged the commission to turn down the resolution. The decision to put a deputy on the school grounds paled in comparison to this

resolution, if the commission is concerned about liability. His client wants to build this project and wants it to be mutual beneficial to everyone that uses electricity in the county, and he failed to see how this moratorium will be of any benefits to the county in the long run. He did not know enough about why it was being done, but he respectfully asked them of vote down the resolution.

Mr. Dean asked Mr. Kelly if they had a building permit. Mr. Kelly said they do not have a building permit yet.

Ms. Clara Reir, from San Clemente, said that her understanding was that there had been a mistake or an error in the zoning ordinance. A commission was formed to study it and the reason for the moratorium was a recommendation for a buffer zone between heavy industries and rural residential zoning, that is across the street, from the proposed power plant. Planning & Zoning was set up to protect the property owners, not to bring industry in. She understands this, because she would not want a power plant across from her residence. Soft valley materials was put in with the understanding, that it would improve their lives, paying taxes for roads to be paved, but she did not see any benefits. They had told them that they would not know it was there, but she had pictures of the pollution. Be cautious, she said, because it doesn't always turn out that way.

Ms. Georgia Winston said that in 1991 she had bought property to retire here in Valencia County, but if a power plant comes in, her property won't be worth anything. They would be using her water and air, and, she did not want it in her back yard, so if the power plant would buy her property, they could.

Mr. Ron Gentry, lives in the immediate area and owns two thirds of the property that surrounds this industrial park and in scanning through the resolution, he had two questions. He read the eighth "Whereas" and the "Now therefore, be it resolved" below it and said he was not addressing the power plant, he lives across the street and sees all the other industrial plants that are currently there. He said this moratorium it not directed at issuing the new building permit. It says that it will not allow construction permits on anything. Did this include the Lime Plant adding a new grinding tower and does it include Mesa Oil adding new larger burners, because those have grown over the last year. He had seen a new grinder and a new tower go up in the Lime Plant, which, when he had read the original request, and he hadn't objected to that, it was for an industrial processing plant and he believes it has doubled in size in the last three years. His question also refers to the oil burning at night, which he has pictures off, that looks like an atom bomb going up in black smoke. Do they have control and are they issuing permits for additional growth of small industrial to large industrial. Does this moratorium stop all permit for any construction in industrial zones, as it says. If it does, he assumes that nobody will add additional anything, or modify their business without building permits.

Mr. Larry Alba had maps that he had bought from the Council of Government, and paid \$200.00 for, and, he wanted People's Energy to see that it showed I-3 zone was penciled in and the other map showed the original SP zone that came from 1987, it was supposed to be changed to I-1, which is a resource industrial district and is compatible with a residential properties. Somebody tampered with the map and that's how an I-3 heavy industrial was created back in 1999.

Chair Daves asked if any other member of the audience wanted to speak, and if not, he reminded the commission that there was a motion and a second before them, to pass the resolution as it is.

Commissioner Andersen said they had spent three years debating the power plant. In her mind, this issue had been settled by the lawsuit and the Supreme Court's verdict. She was concerned about this moratorium from the perspective that we are setting themselves up for a monumental law penalty. The risk is much too great to do this, and there is absolutely no way, in her mind, that you can characterize this resolution as anything but a way to stop People's Energy. She cautioned her fellow commissioners that if they vote for this, they would be voting to put Valencia County in a terrible situation and didn't know if their risk insurance would cover it. It is wrong, she said, terribly wrong.

Chair Daves said that because of the action of the county, taking the position that the power plant is a permissive use and having approved a site plan after a hearing, and participating in the litigation, rather passively, but nevertheless participating on the side of its actions, which was to support People's Energy and its more proactive appeal of this challenge by Mr. Alba to those actions, that he believes the issue has been litigated. I also believe that I've taken the view of the law, that his action would not have the legal effect of stopping what has happened in the past in regards to People's Energy. For better or for worse, it was important for him to express this as Chair and as commissioner. He believed that it has been litigated and gone through a process that the commission does not have the authority to change, but certainly have the authority to pass resolutions and ordinances. His view is that the action to do, perhaps was the intent, to either postpone it or stop this past approval. He believes that it doesn't and wouldn't have any legal effect and that in fact, some action the county takes that would in fact, divest that approval, and that litigation, of the possibility, that there is a grand and almost certain prospect of liability to the county. Not relating to the pros and cons of peoples energy, in fact, as a commissioner and as a citizen, he thought that on balance, it's a good project, but he certainly didn't question the sincerely, and the emotion, and the work, that others opposed to it have gone in doing it, but his concern at this point relate to the legal posture of this situation and that this resolution would not in fact have any effect to People's Energy's ability to go forward within five years, and if it should, given the history of the county saying that it was a permissive use, going to the process, participating in the litigation has

given a reliance that People's Energy has spent lots of money that it would create a possibility of liability.

