



VALENCIA COUNTY PLANNING & ZONING COMMISSION

MINUTES

MARCH 28, 2012

4:00 PM

Valencia County Courthouse Commission Chambers
444 Luna Ave, Los Lunas, NM

1. CALL TO ORDER

Commissioner Lane

2. PLEDGE OF ALLEGIANCE

Commissioner Lane

3. APPROVAL OF AGENDA

Commissioner Artiaga

Commissioner Edeal

4. APPROVAL OF AMENDED MINUTES: February 22, 2012

Commissioner McCartney

Commissioner Gaudette

5. SWEARING IN OF PARTICIPANTS

Commissioner Lane

6. ACTION ITEMS

- A. REQUEST FOR CONDITIONAL USE—TO OPERATE A DAYCARE/PRESCHOOL FACILITY: Martha Oros:** Legal Description: T6N, R3E, Section 8; Monterey Park, Block B, Unit 3, Lot 31; Zoned RR-1; Filed in Book 366, Page 995; of the office of the Valencia County Clerk; Also known as 21 Santa Cruz, Los Lunas, NM.

Ms. Oros stated that her name is Martha and her address is 21 Santa Cruz Los Lunas, NM.

Commissioner Lane asked if she could understand everything that they are saying.

Ms. Oros stated that she could understand but if she does need help, she did bring someone with her to help.

Commissioner Lane asked Mr. Martinez if at any point they need more interpretation would there be any one that would help, because Ms. Oros did not elect to have any addition assistance.

Mr. Martinez stated that if at anytime they do need help Ms. Garcia is fluent in Spanish and she would be able to help.

Commissioner Lane stated that is very good and he would like Ms. Oros to explain in her own words what she wants to accomplish.

Ms. Oros stated that she has a day care center and she is here to extend the permit from 6 children for 12 children.

Commissioner Lane stated that he is going to ask a few question and then ask the commissioners if they have any questions, and asked if she is currently watching children.

Ms. Oros stated yes.



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Commissioner Lane asked what made her decided to come before the commission.

Ms. Oros stated because she needed to obtain the permit to have 6 more children and she need to receive the authorization from the County first.

Commissioner Lane asked if she currently has a permit for the day care.

Ms. Oros stated that she does for 6 children.

Mr. Martinez stated that under the RR-1 and RR-2 zoning laws it allows a conditional use for a day care facility or a kindergarten or a day school nursery, now the day care facility is defined as an establishment or facility which has a primary function providing care, service, and supervising to 7 or more children for a period not exceeding 24 hours, so once you have reached that 7 limit that kicks you up into the actual definition of a day care facility which needs a conditional use within an RR-1 zoning, therefore they are in front of the board for a conditional use for a day care facility.

Commissioner Lane stated that under 7 children it is not considered a day care facility and anything over 7 is considered a day care facility and she would need a conditional use permit.

Mr. Martinez stated that is correct.

Commissioner Lane asked how long she has been taking care of the children that she cares for right now.

Ms. Oros stated that she started working with then in April of 2011.

Commissioner Lane asked how long she has lived at her current address.

Ms. Oros stated that she has been there for around 12 years.

Commissioner Lane stated that he is going to leave the floor open for the other commissioners to ask any questions.

Commissioner McCartney stated that the different departments in the county follow up on the entire request that come before the commission and they do reports and the code enforcement officer Michael Marquez had some concerns about the fencing, and it seems like there is fencing around the property but the fence is around two different homes, and asked if she is going to fence off the home where the kids are going to be.

Ms. Oros stated that the property is fenced were she watches the children.

Commissioner McCartney stated that understands that but its fenced around two different homes, 21 Santa Cruz and 23 Santa Cruz.

Ms. Oros stated that if it is required she would fence that specific area.

Commissioner McCartney stated that just for the safety, and asked if both home participate in taking care of the kids.

Ms. Oros stated not just one.



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Commissioner McCartney stated that if the kids are playing outside what is going to be preventing them from going into the neighbor's yards.

Ms. Oros stated that there is a specific area for the children.

Commissioner McCartney asked if they have a playground area that is fenced.

Ms. Oros stated yes.

