

VALENCIA COUNTY BOARD OF COMMISSIONERS

Regular Business Meeting

May 30, 2007

PRESENT	ABSENT
Pedro G Rael, Chairman	
Georgia Otero-Kirkham, Vice-Chairman	
David R Medina, Member	
Ron Gentry, Member	
Lynette Pinkston, Member	
Eric Zamora, Interim 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 3:30 PM.

2. Chairman Rael led the Pledge of Allegiance.

3. Approval of Agenda

Commissioner Pinkston stated that item 6(a) be changed to an action item, (Discussion of Peralta canvassing date). Commissioner Pinkston moved for approval of the agenda with the above change. Seconded by Commissioner Kirkham. Motion carried unanimously.

4. Approval of Minutes

None

5. Public Requests –At the discretion of the Chair (For Information Only) limited to two minutes per person on subjects not on this published agenda)

William Dean, Los Chavez, spoke on the zoning ordinance, regarding heavy industry. Mr. Dean reminded the commission that this is a very important issue.

6. Discussion (Non-Action) Items

a) Discussion of Peralta canvassing (date) – County Commission

See Item 7 (e) below as an action item.

b) Discussion of Water Project Flood Prevention – Eric Zamora

Mr. Zamora said he had received notification from the New Mexico Water Trust Board for project proposals for the upcoming year. Mr. Zamora said one of the issues for discussion is flood prevention projects. Currently, Mr. Zamora said Public Works is working on several issues on waste water study and solid waste. Flood prevention is the only large gap in the process. Commissioners consented that they do need to start working on projects for flood prevention because of heavy rains.

c) Valencia County Mobile Homes Park & Regulation Status – Ruben Chavez

Mr. Chavez discussed the mobile home ordinance and setting procedures along with compliance policy. Commissioner Gentry said he is the commissioner that wanted this item on the agenda. He appreciates the procedural policy that Mr. Chavez explained on the manufactured housing situation on individual homes on half acre or five acres or less. Commissioner Gentry said he had asked Mr. Chavez to come before the commission because of the mobile home parks. Mr. Chavez said they inspect the setbacks, the gas and electricity is passed, the manufactured housing is passed and they do the setbacks and tie downs. Commissioner Gentry said in his district there is a mobile home park that has been there for over 30 years. It has a senior center, a swimming pool, paved roads, and is on a sewer and water system. Commissioner Gentry said he has had complaints that it takes a long time to move into that mobile home park. He understands that the ordinance is in place and that Planning and Zoning is doing their job, but maybe we need to amend the ordinance to meet the criteria for a well established mobile home park. Mr. Chavez said that park is in a flood zone and the elevation is not the same for all of the mobile homes, it is a determination of how high you have to be. Commissioner Gentry said we need to look into the requirements. Eric Zamora added clarification on the elevation certificate, it does change every time a mobile home is moved in, unless it is set to the same elevation that the previous mobile home was set, but you are going to have various elevations, and this has to be verified every time you move a mobile home in. Commissioners consensus was to discuss this item at another time.

d) Department Reports – Department Directors

Vangie Gabaldon, Administrative Director, had a written report for Commissioners review. Ms. Gabaldon added that the ground breaking for the Meadow Lake Fire Station will be June 15, 2007 at 10:00 AM.

e) Reports from Boards, Commissions & Committees – County Commission

Commissioner Kirkham stated that when this commission came on board in January, they all agreed that public safety was going to be a priority, so they funded the Sheriff's Office an additional \$2

Minutes of May 30, 2007, Regular Business Meeting

million dollars to hire officers and resolve that question on public safety. Commissioner Kirkham said now we need to start working on roads. She has had eight calls since Monday, regarding roads, her district is the only district entirely in the county, other commission districts fall within a city. Commissioner Kirkham said this commission needs to take the road situation seriously and do what we did for the sheriff's department and road department. We were able to get legislative monies this year for roads and she would like to see this road situation improve.

Commissioner Gentry handed in a speed hump petition to the Interim County Manager, Eric Zamora for review.

Commissioner Pinkston stated that the Meadow Lake Community Center ground breaking is today.

Chairman Rael reported on the hospital workshop held at the UNM Valencia Campus. It was lengthy and very informational.

7. Action Items

a) Resolution 2007-30, Establishing an Open Meetings Policy and determining the Meeting dates for the Board of County Commissioners and their Boards, Commissioner or Committees – County Commission (See Exhibit A)

Commissioner Kirkham moved for approval. Seconded by Commissioner Pinkston. Discussion. Commissioner Kirkham moved to amend her motion to delete items 2 & 3 of the open meetings policy and add majority of commissioners to call a special or emergency meeting and not only the chairman. Motion carried unanimously. Mr. Zamora pointed out on the open meetings policy resolution there was a typographical error with two paragraph number (2)'s and said it would be modified.

County Clerk, Sally Perea, announced **Resolution #2007-30.**

b) Consideration of Appointment for Dist III, Hospital Advisory Board – Eric Zamora

Mr. Zamora stated that this item is presented to fill a vacancy in District III regarding the Hospital Board and Commissioner Medina will announce the replacement. Commissioner Medina said his previous appointment resigned and at this time he recommends Dr. David Schneider to the Hospital Advisory Board. Commissioner Medina moved to appoint Dr. David Schneider. Seconded by Commissioner Pinkston. Motion carried unanimously.

c) Juvenile Detention Center Agreements

i) Resolution 2007-31, Termination Juvenile Detention Regional Joint Powers Agreement – Eric Zamora (See Exhibit B)

ii) Consideration Cost of Care Agreement with Bernalillo County – Eric Zamora (See Exhibit C)

iii) Consideration of Community Custody JPA with Bernalillo County – Eric Zamora (See Exhibit D)

Mr. Zamora presented the above three items. Commissioner Pinkston moved to approve the resolution, the termination of the Juvenile Detention Regional Joint Powers Agreement. Seconded by Commissioner Kirkham. Motion carried unanimously.