Commissioner Trujillo told a story and then called for the vote. Chair Daves reminded the commission of the motion to pass a resolution declaring a moratorium on the issuance of building permits in industrial zones of Valencia County. Motion carried. 3-1. Commissioner Andersen voted no. **See Exhibit .**

Commissioner Aguilar commented that based on legal advise that the county attorney had given them about the current ordinance, the moratorium had been proposed. Chair Daves reflected that he was signing the resolution, but had it been a tie, he would have voted no.

Mr. John Kelly said that the last comment by Commissioner Aguilar, is clearly inaccurate, because there are nine "Whereas" clauses in this resolution and none of them make any reference to a mistake or shortcoming in the county zoning ordinance. They'd had discussions for three years, about maps, and for the last two months they have discussed alleged problems with the ordinance, but that clearly is not the bases for their actions today, otherwise it would have been in the resolution.

Public Hearing:

Ordinance 2004-02, Adopting Valencia County Building Code.....Richard Padilla

Richard Padilla, Building Inspector for Valencia County, presented the commission with an ordinance to adopt the new international building codes. County Manager, Mike Trujillo, said this was a public hearing and if anybody was going to speak on it they needed to be sworn in. None. Commissioner Trujillo made a motion to approve the adoption of the uniform codes. Commissioner Padilla seconded. Motion carried. 4-0. **See Exhibit.**

Resolution 2004-46, Adopting Building Valuation Data/Permit Fee

Mike Trujillo said there was a minor correction on the resolution on the last page, last column, which is the fee schedule. It should read \$599.00 instead of \$59.00. He recommended adoption of the resolution. Commissioner Trujillo made a motion to adopt the resolution. Commissioner Padilla seconded. Motion carried. 4-0. **See Exhibit.**

Request Guidance on Comprehensive Zoning Ordinance.....Cyndi Wimberly

Ms. Wimberly informed the commission that in order to clarify and eliminate any potential issues with the 1999 zoning ordinance, staff recommended publication for public hearing of an interim comprehensive zoning ordinance. The interim would be so that it is effective quickly and it would give the county time to have the ordinance adapted and implemented in order to approach, with a measured manner, a permanent revision of the zoning ordinance during the development of the comprehensive plan, which the county just recently contracted with the Middle Rio Grande COG, to do. They do have some minor changes to it and she spoke to County Manager, Mike Trujillo. They recommend, that during this procedure, if the commission so desires, to go ahead and approve the publication of this ordinance, and at the same time, they do a workshop with the commission to go over changes from the 1999 ordinance. Chair Daves asked when they propose to have a workshop. Mike Trujillo said they hoped to have it prior to the public hearing, and no date had been set because of the notification requirements.

Commissioner Trujillo asked Attorney Wimberly if she could briefly tell what the problem with the 1999 ordinance was, because there were people that were not aware of what had necessitated this. Ms. Wimberly said she did not have a problem with this, however, she would like the commission to vote on whether she should do so or not. Commissioner Trujillo said this had been public information at the last hearing. Ms. Wimberly said that at the last hearing what had been public information, was that they had identified a potential issue with the way the 1999 zoning ordinance had been adopted.

Chair Daves said he had no objections to full discussions of the issues. Ms. Wimberly said she had a duty to communicate with the client, and her client was the board of county commissioners of the County of Valencia. She also had a duty not to disclose information that may confidential and so she was at the cusp of disclosing confidential information, which is fine, as long as her client waives that confidentiality.

Commissioner Aguilar said that in reading the letter from People's Energy, and they are talking about what was discussed in executive session, should not have been discussed, and then they came out in a public meeting in which information was given to them, so that any confidentiality was waived then, she said, it was announced. She, as one commissioner, is taking action based on the information and the legal advise that the attorney had provided them and she would like to know that it is on record. She made a motion that the attorney give them legal advise on the ordinance. Commissioner Trujillo seconded. Chair Daves asked Commissioner Aguilar if the substance of the motion was to freely discuss the issues in regards to the zoning ordinance. Commissioner Aguilar said she wanted the attorney to go on record, as to what she had told them, and has brought them to this point.

Commissioner Andersen said she was concerned about the risk to the county with having this discussed. She is terribly concerned about the Pandora's box that they were going to open. Ms. Wimberly's task was not to her, she was not her client and neither was any other commissioner on this board. Her client is the county and the county pays her salary and when they do something that is detrimental to the county, it is her job to tell us that, she said.