Commissioner McCartney asked with have 12 children would she have traffic at different times of the day.

Ms. Oros stated yes.

Commissioner McCartney asked during the primary times of pick up and drop off would the children be inside rather than outside.

Ms. Oros stated yes, they do have a scheduled time to be outside but the majority of the time they will be inside.

Commissioner McCartney asked Mr. Martinez if there is a square footage requirement for X amount of children.

Mr. Martinez stated that under the day care facility which is 154.169 day care facility standards there is no square foot requirements for the number of children, the three requirements include compatibility in appearance of the surrounding area, provisions of usable on site open space appropriate to the needs of the day care, and clearly defined boundaries.

Commissioner McCartney thanked Mr. Martinez.

Commissioner Edeal stated that he drove by the house this morning and he was a little concerned with the area and having that many kids there, and he did not see the playground and asked where the playground is from the front of the house.

Ms. Oros stated that it is in the back of the home.

Commissioner Edeal asked if the house on the right is the day care center and then behind that house is where the playground is.

Ms. Oros stated that is correct.

Commissioner Edeal stated that it looks very disorganized like there is trailer houses and a big open filed.

Ms. Oros stated that it is fenced.

Commissioner Edeal stated that the entire property is fenced but the little playground is fenced but it is behind the house.

Ms. Oros stated that is correct.



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Commissioner Edeal stated that he did not see that, and would like to ask Mr. Martinez if he sent someone to physically walk around the place and give an opinion of the facility.

Mr. Martinez stated that he walked around the place and the code enforcement officer and the fire department have checked the site out as well.

Commissioner Edeal ask what his general opinion of the property is.

Mr. Martinez asked if he would like a general opinion of the site itself.

Commissioner Lane stated to Mr. Martinez that he does not have to give his opinion of the place, they would just like to hear about his findings of the place and how it relates to the county's ordinances.

Mr. Martinez stated that they did provide to the Planning office the complete packet, they provided a site plan, and they provided a description of the proposed use including the maximum number of day care patients and those served in the time they are going to be utilizing, there is one thing that was missing was a clearly defined property boundaries, they don't have a fence between the two property boundaries and they found that does not clearly define the property boundary in which they are going to have their day care center.

Commissioner Edeal stated that the property line is somewhere in the entrance of the property.

Mr. Martinez stated that is correct.

Commissioner McCartney stated that Mr. Marquez the code enforcement officer is in the audience if they have any questions for him, and asked Ms. Oros if she realizes that she would have to get a state license as well.

Ms. Oros stated that she already has the state license.

Commissioner McCartney thanked Ms. Oros.

Commissioner Artiaga asked how many square feet is her home.

Ms. Oros stated that she does not know the exact amount of square footage.

Mr. Martinez stated if the mobile 64X30 the square footage would be approximately 1900 square feet.

Commissioner Artiaga stated that she was on a board of directors for a nonprofit day care and she is looking at the bed rooms and if she is going to have 12 children, does she have beds step up in the rooms.

Ms. Oros stated that she has space for the children.

Commissioner Artiaga stated that she thinks that is not the business of the Planning and Zoning Commission as far as meeting the CYFD requirements.

Commissioner Lane stated that after they have asked their questions he has some that he would like to ask about where their responsibilities start and where they end.



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Commissioner McCartney stated that she is required to obtain a state license as well in order to be a day care facility.

Ms. Garcia stated that she clarified the question so that Ms. Oros understood.

Commissioner Lane asked if she could translate what Ms. Oros said.

Ms. Garcia stated Ms. Oros said that she does have a designated area for naps and they each have mats for each of the children.

Commissioner Lane thanked Ms. Garcia.

Commissioner Gaudette asked who lives in her home.

Ms. Oros stated that her husband her three children and her.

Commissioner Gaudette asked how old the three children are.

Ms. Oros stated that they are 22, 20, and 14.

Commissioner Gaudette asked about the hours of operation would be 6am until midnight.

Ms. Oros stated that is correct.

Commissioner Gaudette stated that is 18 hours.

Ms. Oros stated yes.

Commissioner Gaudette asked if she has employees.

Ms. Oros stated yes.