County Clerk, Sally Perea, announced **Resolution #2007-31.**

Commissioner Pinkston moved for approval the above two items (ii) and (iii), the Cost of Care Agreement with Bernalillo County and the Community Custody Join Powers Agreement with Bernalillo County. Seconded by Commissioner Medina. Motion carried unanimously.

Ms. Wimberly pointed out that this will be a significant cost savings to the County and provide better services for the juveniles who are in the community custody program. There are people representing Bernalillo County here today, also we wanted to recognize Judge Pope who is the judge in charge of the drug court and was a very integral part in making this agreement possible.

Commissioner Pinkston also thanked Judge Pope, as she served on the Juvenile Detention Board for a couple of years and their policy was how to better serve our juveniles. This will be a better service to our juvenile situation. Also thanks to Bernalillo County, Ms. Wimberly, Interim County Manager, Eric Zamora, and Tom Swisstack for backing us one hundred percent.

d) Valencia Hospital

i) Consideration amendment of contract with Covenant Health Systems and finalize Phase I – Robin Hunn, LLC (See Exhibit E)

Chairman Rael recognized Robin Hunn, who is working on the Valencia Hospital project, she is working in conjunction with Covenant Health System, just so that the public will know.

Ms. Hunn thanked the commission for the workshop last week, this was a wonderful opportunity for us to do everything we possibly could about the ongoing health projects. Thanks for the time in dealing with Phase I. We are asking you to approve this item today and the technical amendments that you have before you for the Covenant contracts that were requested by DFA and we would further come back to you for recommendation for ownership options for this facility.

Minutes of May 30, 2007, Regular Business Meeting

Commissioner Pinkston moved for approval. Seconded by Commissioner Gentry. Discussion. Commissioner Kirkham had a question to Ms. Wimberly, the changes on the amendment on the health care contract was the changes that we talked to DFA about, Ms. Wimberly said exactly. Chairman Rael asked any further discussion, fellow commissioners. Chairman Rael said he had some comments to make and would like to apply to little d, little I, and d, iii. Chairman Rael said he had some concerns with finalizing Phase I, the amendment to contract that he thinks is something that has been requested by Department of Finance and Administration. Chairman Rael said he would request and he sees people here that have a great interest in the hospital project. Please do not react in any way, and hold back your comments, because you will have an opportunity at the commissioners wishes to respond. Chairman Rael said this is the most important project this county has ever undertaken, and it is for that reason that he has various concerns, in finalizing Phase I and then we go into Phase II which is construction. Everyone is in favor of a hospital, he is one of the baby boomers and he doesn't know when he may need to have emergency care, and so the voters of the county wide voted 76.2% to maintain and operate or provide a hospital or a 24 hour emergency care facility in Valencia County and that is a 8 year mill levy and what that means is that for every hundred thousand dollars of taxable value for your property you pay \$275, and that is taxable value not the full value. There is some deductions in there. According to the mortgage financing authority, this will give us a total of \$12 million dollars toward the hospital for an eight year period.

Chairman Rael asked Ms. Hunn to take some notes because he would ask her to address some of these things because she is the most informed person on this particular issue. Covenant's own assumptions stated that the mil levy was authorized for eight years and must be reauthorized past eight years by the voters of Valencia County and this reauthorization is an assumption made by Covenant. Chairman Rael said he has their reports that specifically state that. The proposed hospital cost is \$29.9 million dollars, it started out as \$40 to \$50 million and now it is being downsized because we did not get money from the legislature, so we have a shortage, as of today, at least of \$17.9 million dollars that we just don't have to finish, what the physicians refer to as bricks and mortar. To pay it all off according to Covenants calculations, if we borrow the entire amount it will take us a period of 24 years, which means rebuilding the mil levy, in hopes that it passes. We don't know what will happen if it does not pass, eight years from now. In one projection by Covenant, they say it will take 28 years to pay off the \$29.9 million dollars. At this point there are no sources that he knows of, this is one of the things that Ms. Hunn might want to address, of committed funds to make up the \$17.9 million dollar difference. Chairman Rael said he is looking to see where the money is going to come from, and hopes to get an answer, if not today, sometime in the near future. It looks like one of the requests today is to give Covenant another 30 to 45 days from today to secure the financing. The reason Chairman Rael said he is concerned about this is that we don't want to start with \$12 million at a \$29 million project. It is that simple.

Chairman Rael said we didn't get money from the legislature, we are maxed out and as I understand it if I am not mistaken on some of these things, we are maxed out on the gross receipts taxes. If we obligate the County to pay for more than eight years and the voters do not pass another mil levy, we will have a major, major problem on our hands, not only it extends to the County, but it extends to the individual County Commissioners having a personal responsibility for having indebted the county beyond their authority. And our authority is eight years, that is all we can in debt the county for, if we do more than that than we have a problem, that is very clear. Chairman Rael said he would like to propose if we don't find the financing, there are alternatives, we have \$12 million that the voters voted in favor of, he thinks we can retool and do a lot with \$12 million. The voters also approved not just a hospital, but a 24 hour emergency care facility, and he thinks we should consider those, in addition to the urgent care. Chairman Rael said it would be fair to have one facility on each side of the river because the river represents a natural and common barrier which divides the county in half and makes it difficult and very nerve wracking to consider these things fairly.

