

VALENCIA COUNTY BOARD OF COMMISSIONERS

Regular Business Meeting

February 21, 2007

PRESENT	ABSENT
Pedro G Rael, Chairman	
Georgia Otero-Kirkham, Vice-Chairman	
David R Medina, Member	
Ron Gentry, Member	
Lynette Pinkston, Member	
Francisco Apodaca, County Manager	
Cynthia R. Wimberly, County Attorney	
Sally Perea, County Clerk	
Press and Public	

1. The meeting was called to order by Chairman Pedro Rael at 9:00 AM.

2. Chairman Rael lead the Pledge of Allegiance.

3. Approval of Agenda

Commissioner Pinkston moved for approval. Seconded by Commissioner Gentry. Commissioner Pinkston voted yes. Commissioner Gentry voted yes. Chairman Rael voted no. Commissioner Kirkham voted no. Commissioner Medina voted no. Motion failed 3-2.

Chairman Rael made a motion to table item 7 (h) which is the (Consideration of the Valencia County Hospital Site) until March 7, 2007, the next regular Business Meeting. Seconded by Commissioner Kirkham. **Discussion.** Commissioner Gentry said he is taken aback on this, he wants it for the record that there hasn't been any discussion wanting to table this matter. Commissioner Gentry said he thought it would go forward with due diligence. Commissioner Gentry asked for rationale on tabling this issue. Commissioner Kirkham said her reasoning in agreeing to table this item is that she needs more time to make a decision, she had 25 calls yesterday, nothing concise, half going one way, half going the other way. Commissioner Kirkham said she does not want to table this item indefinitely, she wants to see this voted on and does want to see a hospital. It is extremely important to her constituents, but wants more time to see what they want, not only the hospital site but the services of what they want. Commissioner Pinkston said she gave her objections at the last meeting, she feels that some are trying to stall this project and she was prepared to vote on this issue today. She has done her research and talked to her constituents and answered phone calls, she has researched this project since last year and knew this was coming up. Today by tabling this issue, it will cost us more funds from the state and we need to let them know where we are headed with this. Commissioner Kirkham said she has spoke with the legislators and they indicated to her it would not hurt anything in Santa Fe and would wait until the next meeting. Commissioner Kirkham said this is a 50 million dollar debt that the County is going to take on and this is the biggest decision this Commission is going to make. To wait until the next business meeting will not hurt anything and would give us more information. Commissioner Medina said this was a hard choice for him, the voters have asked for a hospital, he has had tons of calls and visits. He felt that as an elected official he does not have a true grasp on how this hospital is going to work, how it is going to pay for itself and so forth. He does agree we need a hospital but needs more time to gather figures. Chairman Rael said his concerns are the same as Commissioner Kirkham and Commissioner Medina. He is in total favor of the hospital but a debt this big needs more time to make a rational decision. Chairman Rael said he has checked with legislators also and to wait would not hurt anything and he disagrees that it is a political plan. We are trying to save the taxpayers, if we do this right it will be viable and we need to do this right. Chairman Rael called for the vote. Commissioner Medina voted yes. Commissioner Kirkham voted yes. Chairman Rael voted yes. Commissioner Pinkston voted no. Commissioner Gentry voted no. Motion carried 3-2.

4. Approval of Minutes

January 17, 2007 – Businesses Meeting

February 7, 2007 - Business Meeting

Commissioner Kirkham moved for approval. Seconded by Chairman Rael. Motion carried 3-0 with 2 abstaining.

5. Public Requests

William Dean, Los Chavez, spoke on the location of the courthouse. Mr. Dean stated his concerns on the elevation of the courthouse with regard to flooding in that area.

Bill Lebrecht, Meadow Lake, spoke again on the trash issue in Meadow Lake. Commissioner Kirkham deferred Mr. Lebrecht to Mr. Chavez, Code Enforcement Department.

Dana Rhoades, resident of Highland Meadows, spoke on the closure of the bridge for repair. Ms. Rhoades was concerned on the alternative routes. Commission deferred Ms. Rhoades to Mr. Apodaca and Mr. Zamora, Public Works Director.