Commissioner Gaudette asked who the employees are.

Ms. Oros stated that Veronica Flores, Victoria Arango, and Erida Gonzalez.

Commissioner Gaudette stated three employees.

Ms. Oros stated yes.

Commissioner Gaudette asked if she is thinking about adding more employees.

Ms. Oros stated that it would depend on the demand of her services.

Commissioner Gaudette thanked Ms. Oros.

Commissioner Lane asked Mr. Martinez if they approve this request for home occupation who would be responsible for checking on the state license is filed and all the proper things are filed could there be a condition on the request that if the license is not obtained by a certain date that the conditional use approval would be pulled.

Mr. Martinez stated that they could put in conditions within the conditional use that they feel are reasonable.



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Commissioner Lane asked how they know that the state licensing is involved, would the planning office monitor that.

Mr. Martinez stated that there is not trigger that allows the planning office to know that they are going for the state license besides if there is a condition made by the commissioners that would give us a time frame or timeline by which they should check then they would check.

Commissioner McCartney asked if in the past they have required documents before they are issued a business license.

Mr. Martinez stated that in the past they have required that they bring at least the application form that they are filling out and that they are working with the state before the county issues a business license and that was a condition made by the board.

Commissioner McCartney stated that this request is for a conditional use permit not a home occupation.

Mr. Martinez stated that is a conditional use permit for a day care center/kindergarten facility.

Commissioner Gaudette asked if Ms. Oros could operate her day care facility with only two employees plus herself.

Ms. Oros stated that she has three employees her husband and herself.

Commissioner Gaudette asked if she would be able to get by with just two employees.

Ms. Oros stated that she could possibly do that.

Commissioner Lane asked if the picture that the commissioners received of 21 Santa Cruz is her house.

Ms. Oros stated yes and she showed Commissioner Lane where her property is on the pictures.

Commissioner Lane asked where was the fenced area for the playground is on the pictures.

Ms. Oros showed Commissioner Lane on the pictures where the playground was.

Commissioner Lane stated that some of the concerns that he has by looking at the pictures and it was also stated by the code enforcement officer, for the protection of a large amount of children he would put some conditions on this request if he was to want to approve the conditional use, some of the conditions would be a specific parking area so there is no cars in the front and the back, and that the state license needs to be obtain and taken to the planning office before the conditional use is granted, and she does not have to agree to the conditions right now but as the discussion goes on she does need to think about them.

Ms. Oros stated that she currently has the state license but it its only for 6 children and she just wanted to obtain the approve from the commission in order to take care of 6 more children.



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Commissioner Lane asked if the license she has is from the state.

Ms. Oros stated that is correct.

Commissioner Lane asked if she already has her state permit.

Mr. Martinez stated that she does have her state permit for the 6 children but she does need to get the approval from the commission for 12 children and this would be the first step in the process.

Commissioner Lane asked if the state is going to be the ones that do the walk ins and the inspections and make sure that she does conform to whatever she needs to do with the state.

Mr. Martinez stated that is correct.

Commissioner Lane stated the approval of the conditional use would mean that their responsibility would end right there.

Mr. Martinez stated that besides checking on nuisance and things of that nature.

Commissioner Lane asked if there were any other questions from the commissioners, No questions from the commissioners.

Ms. Oros stated that after she obtained her license they are the ones that go do inspections and make sure that everything is in order for 6 months.

Commissioner Lane stated that is what they were talking about making sure that the state would be in charge of that, and asked if there was anyone in the audience that is in favor of the request to please come forward, No one was in favor, and then asked if there was anyone that is in opposition of the request to please come forward, No one was in opposition.

Commissioner McCartney stated that he would like to call Mr. Michael Marquez to the podium.

Mr. Marquez stated that his name is Michael and he is a code enforcement officer for Valencia County.

Commissioner McCartney asked Mr. Marquez to give a brief description of the property and his findings.

Mr. Marquez stated that he did not go into the property and it looked from his angle where he took the pictures that the single wide mobile home had several additions done to it and he guesses that the playground would be behind that but he did not go back there, and as they could see in the pictures the mobile home is covered with plywood and he does not know if some of the windows might have been covered or if there has even been permits obtain for the additions made to the single wide mobile home, and if the state gave her a permit for 6 children then he is sure that everything is up to compliance with the state.