Chairman Rael said he would suggest if the County is going to undertake this on its own, that we consider alternatives, if we can't do a full fledged hospital, then we do an emergency room where we can get taken care of within the county at some location. And then also an urgent care center, he believes we can afford both at \$12 million. Chairman Rael said they haven't looked at that because we are trying to get financing for \$29.9 or initially at \$40 to \$50 million hospital, that has now been downsized. There are other problems with the current proposal, these are factual (these are not opinions, these are simply factual). One that he sees and something that needs to be known is that if it is placed in the Manzano Expressway area, it serves approximately 8% of the county taxpayers, and the county incurred a debt of \$500,000 to Covenant and he is not criticizing that because they have done a lot of work on this project, but this is where the issue arises. Initially back in January or February, we paid Covenant \$100,000 out of indigent funds. We were going to pay them the entire amount but DFA said we can not do that, there is not enough money, they misread the law, and you can't pay that much.

Chairman Rael said we were severely limited and we received \$108,000 or \$49,000 that was taken out of indigent funds, now we are being asked by the Attorney General if they can make it right and change DFA's opinion so that we can pay more out of indigent funds, these are monies that are being collected from the taxpayers to pay for care for the poor. Chairman Rael said what he is suggesting here is that we should not go into Phase II at this point, that we stay in Phase I until we can get financing for considered alternatives. Once we go into Phase II, he thinks we have much more of a legal commitment that we have at this point. Chairman Rael said he is also concerned about the county running the hospital, he would like a private industry to come in like Covenant

Minutes of May 30, 2007, Regular Business Meeting

themselves or somebody else, Lovelace, Presbyterian, a physicians group of investors and help them out and let them do this project.

We have other difficulties that he sees with the project, we have advisory board problems. Chairman Rael said he looked at (and he didn't have this information before or he would have reported it before) but the rules require that the advisory board members be county residents, and said he has it there if anybody wanted to look at it). There are two board members as he understands it that are not county residents (and correct him if he is wrong), and he is apologizing if he is incorrect, the chairman of the hospital advisory board lives outside the county, and so does the chairman of the site committee who lives in Albuquerque, as he understands it. These are critical considerations there and these are rules that were adopted by this commission or former commission but nevertheless by this commission and those advisory board members are serving even though they are not residents of the county. Incidentally, they are both appointees of Commissioner Gentry's. The other thing that bothers him, is that this hospital or whatever facility place, it could be an emergency care facility, if we can't afford the hospital, other substantial improvements, this is going to go on Valley Improvement Association land, they can do this if they want, but the public should know that they owe approximately as of this morning and this afternoon at 2:20 PM, \$700,000 more or less, it is hard to figure out more or less, what they pay or don't pay, this amount varies, it could be less or it could be more in property taxes to Valencia County. We need those funds desperately, it is not just recently, in looking at the records, Valley Improvement Association has been delinquent in the hundreds of thousands of dollars for a very long time. Chairman Rael said he thinks that is an important consideration that needs to be taken into account if we are going to undertake this huge county taxpayer investment on property of another persons who does not pay their taxes. This needs to be looked at, these matters are factual, some people might not think there is a problem, there is another requirement in the selection criteria for the advisory board members, which says that if there is a conflict of interest and the gain of financial benefit for a possible gain of financial benefit then that person should not be serving on the board, the chair of the county hospital board is also the chief executive officer of Valley Improvement Association that stands to benefit the most of this wonderful investment is going to go on their property. Chairman Rael said his understanding is that we also want a concrete company to be bidding on this and so that they have clearly an interest of financial benefit if they get the concrete contract, they may not but there it is. The Covenant rules themselves that the county adopted prohibited such a member from serving on the advisory board. Why is that important? It is important because we need the fairest shot we can get for spending \$30 million of taxpayer money and putting it in any particular area and legally creates a very difficult situation in terms of seeing a fair and consider the advisory board in selecting a site.

Chairman Rael said recently we have found that we can't even vote, if across the street from where there is a rezoning going on of what is being zoned across the street, it is considered an attempt of impropriety of conflict of interest, even if that is a matter as light as that. There are many other things that need to be considered but he is asking that we not go into Phase II at this point, that we first look at the finance, and we look at resolving these items that he has raised, conflict of interest and non-residency of the county. These things have been coming to his attention as we proceed through this and he apologizes, but when you are elected to the county, you hit the ground running, and it takes time to get on board, especially a complicated and important issue to the taxpayers. Chairman Rael said he does not expect an applause or want any jeers, he is just giving factual information, for that reason his vote will be no, on finalizing Phase I. The amendment contract he has no problem with, for that reason, consideration of financing mechanisms for Phase II, he will vote yes, to see if we can get the money to do it. Consideration of the Attorney General's opinion on use of county indigent funds for Phase I planning costs, he will vote no. Chairman Rael said DFA already told them no on that issue and we don't need a state agency to tell another state agency that we can use indigent funds to pay Covenant. We owe them money but it is inappropriate to take this any further to ask the Attorney General to see if we can pay that out of indigent funds. Chairman Rael thanked everyone for listening and hope you keep it that way but other commissioners or persons may have other comments.

Commissioner Gentry called for the previous question. Commissioner Pinkston seconded it. Chairman Rael said it has been called and seconded to approve the consideration of amendment of contract with Covenant Health Systems and finalize Phase I. Commissioner Gentry voted yes. Commissioner Pinkston voted yes. Commissioner Kirkham voted yes. Chairman Rael voted no. Commissioner Medina voted yes. Motion carried 4-1.