Commissioner Trujillo said he was just asking to put this in context, why was it in the agenda if there was not a problem. We are here to discuss an interim ordinance, but we can't say anything about why we are doing it, he said. We consider it enough to have it in the agenda, and was publicly discussed in a prior meeting and in fact, it was published in the newspaper. He asked Jane Moorman, the bulletin reporter, what the problem was, with the other ordinance.

Chair Daves reminded Commissioner Trujillo that there was a motion on the floor and he believed that the motion would allow the answers to the questions. It was appropriate that it be openly discussed and would solve the problem. He called for the vote. Commissioner Trujillo voted yes. Commissioner Aguilar voted yes. Commissioner Padilla voted no. Commissioner Andersen voted no. Chair Daves voted yes to break the tie. Motion carried. 3-2.

Chair Daves said Commissioner Trujillo's question was "what was the problem with the 1999 ordinance that caused us to bring this issue of an interim ordinance"? Ms. Wimberly, in response to Commissioner Andersen's concern, said she understood that the county was her client, however, what is best for the county is decided by the five commissioners. She may give legal advise, but there may be other factors besides legal, that the commission needs to weigh and that's why they were elected. Her place was to help them do their jobs.

They had come across an issue with the zoning ordinance that the adoption of the county zoning ordinance may not have complied with Chapter 3-Article 21-Section 14 of the New Mexico Statutes. This relates to adoption of county zoning ordinances. Under this statute, under sub-section B, when a county zoning ordinance is proposed, any member of the board of county commissioners may submit it to the commission. Majority of the board members may order publication of title and a general summary of the proposed ordinance in a newspaper of general circulation in the county, at least once a week for two consecutive weeks, prior to the date of the meeting of the board, in which the ordinance is to be submitted for final passage. The proposed ordinance will then have a final hearing, then the county needs to consider the ordinance. It shall be passed only upon a majority vote of all members of the board of county commissioners, not just a quorum. In subsection D, the original copy of the ordinance, together with proof of publication and supporting maps, are required to be filed by the clerk of the county, for that purpose, and it needs to be authenticated by the County Clerk and kept together with the supporting maps. Then the title and general summary of the ordinance is supposed to be published in the newspaper general circulation in the county, once a week for two consecutive weeks. The last publication cannot be less than fifteen and more than thirty days prior to the effective date of that ordinance. The 1999 Valencia County Zoning Ordinance was published twice prior to the final hearing. The statute looks at the final hearing. It was published once, the week of the final hearing and two weeks prior to that. There is a potential issue as to whether it was published once a week for two consecutive weeks. This is not her biggest concern, it was that it was never published after.

Commissioner Trujillo said that in bringing this interim comprehensive zoning ordinance before the commission, no substantive changes have been made to it. This is a good time for us, as People's Energy had suggested, to go ahead and clean up the ordinance, make them reflect what you want them to. There are problems with the ordinance or else they would not have been going through this in the past two years or even longer. He disagreed with Mr. Kelly in that the heavy industry committee had been productive, and had come back, with recommendations that were specific as to how they could implement a zoning ordinance that would make sense and protect the interest of individual residents. This is an opportunity for this commission to adopt an interim comprehensive ordinance that takes into account the recommendation for buffer zones made by the committee. He would like to see substantive changes to this interim comprehensive zoning ordinance. He would like to see substantive changes and he would like the whole commission to participate in joining him, in what those substantive changes are. He suggested that this interim comprehensive zoning ordinance not be adopted until those amendments can be considered and co-operated into the zoning ordinance.

Mike Trujillo, County Manager, said that as with any ordinance that come before them, they have the authority, during the public hearing, to accept the ordinance as is presented, to amend it or to reject it. What he proposed, is that they publish it as drafted, then, if they wished a specific amendment to be addressed as part of the public hearing process or discussion of the workshop, that they direct the staff to draft an amendment that would meet their particular need.

Commissioner Aguilar's concern was that when they vote to request to publish, there is a general summary and that is what goes to the public, that they are considering. If there are substantive changes, then it may need to go back for publication, because it has changed from the original one. Mike Trujillo understood her concern and said that the short title was drafted very carefully to take care of those concerns again, and to allow amendments to be done to the ordinance.

County Attorney said that if there are significant changes to the ordinance, to the affect that it changes what was published, then it would need to be re-published. What is important is that once they publish a proposed ordinance, regardless of whether it is a zoning ordinance, which has specific statutory direction as to how they adapt it, or whether it's a regular ordinance, they are required to have a copy of what is proposed available at the county clerks office and at the county managers office. Her recommendation was that anything that delays the adoption of the interim ordinance, which can be amended later, is not in the best interest of the county.