Commissioner McCartney stated that one of Mr. Marquez's concerns was the fencing.



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Mr. Marquez stated that in his experience he believes that is a state requirement.

Commissioner McCartney stated that is what he thought and he thanked Mr. Marquez for his comments.

Commissioner Artiaga stated that in Mr. Marquez's report he had a statement that according to the ordinance they could only have 2 full or part time employees, and Ms. Oros was saying in her proposal letter that she might hire more and now she is saying that she currently has 2 employees her husband and herself and that is 4 people working and if she does add employees to that would that be allowed to have that many employees.

Mr. Martinez stated that the zoning requirements do require under the home occupation conditional use no more than 2 employees, and again the applicant is going for a conditional use for a day care facility which does not define the number of employees.

Commissioner Artiaga thanked Mr. Martinez for clearing that up.

Commissioner Lane stated that if there are no other comments or questions from the commissioners he would like to entertain a motion, and he would hope that the commissioner that does make a motion puts conditions on the approval such as a designated parking area, a fenced playground for the children, and that she does show the planning department her state licenses when they are obtain.

Commissioner Gaudette stated that his concern is that the property does not look maintained and to put 12 children on this property from 6am to midnight for 18 hours, and he understand that there is an entire different review by the state for day care operations but he has some concerns about the property.

Commissioner Lane stated that the duty of the P&Z Commission is to give her a conditional use permit or not there could be conditions on the approval but after the commission makes the decision it is up to the stated to follow up on everything and it is out of their jurisdiction other than the conditions that are put on the request.

Ms. Oros stated that the capacity of the children or the children are not there for the full 18 hours the children with come and go as the parents pick them up and each day there might be different children.

Commissioner Lane asked if there was going to be 12 children there at one time.

Ms. Oros stated that not all the time.

Commissioner Lane stated that at some point there are 12 children there.

Ms. Oros stated yes.

Commissioner Edeal stated that he went up to the property in the morning to take a look at the place and he agrees with them, but the other part of the equation that is harder to judge is that the day care is a very necessary thing in that area but it also has some issues that need to be addressed.

Commissioner Lane stated that if he would like another commissioner make the motion.



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Commissioner Edeal stated that he just wanted to make sure they knew about his observations when he went to look at the property and he knows that it is needed in the community and people are going to know her and they know who they are leaving their children with, but also it might need a few restrictions on the request and he does not know how to word it but that would be his suggestion for a place to start.

Commissioner Artiaga stated that from her experience, she was on a board of directors for a nonprofit day care for many years, the State does come in and they do make requirements if they don't like the bathroom facility or if they don't like the nap facility or if they don't like the cleanliness or if they feel there is some kind of safety issue then they really do make requirements and they do check, and she would like to make the motion, that the request is approved for a conditional use for a day care facility for up to 12 children if there is a designated area for parking, that the play area be fenced for the children, and that she provide copies of the proper licenses and approval from the state be given to the planning department and all of this should be done within 6 months.

Commissioner Edeal stated that if she is going to take care of 12 children the state is going to inspect the property and they may say that she is not going to be able to have 12 she could only have 6 children.

Commissioner Artiaga stated that is correct.

Commissioner Edeal stated that he seconds the motion.

Mr. Martinez called for a vote.

Commissioner Artiaga stated yes.

Commissioner Gaudette state no.

Commissioner McCartney stated no.

Commissioner Edeal stated yes.

Commissioner Lane stated yes.

Mr. Martinez stated that Ms. Oros applications for conditional use has been approved with the conditions that she have a fenced off play area for the children, that there is a designated parking area, and that she proved copies of her state licensing to the planning and zoning department and all this should be done within 6 months, and she will be receiving a letter of the approval and to note that the date on the letter will be the official date of approval and that there is a 15 day appeal process.

Commissioner McCartney stated that he just did not know if there is a playground that is fenced in the back of the house because there is no picture of it and that's why he voted no, and Mr. Marquez did not find it and the pictures did not show it and it is just a big lot for all the children to be running around and that is just his concern.