Commissioner Kirkham asked Ms. Hunn, kind of in a nut shell, what does Phase II really mean? Ms. Hunn said Phase II is to begin developing construction documents and proceeding on into construction phases. Commissioner Kirkham said we as commissioners have not signed off on anything. Ms. Hunn said this commission would have to approve those items as they come up. Commissioner Kirkham said as the construction portion of that comes up and we don't have to sign off on it. Ms. Hunn said it is contingent upon what we decide to do when we come back to you on ownership options, which may change things significantly on how that would all shake out in terms of this procedure. Commissioner Pinkston said also Phase II would finish up and she believes would clear up financial matters and issues to move on with the project.

Commissioner Gentry said Robin, is that what we are looking at with the next item here that we have says consideration of financing mechanism for Phase II, just to sort of, and he is not interested in playing on old grinding ground and all but is it true that his intent is now and we have had some

Minutes of May 30, 2007, Regular Business Meeting

significant meetings with people about that we start the construction phase with design and cost and then we take this to the financing experts to find out different options and then it will be incumbent on all of us that if there are some problem there, we don't move forward into construction. We do the financing mechanisms first and then the construction. Ms. Hunn said that is correct. Commissioner Gentry said in the last few days, at the last workshop, it was a good workshop from all of the different people, heart association and the cancer group, to listen to their comments. It is going to take a broader perspective of financing and ability to negotiate because we are going into a lot of private partnerships. Commissioner Gentry said when we get into this it would be another motion, he thinks the Chair is going to hold it that way if we consider the financing mechanisms for Phase II if we are somewhat at that point. Commissioner Gentry said people from the Mortgage Financing Authority, whom he has the utmost respect for, had discussed some of the goals and vision and they talked about alternate and other financing mechanisms and they recommended Duane E. Brown from the Modrall, Sperling Law Firm. Commissioner Gentry said he has know these people for years. They have the best reputation in the state for bond financing and financing mechanisms projects. He thinks that staff has visited with them some. He believes that the commission should do a very professional and diligent in finding the financing mechanism as we go into Phase II. He doesn't know how we would incorporate it, if we want to look at that, but he would like to see us get out of the business as we started this project as the elected officials of politicians, he would like to see us get out of the business of the legal financing mechanisms and development because we all have a different expertise and different theory but he would like to see this commission would entertain the idea of under a small contractual service contract getting the Modrall Law Firm and Mr. Duane Brown who is a very, very clear expert in the state field, hire that person, those people to develop legally and professionally the different, and he believes there are two or three alternate financing directions that we can go, keeping in mind that we want to minimize the exposure of liability of the county. If we want to maximize our building partnership ability without extending and he agrees with Commissioner Rael that without extending it into an area that we would indebt future people. He thinks there is ways indicated that we have done, if we can hire that person to develop outside, without any influence from our attorney to our assistant attorney to our assistant assistant attorney to our title person, to our finance person and a member on the board. If we can do a contract and if we have the money and the contractual services account leftover this year to hire them to develop those financing mechanisms, report back to us and at that point, he believes this commission can decide whether we can approve one of the financing mechanisms or then start looking at altering the project or take another direction.

Chairman Rael said he thinks that Commissioner Gentry that what he has discussed about the possibility of employing the Modrall Firm and that gentlemen Mr. Brown, would be subsumed under consideration of financing mechanisms for Phase II, so he thinks if that is approved by this commission he thinks that would automatically be able to talk to them and it seems like a good idea, he doesn't have any problem with looking at financing, that is the biggest problem that he has with this.

Commissioner Gentry said he thinks that might cure all of the problems and he wants to move forward and not get stagnant, and he agrees that we don't want any phantom ideas about financing and indebtedness so we can get some secure people to really give us a professional outside expert advice on this. And maybe that is it, Mr. Chairman and he would like to move on if we could move to that next phase and bring those people in there and you might know an attorney in there that would give us a professional outside expert advice on this.

Chairman Rael said he knows the law firm.

Commissioner Kirkham said she feels that this entire commission would like to go on as the commission that brought health care to Valencia County and not the commission that bankrupted the county either, so it is important that we know exactly what we are getting into before we get into it. So that if we go into Phase II does not in any way, we still have an opportunity to say, we are just to big, let's scale it down, this is not right, let's bring it back, then she is willing to go on and we still have an opportunity on our hands with this. She doesn't want to turn loose of it and not have control. We have had some control, so this gentlemen Mr. Brown is an expert in financing then she agrees, you know, some third person, to go, another opinion. That is her concern not to encumber the county to the point to where we are bankrupt.

Chairman Rael said he doesn't have any problem with Modrall Firm and asking this gentlemen be part of that because he knows what he is doing, that is not an issue with home regarding the financing mechanisms, because it is absolutely essential. Chairman Rael said he had a question, and this might be for counsel, what control do we have in signing off on a contract, once we go into Phase II, who picks the contractor and under the contract agreement with Covenant, and do we have any choice who is going to build this hospital?

Ms. Wimberly said regarding the scope, part of the scope depends on the financing mechanisms and what you end up building, if you are talking about the architect and the development, the commission is the contractor, you picked Cooper Development when you selected or when two of you were on the board, the board in November unanimously entered into selected Covenant Health Care, you also selected their sub-contractor with Cooper Mental Building They designed and developed health building. They are required to follow the procurement code in selecting their contractors and they will be putting those items out to bid once you sign off on the design document. Or Cooper will be putting those items out to bid just as our judicial complex architect did in that case.