## **6. Discussion (Non-Action) Items**

### **a) Set time for Public Services Company of New Mexico, Presentation on Power Plant – Ken Maestas**

Mr. Apodaca stated that Mr. Maestas was not present for this item. Commission directed Mr. Apodaca to check with Mr. Maestas and reschedule this issue for March 14<sup>th</sup> Public Hearing Meeting.

### **b) 13<sup>th</sup> Judicial District Attorney, Space Proposal – Ted Howden**

Lemuel Martinez, District Attorney spoke on behalf of Mr. Howden. Mr. Martinez welcomed the new commissioners on board. Mr. Martinez said his request today is to ask for help on space for his District Attorney's offices. Mr. Martinez along with Nino Trujillo discussed a space proposal in the Belen area for the commissioners to review.

### **c) Department Reports – Department Directors**

Mr. Apodaca stated there was a written report from the Code Enforcement Director in the packets. At this time there were no others submitted.

### **d) Reports from Boards, Commissions & Committees – County Commission**

Commissioner Pinkston reported on the Board of Director meeting with the Association of Counties that was held on the 17<sup>th</sup>. She stated that she had put an update in the elected officials boxes, mainly legislative issues that the county is closely watching. Commissioner Pinkston asked if anyone had any questions to let her know and she would forward them on. Commissioner Pinkston reminded the public of an impending regular town hall meeting in Meadow Lake, the second Saturday of the month from 10 till 2 at the community center and also two upcoming vaccine clinics.

Commissioner Gentry stated he would like a follow up report on the abatement of the maintenance on roads. The deadline for certification is getting closer and he would like see where we are at.

Eric Zamora, Public Works Director said he had discussed the issue with the Department of Transportation with regard to the road maintenance mileage. Their position is that it is up to the county to determine what we maintain and what we do not maintain.

## **7. Action Items**

### ***Board of Commissioners convene as the Indigent Claims Board***

Commissioner Kirkham moved to convene as the Indigent Claims board. Seconded by Commissioner Medina. Motion carried unanimously.

### **a) Indigent Report & Appeal – Barbara Baker (Exhibit A)**

Ms. Baker presented the Indigent Claims from December 19, 2006 to February 7, 2007. There were 149 claims submitted and 50 applicant denials. The amount of claims submitted was \$841,828.75. Ms. Baker recommended approval of \$84,004.99. Commissioner Pinkston moved for approval. Seconded by Commissioner Gentry. Motion carried unanimously.

### ***Reconvene as Board of County Commission***

Commissioner Kirkham moved to reconvene as the Board of County Commissioners. Seconded by Commissioner Medina. Motion carried unanimously.

### **b) Consideration of Letter for Public Library Service to County Residents – Beverly McFarland (Exhibit B)**

Cynthia Sheddard on behalf of Beverly McFarland asked for commission consideration to not enter into a formal agreement with the municipalities but to give a letter of support to agree to let the Belen, Los Lunas and Bosque Farms Library provide services to county residents. Commissioner Pinkston moved for approval. Seconded by Commissioner Gentry. Motion carried unanimously.

### **c) Presentation and Consideration of Appointment Valencia Community Partnership Team – Peggy Gutjar (Exhibit C)**

Peggy Gutjar, Chair of the Valencia Community Partnership gave a presentation on what the partnership entails. Ms. Gutjar said what the council does is health planning, networking, resource development, and the assessment of community needs and assets. They have priorities that they set, substance abuse, teen pregnancy, access to care, and maternal child health. The commissioners support the Youth Development which is the fiscal agent for the partnership program. The council meets every third Thursday of the month. Ms. Gutjar said they had an existing commissioner and needed to replace that member. Mr. Apodaca suggested Jacquelyn Chavira to fill that position. Commissioner Kirkham moved for approval of Jacquelyn Chavira to serve as the liaison for this program. Seconded by Commissioner Medina. Motion carried unanimously.

### **d) Ordinance 2007-\_\_\_\_, Amending in Part the Animal Control Ordinance, Deleting Fee Structure Section & Inserting Reference to Fees Set – Ruben Chavez**

Mr. Chavez presented the above ordinance for consideration with regard to deleting the fee structure section. Commissioner Kirkham moved for approval of the ordinance amendment. Seconded by Commissioner Medina. Motion carried unanimously.