Commissioner Trujillo said what he was hearing from the attorney, was, that it was expedience, to adopt this as it stands, to request to publish to approve this as a matter of expedience. He did not see the value of having a workshop, if the changes are not substantive. He wants to address the issues that have been plaguing this commission for years.

Chair Daves said that the 1999 ordinance is possible not valid because of the failure to publish after it was enacted, or voted for, by the commission. His question is that in 1987 another was passed, was this one published after. Cynthia, County Attorney, said it was published once, after. If, in fact, we didn't do it in '87 and in '88, there is no zoning ordinance in the county, he said, and the reason to move quickly is simply to avoid the problem of the fact that there is no zoning and somebody can come in and do anything on any piece of land for that period of time. Since you opened this up for discussion, Commissioner Trujillo said, he would like to proceed with a question. Do you think that the 1987 ordinance was validly adopted, he asked? Ms. Wimberly said that she believes that it's more defensible, but that an issue does exist with the 1987 ordinance. So, it may be questionable whether we have any ordinance, Commissioner Trujillo said. I believe there's an issue, Ms. Wimberly replied.

Commissioner Trujillo believed that they need a workshop that they need to incorporate some of the major recommendations that were made by the heavy industry committee, regarding that comprehensive zoning ordinance. He made a motion to approve the request to publish the comprehensive zoning ordinance, with the understanding that this commission will hold a workshop and consider the recommendations of the heavy industry committee regarding industrial zoning and that those amendments to the ordinance will be presented at the time of hearing.

Commissioner Aguilar was confused, because they have a motion to go to request to publish, but then they will have a workshop and admitting ahead of time that there will be some substantive changes, so, for clarification, she asked Ms. Wimberly her opinion. Ms. Wimberly said it depended on the changes. If the changes were significant enough to require re-publication, then she recommended at that time, that those changes be published subsequent to the public hearing on this ordinance. That way the workshop is free and everybody can discuss whatever they would like to discuss. If it looks as if it would require an additional publication, then they hold off on those amendments until this interim ordinance is adopted.

Chair Daves said that as chair, the commission decides what the contents of the ordinance will be by a majority vote and a workshop will not be limited to what staff says it will be limited to, but will be limited to what the commission decides. He wants to get this passed, but also wants to accommodate what commissioners want. He said there was a motion and no second. Commissioner Padilla seconded. He wanted to know which ordinance this amendment would be for. Commissioner Trujillo said it would be to the interim zoning ordinance, which is basically a replica with some cleaning up of some language of the 1999. Commissioner Padilla then asked Ms. Wimberly if she was satisfied with this motion. Ms. Wimberly said she didn't have a problem with the motion, but her advise always is to adopt a interim ordinance and proceed with changing whatever policies, prospectively and to adopt it after the workshop and after public hearings on the ordinance, as quickly as possible.

Chair Daves reminded them that there was a motion and a second. He asked for the vote. Motion carried. 3-0. Commissioner Aguilar abstained

Commissioners Consideration of Reorganization of Board.....Paul Trujillo

Commissioner Trujillo had raised this issue at the last meeting and had asked to place it on the agenda. Information has come to surface in the interim and he read the NM Statute 4-38-10. There, also, was a footnote, on when a new chairman may be elected. This was a 1969 opinion of the Attorney General. In reading that, a majority of vote of the commission could not remove the chair and Chairman Daves had indicated that if he were removed as Chair, he would resign. This was not Commissioner Trujillo's intent. He had been told by some of the commissioner that this is the case, only, if there is no cause, and there was a question as to whether that applied. He would like for the attorneys to look at the Attorney General's opinion and to provide us with information regarding our regulation as to whether they can re-organize.

Commissioner Padilla said there was a reason as to why this had been brought up in the first place and he asked Commissioner Trujillo. Commissioner Trujillo said there was a specific concern, and that was regarding the way in which information was being handled, regarding distribution to various commissioners. All commissioner should receive, all information, simultaneously and if it were a major issue, they certainly need to be informed before they come to an item on the agenda.

Commissioner Aguilar said that the question deserves an answer and she would like to see it tabled until the next meeting, with the attorney doing a full research. This would also provide an answer for future commissioners. Commissioner Trujillo made a motion to table reorganization of the board until they have a clear and concise advise from the attorney as to this proposed re-organization. Commissioner Trujillo seconded. Ms. Wimberly said that the Attorney General apparently had issued an opinion on this issue, and she could issue yet another opinion on this.