Minutes of May 30, 2007, Regular Business Meeting

Chairman Rael said do they approve those contracts or do they come back to the county commission each time there is a sub contractor, how is that going to work? Ms. Wimberly said the construction contract? The construction contract we most likely have a construction contract between the county also and a lot of this depends on the financing mechanism how it is set up if the county is not the owner, then the owner probably might not want us to have so much control over signing off and being in privy with the contractor so a lot has to depend on what Mr. Brown comes up with as far as what the financing mechanism and what the government strategy actually is going to be and that is all tied in with the financing mechanisms.

Chairman Rael said so it depends on how the financing is structured, if it is a private industry that comes in and picks up a big chunk of this and they change the way the control over the way the construction goes? Ms. Wimberly said if it is private financed as Mr. Turner mentioned last week, if it is privately financed then most likely it would be privately owned or part privately owned, public private partnership, there is different options and different things that she would have to visit with Mr. Brown, there are different things that you can look at. Ms. Wimberly said it just depends on that structure like how, what type of involvement the county would have, however; Cooper is the design group that was chosen by the county to work on the design and they would be responsible for making sure they follow the procurement code and that is on the assumption that they are using Valencia County, however construction works out, most likely using public funding involved and they will be following the procurement code.

Chairman Rael said okay, that answers his question.

ii) Consideration of financing mechanisms for Phase II – Robin Hunn, LLC

Commissioner Pinkston moved to approve the consideration of financing mechanisms for Phase II and to hire Duane Brown of Modrall Law Firm to help with the project under a small professional services contract. Seconded by Commissioner Gentry. Motion carried unanimously.

Chairman Rael allowed a gentleman in the public to speak on comments made by the Chairman earlier. There was a couple of people that served on the hospital board that lived out of the county and he didn't know if that was going to have an impact on the project. Does someone have the knowledge on this issue, maybe the County Attorney, or Mr. Gentry?

Commissioner Gentry said since the Chairman blamed him for it, he guesses those two were his appointments. Ms. Hunn said they had no requirement on the appointments that they be county residents, we made sure of the guidelines to both commission as well as the evaluation team, those were guidelines only. Commissioner Gentry said one of the gentlemen, Mr. Johnson, whom he has known for many years, served on the legislature with him. Commissioner Gentry said Mr. Johnsons knowledge of the medical field and expertise is one of the most renowned authorities in hospitals and the medical field. Ms. Hunn said he is the CEO of University Hospital for over twenty years, he is the cabinet secretary for Human Services Department for all of the Medicaid and health care spending in the State of New Mexico under Gary Johnson. He is on many, many boards relating to health care, and many other things. Commissioner Gentry said this is what we were looking for to help put this together in a non political way. This gentlemen has one of the most outstanding records in the medical field. The other gentlemen, Bob Davies just recently moved out of the area because of family problems but lived here for most of his life, he moved to Placitas about a year ago. He works in this area daily and has most of his interests and affairs in this community. He was instrumental with the university back in the early 80's and has been in Valencia County for over 30 to 40 years and only about a year ago due to health problems moved out of the area to Placitas for better health care for one of his children.

Chairman Rael said where this comes from is the Valencia County Hospital Planning Board, the criteria that was adopted by this commission, before he even got on this commission, it states criteria for board nominations attributes and characteristics #2 states county resident, and other considerations conflict of interest including financial benefit from the hospital. If those would be things against somebody being on the board. If these are required or not required is a legal question, even though he is an attorney, he is not going to answer that question here today because he is not sure what the answer to that is. He thinks this critical considerations in his mind, if you ask six lawyers a question, then you will probably get six different opinions.

The gentlemen in the audience said he was not questioning their expertise, the rule that the commission had. Later on down the road, people might ask on the process.

Chairman Rael said he is just saying where this comes from, these are the rules, the criteria adopted by this commission in 2006.

Commissioner Pinkston said just a little more background on that selection, each commissioner was given a sheet, we were to pick one appointee, basically they represented the commissioners interests and then we were asked to give other names that had the expertise and quality that we were wanting. Those names were put onto the paper, she went and saw all five sheets and asked that the commissioners names be taken off so that we could get a good evaluation. She does know that some of those names were on a couple of the sheets, so it wasn't just one commissioner that asked for a person on that list. Commissioner Pinkston said those selections were done by the previous committee that was formed from the doctors and professionals in the area. The advisory

Minutes of May 30, 2007, Regular Business Meeting

board now has been on for a period of time and then we will turn to an operational board which will probably have many new members, she doesn't know if any one of those guys want to serve on the operational board. We need to look at different expertise for the operational board and there are other options to be looked into to do the operational board, so this is a limited time that we wanted people with good expertise on our board and she thinks that what we have and she knows that the board of what they have done would not be possible, without each and every single one of those people that we have on the board and she wants to thank them all for their hard work, she appreciates you.

Chairman Rael allowed Mary Andersen, former County Commissioner to ask a question, Did your last motion authorize Covenant to proceed with Phase II? All commissioners answered yes. Her concern is you don't have the money without a determination by the Attorney General to use the indigent funds for Phase I, then how are you going to pay for Phase II?

There was applause after former commissioners question. Chairman Rael said let's not applaud or anything. Commissioner Pinkston asked to speak.

Chairman Rael said the contract has been amended by a vote of 4-1 and finalization of Phase I which goes into Phase II, then approved unanimously the financing mechanisms for Phase II, that was a different question, there was a second motion, okay now the next item, is there anybody that can address the question posed by Commissioner Andersen.

Chairman Rael allowed a member from the audience to ask if it would not be appropriate if counsel had made some determination about the liability of those two people that were mentioned that do not meet the guidelines for being on the board in the first place, should you not have a legal opinion on that?

Chairman Rael asked if anybody had requested an opinion of counsel.