County Clerk, Sally Perea announced **Ordinance 2007-01.(Exhibit D)**

**e) Resolution 2007-\_\_\_\_, for the purpose of establishing a fee schedule for the Animal Control Division's Services – Ruben Chavez**

***Minutes of February 21, 2007 Regular Business Meeting***

Mr. Chavez presented the above resolution for consideration to establish a fee schedule for the Animal Control Department. This fee structure will allow the adoption process and a spay and neuter program to be put in place without changing the entire ordinance. Commissioner Pinkston moved for approval and as discussed to fix the license fee to \$10.00. Seconded by Commissioner Kirkham. Motion carried unanimously.

County Clerk, Sally Perea announced **Resolution 2007-03. (Exhibit E)**

**f) Consideration of Valencia County Water & Sewer Master Plan Agreement, SP 06-1268-GF – Eric Zamora**

**g) Resolution 2007-\_\_\_\_, Valencia County Water & Sewer Master Plan Grant Agreement with the State of New Mexico Environment Department – Eric Zamora**

Commissioner Gentry moved to table the above items to the next business meeting of March 7, 2007. Seconded by Commissioner Pinkston. Motion carried unanimously.

**h) Consideration of Valencia County Hospital Site – County Commission**  
Tabled

**i) Final Action on Public Hearing February 14, 2007**

**i) Final Plat for the Luna Vista Subdivision as Lot 48 & a portion of Open Space as shown on a replat of Lot 72-A, Lot 95-A & Lots 250-A-264A of replat of Lots 52-54 & Lots 111-116 of Eastland Hills Subdivision/Robert Moore – County Commission (Exhibit F)**

Commissioner Kirkham moved for approval. Seconded by Commissioner Gentry. Motion carried unanimously.

**ii) Amend Zone Maps from RR-2 to RR-1 Subdivide Property into 2 lots each 1.59 acres in size, the original proposal was to subdivide the property into 3 lots, each being .95 acres in size Tr.A-1, Lands of James Shortle, AKA 1372 Sichler Rd/Robert Marsh – County Commission (Exhibit G)**

Chairman Rael moved for approval. Seconded by Commissioner Gentry. Motion carried unanimously.

**iii) Vacate Puente Court, a cul-de-sac within Rio Del Oro Subdivision, Unit 45, by appointing a board of commissioners of three freeholders/Rose Marie Verga – County Commission (Exhibit H)**

Commissioner Pinkston moved to authorize Commissioner Gentry to appoint three freeholders to look into vacating Puente Court. Seconded by Commissioner Kirkham. Motion carried unanimously.

**j) Financial Matters**

**i) Consideration of FY 2005-2006 Audit Report – Wilma Abril (Exhibit I)**

Mr. Apodaca stated that Ms. Abril was not available for presentation of the above audit report. Mr. Apodaca presented the audit report to the commission. The audit report does not become public record until ten days after the date of the letter which is January 29, 2007. Mr. Apodaca stated that there were a couple of findings in the report that the county is taking the necessary active measures and a full report at the next business meeting will be presented.

**ii) Consideration of Payroll & Warrants – Francisco Apodaca (**

Mr. Apodaca presented the computer printout list of all the checks issued by the Manager's Office on February 15, 2007 covering vendor bills processed on that date. Check #88541 thru Check #88761 inclusive for a total of \$270,253.64. **(Exhibit J)**

Mr. Apodaca presented the computer printout list of all the checks issued by the Manager's Office on February 16, 2007 covering payroll processed on that date. Payroll Check #78123 thru Payroll Check #78358 inclusive. Deduction Check #88509 thru Deduction Check #88540 inclusive for a listing total of \$278,797.20. **(Exhibit K)**

Commissioner Gentry moved for approval. Seconded by Commissioner Kirkham. Motion carried unanimously.