Chair Daves said what he was hearing was a possible loss of confidence. On the issue that precipitated it, it isn't quite that simple, he said, and there certainly was no pattern of practice of doing anything other than listening and talking to the County Manager and letting him and legal determine when and what should be made available to other commissioners. He certainly calls and talks to the commissioners when he feels that there is something that he needs to communicate about, relating to public policy and to goals that he has. And he suspects that is what other commissioner do, but he is the Chair and as Chair he feels very strongly that commissioner have a forum, that they are allowed the ability to put forward their initiatives and that there be full information and full support from the Chair in regards to allowing those things to happen. He can sometimes disagree with those,, but that is the commission in him and the Chair has an obligation. I have not lost confidence to Chair, and he will not resign and if it should come to pass that they re-organize, then he will resign as soon as he gets health insurance. There was a motion and a second to table the issue and Chair called for the vote. Motion carried. 3-0. Mary Andersen abstained.

Approval of Payroll & Warrants.....Michael Steininger

Michael Steininger presented the commission with a payroll printout for the month of August in the amount of \$93,085.86 and warrants in the amount of \$91,288.38. the cash balance in the General Fund as of yesterday was \$2,030,307.00. Commissioner Andersen made a motion to approve. Commissioner Padilla seconded. Commissioner Aguilar asked about the Cornell bill and that it usually comes in on the third week of the month. Mr. Steininger said with Wilma away, he was not comfortable in processing. Commissioner Aguilar asked if Cornell was increasing the CPI fees on their contract. Mr. Steininger said he had not seen it, but he would check on it. Chair asked for the vote. Motion carried. 4-0. **See Exhibit.**

Michael said that he had been asked to present anything that would be developing and one of the items, Diana Coplen had already addressed regarding the \$520,000, that has come in from the state people being down here. The pumps directly below us that pump the sewage out of the jail, are custom engineered pumps and they are up for inspection. If they are required to replace them it would cost about \$900,000. They had looked for alternatives to try to redo them, but it would require extensive trenching. The road department has been spent over \$2,000. on a rental of pumps and many times they need them at night , but don't have access to them until the place opens. We have authorized the purchase of our own heavy duty pumps, along with addition hosing, Michael said, at a cost of \$35,000. Commissioner Aguilar asked Michael to check the Cornell contract and see if there was anything that Cornell would help out with, to a certain dollar amount. Michael said he would.

On August 23rd, a new set of rules regarding overtime will be in effect. This is the first major change in fifty years, Michael said. Based on what has been published, it will only effect people making \$11.37 an hour. Chair Daves assumed that they would have some authority to pay overtime under our rules. Michael said they could pay under any guidelines that they wanted, as long as it is not more restricted than what the government allows.

County Manager's Report:

Mike Trujillo reported that the Valencia County Detention had an average of 123.22 male prisoners and an average of 10.72 female prisoners. He did not have a juvenile Detention report, as he did not get it in time. He had an Older American Program Respite and Homemaking Service report for August, and if they had any questions or required more information, he would get it for them.

Mike also reported that he had represented the county in the MRCOG in Farmington and after seven long years, the commission had adopted the Middle Rio Grande Water Plan. It is now an official state document and accepted by the Interstate Stream Commission after so many hard questions.

Mike had applied for a Homeland Security Grant and he had received a letter stating that Valencia County has been allocated for FY04, \$374,688.00 under the program. The way it is set up, is that the money does not come to us directly, it stays at state level. We, in our grant, had applied for certain items, they were approved, and now the state will purchase those and turn them over to us. We do not have to budget for it. There will be a meeting with an assistant from the Governor's Office to discuss the specific grant and he will try to get as much information or input to secure more funding for Valencia County.

Commissioner Padilla asked if this meant that we could propose something to pull that money out. Mike said the Sheriff could enlighten them on it. Sheriff Perea said this had started with \$37,652 for records management system for the sheriff's department and this would help in recording their reports and reporting them to the FBI. They had spoke to them about it and he had advised them that they needed extra funding for a mobile command unit. They had advised to give the specific's on it and they had granted him \$235,000.

This is been built from the ground up and will be used for any kind of scenes that they have and will start working on Memorandum of Understanding with LAPC, Local Emergency Planning Committee and all the other agencies in the county. It will be equipped with the latest technology, as far as satellite communications.

Commissioner Andersen made a motion to adjourn. Commissioner Padilla seconded. Motion carried.

The next Regular Meeting of the Valencia County Board of County Commission will be held on September 1, 2004 at 6:00 PM in the County Commission Room at the Valencia County Courthouse.

Adjournment 10:30PM

NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the, August 18, 2004 Regular Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

**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: September 1, 2004