Ms. Wimberly said that no one has requested an opinion of her on that determination. Chairman Rael asked if she would be willing to give an opinion if they requested one?. Ms. Wimberly said if you are requesting an opinion then she would imagine, if she didn't want to get in trouble with insubordination, then she would have to. Chairman Rael said he would request such an opinion of counsel. Commissioner Gentry said we have been non political for a long time and one of the very high level professional advisory boards and he takes a little bit of difference to hear at the end of the line that we are not happy with some things, and we start personally attacking people's credentials and all, we should have been attacking those three, four, five, six months ago when you started the work and not criticizing for finishing the work. He said it is inappropriate to start attacking, if someone wants to challenge that validity, he knows it wasn't tied to residents, this commission discussed this before Chairman Rael came on board, that we wanted to go outside the box and start finding professionals that would do a good job and not a political motivated job and the accusations and things that are coming up, it is a little distasteful because next week it will be him, or Chairman Rael, or next week it will be Commissioner Kirkham, or Commissioner Medina and it just goes around the barrel. But these personal attacks on people is inappropriate to start attacking this committee now.

Chairman Rael asked Commissioner Gentry if this was a non political statement. Commissioner Gentry said it is.

Commissioner Pinkston agreed with Commissioner Gentry, because we have picked people that we thought would do a good job and we need to move on.

Chairman Rael said he has done his duty to report to the public what the facts are and he feels he is obligated to do that.

Commissioner Gentry asked to go on to the next item and get out of this mess that we are in. Commissioner Pinkston said we need to move on.

Bob Gosticha said one political question, you made these rules can't you amend that one rule? Those people are more than qualified and have done the job to specifications that are beyond most people's and maybe change and get rid of the residency, that would be the end of the problem

Chairman Rael said that is a suggestion that maybe taken up by the commission.

Mike Wood from the audience asked if Chairman Rael's long dissertation, if this was his opinion or the commissioners? Chairman Rael said it is factual information that he thought was necessary to report to the public. The reason he asks is that is that at the professional workshop at the college these same issues that were brought up, Mr. Davies explained the tax issues and now the Chairman is bringing them up again. Mr. Wood said it appears to him that Chairman Rael has a serious, serious problem and it's personally between you and Mr. Davies. Mr. Wood said this shouldn't apply with this hospital and what is going on. And he thinks that Chairman Rael should get him out of your mind. Chairman Rael disagreed with Mr. Wood, and stated that this was not the case.

Commissioner Gentry moved to go on record for a vote of confidence for the hard work and professionalism in which the hospital advisory committee has worked to this point in supporting all of the members including the ones who have worked and then resigned, he would like to go on record

Minutes of May 30, 2007, Regular Business Meeting

as giving a vote of confidence and support and continuing support. Seconded by Commissioner Pinkston. Commissioner Kirkham said it is not on the agenda and Chairman Rael said it is not on the agenda and the motion is inappropriate but the motion has been made. Motion carried unanimously.

iii) Consideration of request for Attorney General's opinion on use of County Indigent Fund for Phase I planning costs – Robin Hunn, LLC

Commissioner Pinkston moved for approval. Seconded by Commissioner Gentry. Discussion.

Commissioner Pinkston stated that we did have a senator who has been keeping up with everything that has been happening in Valencia County concerning the hospital and he is very up to date on information, he is the one requesting also from the Attorney General information on the indigent fund because he feels it can be used for those purposes. She believes that others that she has talked to with those departments also have different opinions just as the five commissioners may have different opinions and we need a final say so from the Attorney General's Office.

Chairman Rael asked does this senator have a name? Chairman Rael said he remains nameless but we all know who that is. Commissioner Pinkston said she did not ask permission to use his name but they do represent Valencia County. Commissioner Kirkham said it is your district. Commissioner Kirkham asked counsel if there is a possibility that we can use the indigent funds? If DFA says we can and can the Attorney General override DFA? Ms. Wimberly said the Attorney General's opinion is persuasive, Supreme Court Justice says they are persuasive in their right, and she happens to agree with that. Ms. Wimberly said she has no idea what the Attorney General's opinion will be in this matter. She has an opinion that is based on case law and statutory law and basic principles of statutory construction, and her opinion is that this money can be used, that there is specific purpose in state statute that says if you don't use money that is specified for specific purpose then that balance rolls over and you can use it next year. She has a difference of opinion in that the Chairman noted earlier that three different attorneys in the same room and you ask them all a question, you probably get six different opinions. But she has one opinion in this matter and that is yes it can be use. She can't predict that is how the Attorney General will find and she doesn't believe that the Attorney General they wouldn't direct DFA to take any action but it looked at that analysis, it looked at DFA analysis, it looked at the county's analysis and came up with that it can be used. It can certainly be persuasive in asking DFA to reconsider their decision which we do have a request pending for DFA to reconsider. Also, when Mr. Zamora was talking with Rick Martinez, the Deputy Secretary for DFA, he is the one that can issue an Attorney General's opinion and so she thinks that it will be persuasive to them, because he said you know what we are going to request an Attorney General's opinion on this matter and so far they haven't. She does understand there is a request pending of the AG's office, she has contacted the AG's Office and said if they need any documents from us to let us know. Commissioner Kirkham said she realizes how important it is (audio is undecipherable)

Commissioner Gentry said since Valencia County started up this issue has gone state wide and has got a lot of counties right now in a tough position. They have found some counties use it for road repairs, some counties use it for building jails. We have caused quite a stir amongst the other counties and all we wanted to do was use it to build a hospital for those very people who we collect it for. We are going to have a roll over balance as of the 1st of July of approximately \$1.7 million in the revolving fund and we can't spend it. And we can't even spend it according to this new theory to pay the lady whose running it, Ms. Baker. Her job is being paid out of it, if this holds, this one ladies opinion, we are going to turn around and have to pay our administrator about 2/3 of her salary out of the general fund because we can't even pay her to administer the fund if those guidelines are adhered to. He has a pretty good feeling that we are in pretty good shape on using it for health care.