**8. Executive Session- Pursuant to Section 10-15-1 NMSA 1978, the following matters may be discussed in closed session: a. limited personnel matters; b. pending or threatened litigation, and c. other specific limited topics that are allowed or authorized under the stated statute.**

Commissioner Kirkham moved to enter into executive session. Seconded by Commissioner Gentry. Roll call vote. Commissioner Pinkston voted yes. Commissioner Kirkham voted yes. Commissioner Medina voted yes. Commissioner Gentry voted yes. Chairman Rael voted yes. Motion carried 5-0.

Commissioner Medina moved to return to regular session. Seconded by Commissioner Pinkston. Motion carried unanimously.

Chairman Rael asked Mr. Apodaca to report as to what was discussed in executive session. Mr. Apodaca said discussions were limited to personnel matters which no action was taken. We discussed action to be taken on the matter of the court of appeals denial of certiorari in Rio Grande Industrial Park, Ltd and Mesa Oil Co. Inc. vs the Board of County Commissioners which the Commission will take action following the motion and roll call vote.

Chairman Rael asked for a motion to approve the summary by Mr. Apodaca as to matters discussed in executive session. Commissioner Pinkston moved for approval. Seconded by Commissioner Kirkham. Commissioner Medina voted yes. Commissioner Gentry voted yes. Commissioner Pinkston voted yes. Commissioner Kirkham voted yes. Chairman Rael voted yes. Motion carried 5-0.

#### **9. Action on Executive Session Item**

##### **a) Action on whether to seek review of Court of Appeals denial of certiorari in Rio Grande Industrial Park, Ltd. Co and Mesa Oil, Inc v. Board of County Commissioners, No. D-1314-CV-2006-11 & No. D-1314-CV-2006-85.**

Chairman Rael said we have an action item, something that was discussed in executive session that requires action in open session. Commissioner Gentry said he would like to move that we go forward as a commission to ask for an appeal on the court of appeals denial and we move it to the next step that would be to ask for reconsideration by the court of appeals. Seconded by Commissioner Pinkston.

Chairman Rael said it has been moved and seconded to pursue the appeal to another level by the Court of Appeals. Discussion. Commissioner Pinkston said, point of clarification, this is the conflict of interest for those in the audience from the commissioners that are being held at a judiciary standard of a possible impropriety. Commissioner Gentry said for the record he would ask that the Chairman recuse himself from voting on this issue, since the plaintiff's attorney was his law partner at the time, he represents the plaintiffs and since that person houses with the Chairman at least as a roommate or as a law associate and rents from the Chairman Commissioner Gentry asked if Chairman Rael would recuse himself as any judge living in the judicial standard would.

Chairman Rael said he appreciates Commissioner Gentry's motion but he personally can tell him and fill in some of the facts for him that James Sanchez is not his partner, they dissolved that partnership back in 2005 and simply rents from him. Chairman Rael said he has not represented any of the parties involved in this matter at the level before the county commission, was a different county commission at the time in any event, in District Court nor on appeal. Chairman Rael said he does not feel uncomfortable in sitting and voting on this matter, he doesn't feel a conflict of interest and does not feel a conflict of interest or impropriety, he does not feel any of those things unless voted by the balance of the commission to get out, he will sit here and vote on this matter.

Commissioner Gentry said his concern is that it has the appearance or could have the appearance of an impropriety and that is the judicial standard not actually as a matter of fact that he does but it would certainly have the appearance. Commissioner Gentry said he doesn't believe a judge would stay on the bench if that request were made but that is his decision.

Chairman Rael said he does understand that and he has addressed that and he has made his decision.

Commissioner Gentry said for the record Commissioner Kirkham should recuse herself from voting on this matter due to the fact that she has closed through her title company either directly or indirectly an interest financially in this matter that she does close properties and has financial dealings with the plaintiff's in this matter. Commissioner Gentry said he feels this would represent the possibility of an appearance of impropriety with the judicial system.

Commissioner Kirkham addressed Commissioner Gentry that she does not have a financial interest in this, if she has closed properties in this industrial park, she may or may not have and she does not see an issue here and she feels comfortable voting on this issue.

Commissioner Gentry said an appearance of a perceived conflict of interest is what he is concerned about.