Chairman Rael said he wanted to summarize the issue so that the public will understand it. We have been paying Covenant for the contract in planning this hospital, and have given them \$100,000. Ms. Wimberly said to Chairman Rael that he had stated that earlier, and actually the \$100,000 payment that went to Covenant for Phase I was out of legislative appropriation for the purpose of planning a hospital. Chairman Rael said that he had asked Wilma Abril and she said we paid it out of the indigent fund and was reimbursed by legislative appropriation, so it was paid out of indigent funds first. He said are you sure? And she said did they cash the check and she said yes and then was reimbursed. Ms. Wimberly said it is opposite and Wilma is not here. Chairman Rael said the history of this is that we were paying out of indigent fund and had the intent to pay them, and then get reimbursed ourselves. But in any event the questions was did we pay Covenant out of the indigent fund and if we could go back to 1993 and keep taking percentages of the indigent fund and add those up and pay \$600,000, \$500,000 he thinks that we owe to Covenant at that time. And then DFA said we could only go back one year, is that correct? Ms. Wimberly DFA said you are not allowed to save unused planning and administration funds, in effect you don't go back one year, you can only use the money, a percentage of the money, based on your prior years revenue, that you can only use, say we are in 07-08, you can only take what you can spend on administration on planning of the revenue that came in 06-07 fiscal year. Chairman Rael said we could go back further years. Ms. Wimblery said we are not allowed to save that money. Chairman Rael said the Attorney General may say yes or may say no, or they could go further and say we can't pay anything. We are taking a little bit of a risk. Ms. Wimberly said don't say you can't pay anything. Chairman Rael said you have no control over that. You have no control over that. (audio is undecipherable)

Minutes of May 30, 2007, Regular Business Meeting

Chairman Rael asked for the vote. Commissioner Pinkston voted yes. Commissioner Kirkham voted yes. Chairman Rael voted no. Commissioner Gentry voted yes. Commissioner Medina voted yes. Motion carried 4-1.

e) Discussion of Peralta canvassing date – County Commission

Commission consensus to canvass the Peralta Election on June 20, 2007 at 3:30 PM which would be a Special Meeting.

e) Financial Matters

i) Consideration of Award Bid #620 Emergency generator Judicial Complex –

Eric Zamora (See Exhibit F)

Mr. Zamora presented the above consideration of bid #620 be awarded to Wagner Power Systems. Commissioner Pinkston moved for approval. Seconded by Commissioner Gentry. Motion carried unanimously.

ii) Consideration of Litter Control & Beautification Grant – Cyndi Sluder (See

Exhibit G)

Ms. Sluder presented the above consideration. Commissioner Kirkham moved for approval. Seconded by Commissioner Pinkston. Discussion. Motion carried unanimously.

iii) Consideration of New Mexico Selective Traffic Enforcement Program Grant

– Gary Hall (See Exhibit H)

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

iv) Consideration of Approval: Payroll/Warrants – Eric Zamora

Mr. Zamora presented the computer printout list of all the checks issued by the Manager's Office on May 21, 2007 covering vendor bills processed on that date. Check #89753 thru Check #89753 inclusive for a total of \$14,281.84. **(See Exhibit I)**

Mr. Zamora presented the computer printout list of all the checks issued by the Manager's Office on May 25, 2007 thru May 29, 2007 Special Payroll covering payroll processed on that date. Payroll Check #79125 thru Payroll Check #79311 inclusive. Direct Deposit Check #2574 thru Direct Deposit Check #2714 inclusive. Deduction Check #89754 thru Deduction Check #89944 inclusive for a listing total of \$291,155.80. **(See Exhibit J)**

Mr. Zamora presented the computer printout list of all the checks issued by the Manager's Office on May 25, 2007 covering vendor bills processed on that date. Check #89787 thru Check #89942 inclusive for a total of \$719,689.13. **(See Exhibit K)**

Commissioner Medina moved for approval. Seconded by Commissioner Gentry. 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: Job description requirements, Alternative methods for Valencia County management, Upgrade position & salary for Civilian Supervisor in Sheriff's Department & Employee salary adjustments 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 Pinkston. Roll call vote. Commissioner Pinkston voted yes. Commissioner Kirkham voted yes. Chairman Rael voted yes. Commissioner Gentry voted yes. Commissioner Medina voted yes. Motion carried 5-0.

Commissioner Kirkham moved to enter into regular session. Seconded by Commissioner Medina. Motion carried unanimously.

Ms. Wimberly reported on items discussed in closed session. Ms. Wimberly stated the board discussed the various tort act claim notices that have been filed against the county in the past six weeks, potential litigation regarding subpoenas that have been served on the county for documentation from the Detention Center and from the Sheriff's Department, we have updated the status on those subpoenas, we discussed a personnel matter of resignation from county employment, we discussed salary ranges for department heads, we discussed the organizational chart management system. No final action was taken.

Commissioner Pinkston moved to accept Ms. Wimberly's report on matters discussed in executive session. Seconded by Commissioner Gentry. Roll call vote. Commissioner Pinkston voted yes. Commissioner Kirkham voted yes. Chairman Rael voted yes. Commissioner Gentry voted yes. Commissioner Medina voted yes. Motion carried 5-0.

9. Action on Executive Session Item

a) Consideration of job description requirements for County Manager No action taken.

b) Consideration of alternative methods for Valencia County management –i.e.

Assistant Managers – No action taken.

c) Consideration of upgrade position and salary for Civilian Supervisor in Sheriff's Department – Chairman Rael moved that we upgrade the position and salary in the Sheriff's

Minutes of May 30, 2007, Regular Business Meeting

Department and salary be upgraded by \$2.00 per hour. Seconded by Commissioner Kirkham. Commissioner Pinkston voted no. Commissioner Kirkham voted yes. Chairman Rael voted yes. Commissioner Gentry voted no. Commissioner Medina abstained. Motion tied and motion failed.

d) Consideration of Employee salary adjustments –No action taken.

Commissioner Gentry stated he would like to comment on the last item that he voted no, he had no problem with the raise, the increase for Mr. Garcia, but there is a problem with the collective bargaining unit in making that decision, and whether or not it is clear enough that it is not a problem with the FOP bargaining unit. Then he would feel more comfortable about supporting this issue but he is real cautious about supporting that agreement.

Commissioner Pinkston stated she agreed with Commissioner Gentry's statement because we need to be cautious and get the correct wording on the FOP on the collective bargaining unit and then we would have no problem in doing that.

Commissioner Medina stated his reasoning for abstaining is that he represents the county commission against the union on the negotiations and he feels the union would provide us with some documentation that if they are okay with it then he would be one hundred percent for it.

Chairman Rael said we have received a letter in the past that is very clear that they have no objection with the proposed action by the Sheriff's Department. Are we letting the union tell the county commission what to do with raises for somebody just because they are union? This is totally unfair and he thinks the upgraded position should be at the Sheriff's discretion and we should support the Sheriff and the Sheriff's Department in creating a position and upgrading it for a civilian supervisor. The thing that we need in this county is more protection for the public and they are doing a good job in that area and he disagrees with counsel that there is something in the union contract that he has not seen, and nobody is showing anything that there is any prohibition to take action to permit the upgrading for the position of civilian supervisor.

Chairman Rael asked Undersheriff Montoya if he had that letter. Commissioner Gentry said we have voted and need to move on, we have all seen the letter. Undersheriff Montoya said he has looked at state and federal regulations and has found nothing that says that we can deny the civilian supervisor supervising commissioned officers.

Ms. Wimberly said for the record she advised that this was an executive session item for a reason and she advises that we don't air every detail of this issue in the public meeting.

Chairman Rael said he understands that, he just wants to see the letter that was a matter of public record that was circulated.

Rene Rivera, Sheriff for Valencia County, said he hasn't seen anything state, federal or even county that prohibits him from appointing someone in that capacity.

Ms. Wimberly stated she advises again airing this in public, this is an executive session item and if this commission would like to go back into executive session and advised again airing this issue in public.

Commissioner Medina moved to enter into executive session. Seconded by Commissioner Kirkham. Roll call vote. Commissioner Pinkston voted no. Commissioner Kirkham voted yes. Chairman Rael voted yes. Commissioner Gentry voted yes. Commissioner Medina voted yes. Motion carried 4-1.

Commissioner Kirkham moved to enter back into regular session. Seconded by Commissioner Medina. Motion carried unanimously.

Ms. Wimberly reported that the item that was discussed in closed session was consideration of upgrade position and salary for Civilian Supervisor in the Sheriff's Department. No final action was taken.

Commissioner Kirkham moved to accept Ms. Wimberly's report. Seconded by Chairman Rael. Roll call vote. Commissioner Pinkston voted yes. Commissioner Kirkham voted yes. Chairman Rael voted yes. Commissioner Gentry voted yes. Commissioner Medina voted yes. Motion carried 5-0.

Chairman Rael moved that we rescind the prior action taken by this commission regarding no upgrade position and no salary for civilian supervisor in the Sheriff's Department. Seconded by Commissioner Kirkham. Commissioner Pinkston voted no. Commissioner Kirkham voted yes. Chairman Rael voted yes. Commissioner Gentry voted no. Commissioner Medina voted yes. Motion carried 3-2.

Chairman Rael moved that we consider approving an upgraded position and salary for civilian supervisor in the Sheriff's Department with the \$2.00 per hour raise for the position. Seconded by Commissioner Kirkham. Commissioner Kirkham voted yes. Commissioner Pinkston voted no. Chairman Rael voted yes. Commissioner Gentry voted no. Chairman Medina voted yes. Motion carried 3-2.

Minutes of May 30, 2007, Regular Business Meeting

Commissioner Gentry explained his vote again stating he had no problem with this but he stands on his decision that this issue is in that gray area with the collective bargaining unit policy and he would have liked a letter stating that this could be done.

Ms. Wimberly stated any issues regarding the collective bargaining agreement should not be discussed in the public session.

10. County Manager's Report (Information Only)

Ms. Wimberly stated that Mr. Zamora had a family emergency and had to leave.

11. The next Public Hearing/Business Meeting of the Valencia County Board of County Commission will be held on June 13, 2007 at 3:30 PM in the County Commission Room at the Valencia County Courthouse.

12. Adjournment

Chairman Rael stated commissioners sign all proper documents before leaving this meeting. Commissioner Kirkham moved to adjourn. Seconded by Commissioner Medina. Motion carried unanimously. Time 8:21 PM.

<p>NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the May 30, 2007 Regular Business Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.</p>
--

VALENCIA COUNTY BOARD OF COMMISSIONERS

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

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

**ss/
DAVID R. MEDINA, MEMBER**

**ss/
RON GENTRY, MEMBER**

**ss/
LYNETTE PINKSTON, MEMBER**

ATTEST: ss/

SALLY PEREA, COUNTY CLERK

DATE: June 27, 2007