Commissioner Kirkham said she takes his concern and feels there is not as far as she is concerned and feels comfortable voting on this issue.

Chairman Rael said along the same lines to Commissioner Gentry he would like to make a motion to recuse him because he is a party involved in this. Commissioner Gentry said there is a motion on the floor. Chairman Rael said he realizes this but he doesn't feel he can vote on that, this is a point of order, that can be interjected at any time and he believes that since he is a party and has a direct stake in the outcome regarding this ruling, was personally made against him, found to be guilty of having an appearance of impropriety on a vote that he made which was stricken and by him pursuing this matter trying to get it reinstated and therefore Chairman Rael asked Commissioner Gentry because he has a direct bearing on the outcome to please not vote on this matter.

Commissioner Gentry said he has stated previously before as we did in the court findings that there was a challenge by the plaintiff's, Chairman Rael's former partner, and law firm associate, that he can not represent his constituents because he owns property in the area. We have gone through that with the courts, and he feels that's what the appeal is that we do not live by the judicial standard, we live by quasi judicial legislative policy board and it would not affect that. Commissioner Gentry said he thinks this decision might adversely affect all commissioners in Valencia County and their ability to represent their constituents. Commissioner Gentry said he does not believe the judge said he could not vote on these issues, he said he could not vote on a zoning issue if there was an appearance of a

impropriety by living in the area that was notified. So by him living in the area or being in the notification area has no bearing and he has no financial interest in his opinion on voting on this.

Chairman Rael asked for any further discussion on any of these items, he would just like to comment that we have had one District Judge who is totally impartial vote on this matter, it has been taken up on appeal and has spent quite a number of hours of attorneys time, county expense, taxpayer money, taking it there, three judges that are an impartial panel in Santa Fe on court of appeals. The District Court ruling was just fine and his view that should stick, we shouldn't spend any more money on this issue, it is over and we need to move on and take a vote on this motion.

Chairman Rael said there is a motion pending to continue this appeal that was made by Commissioner Gentry and seconded by Commissioner Pinkston. All in favor signify by saying aye. That is not a majority, does he hear another motion? Commissioner Gentry asked to hear the vote on the nays. Commissioner Kirkham voted no. Commissioner Medina voted no. Chairman Rael voted no. Commissioner Gentry voted yes. Commissioner Pinkston voted yes. Motion failed 3-2.

Chairman Rael said point of order we can instruct our attorney to not pursue any further action regarding the denial of certiorari in the Rio Grande Industrial Park Ltd and Mesa Oil Inc. vs. the County Commissioners, Case No.D-1314 CV-2006-11 and D-1314-CV 2006-85.

Commissioner Gentry asked does this vote have the affect of actually instituting the I-3 heavy industrial zoning in the industrial park by us not pursuing all avenues to overturn that? Chairman Rael said he has his own views on that but the affect is pretty apparent, whatever the zoning was prior to it being changed by a vote of 4-1 would revert back to that.

Chairman Rael requested by asking the county attorney what the affect is but she will be instructed not to pursue it any further. Commissioner Gentry asked if the county attorney could give them a public document of her opinion on the affect that this will have on this Commission. Chairman Rael said we can all ask for that opinion.

#### **10. County Manager's Report (Informational Only)**

None

**11. The next Regular Business Meeting of the Valencia County Board of County Commission will be held on March 7, 2007 at 9:00 AM in the County Commission Room at the Valencia County Courthouse.**

#### **12. Adjournment**

Commissioner Pinkston moved to adjourn. Seconded by Commissioner Kirkham. Motion carried unanimously.

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the February 21, 2007 Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

### **VALENCIA COUNTY BOARD OF COMMISSIONERS**

**ss/  
PEDRO G. RAEL, CHAIRMAN**

**ss/  
GEORGIA OTERO-KIRKHAM, VICE-CHAIRMAN**

**DAVID R. MEDINA, MEMBER**

**ss/**

**RON GENTRY, MEMBER**

**ss/**

**LYNETTE PINKSTON, MEMBER**

**ATTEST: ss/**

**SALLY PEREA, COUNTY CLERK**  
**(by Debbie Ridley)**

**DATE: March 21, 2007**