Ms. Oros stated that if his concern is the fenced play area she would be willing to bring in pictures and show them the back area of the house so that they could see that the area is fenced.

Commissioner McCartney thanked Ms. Oros.



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Ms. Oros thanked the commissioners for their time.

B. REQUEST FOR A ZONE CHANGE FROM RR-2 TO RR-1: Arley & Leroy Sanchez:

Legal Description: T6N, R2E, Section 28, Map 89; Zoned RR-2; Filed in Book 294, Page 2743; of the office of the Valencia County Clerk; Also known as 2779 Highway 47, Los Lunas, NM.

Mr. Sanchez stated that his name in Arley and his address is 2779 Highway 47 Los Lunas, NM.

Commissioner Lane asked if he could tell the commission why he would like to change the zone of his property and what he is trying to accomplish today.

Mr. Sanchez stated that his name is Leroy and he is Arley's son and he would like to speak for him and he would like to separate the land for his children and there are three children that he would like to give the land to.

Commissioner Lane asked if he was one of the children that will get some of his land.

Mr. Sanchez stated yes.

Commissioner Lane asked how long he has owned the property.

Mr. Sanchez stated that he has owned it his entire life, his parents owned it and they gave it to him.

Commissioner Lane asked if his plans have been to split the land for his children.

Mr. Sanchez stated that he has some acreage there that he is trying to divide into equal one acre pieces for each of his children.

Commissioner Lane asked what the minimum size of the property is now.

Mr. Sanchez stated that they would each be one acre pieces and he has 4.37 acres total.

Commissioner Lane stated that he read in the packet that the subject property is 2.69 acres and the applicant would like to split up his land into two parcels of one acre, and what he is saying is that he has 4.37 acres and he would like to split it.

Mr. Martinez stated that as he understand it is that the land is comprised of two separate tracts 84-A-2 and 82-B-1 and 84-A-2 is 1.62 acres and 82-B-1 is 2.69 acres and together they are 4.37 acres and now the application 82-B-1 would be changed to RR-1 zone and that would be split into two one acre tracts.

Commissioner Lane asked Mr. Sanchez if what Mr. Martinez said sounded correct.

Mr. Sanchez stated yes.

Commissioner Edeal stated that he looked on the GIS Mapping system this morning and it shows 4.37 acres and it does not show the property being split.



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Mr. Martinez stated that on the mapping programs by GIS the assessor's office sometimes will comprise two different tracts of land so that there is only one tax bill going out every year, but these are two separate tracts as defined by the old MRGCD maps.

Commissioner Edeal stated that the land must have been split over 20 years ago.

Mr. Martinez stated that has been split since the 40's when the MRGCD first defined the area.

Commissioner Edeal stated that he would like to see that.

Commissioner Lane asked if he had any questions for the applicants.

Commissioner Edeal stated that there are quite a few house on that property and he counted about 9, there are two empty houses that are boarded up, there's a mobile home behind that, and there another house next to that mobile home, and then there is 3 or 4 houses on the north end of the property and he just wondered how many people lived there.

Mr. Sanchez showed Commissioner Edeal where the land had been split before.

Commissioner Lane stated that in the packet they have a department review from Mr. Sonny Vega that states: the old houses Mr. Sanchez is referring to in his application are a hazard. They are very dilapidated and are on perfect for transients and vandalism. In his application he also states these houses are to be torn down to make room for new homes, I feel that would be best for all concerned and would be beneficial to the community. With the problem come trash, junk and debris of course, as a code enforcement officer I would like these issues to be addressed before any changes occur, and he asked Mr. Sanchez that he stated that these houses are going to be taken down.

Mr. Sanchez stated that he was thinking about it but he would preferred not to do that.

Commissioner Lane stated that he read the application and he did not think that it would be an issue because he wanted to put new homes on the property and now Commissioner Edeal has a concern with the amount of houses on the property as it is now, and asked if that was going to remain the same, because once the property is subdivided they are going to get in a different set of rules and as of right now the property is grandfathered in and once the split happens they will take a fresh look at the amount of houses on the property.

Mr. Martinez stated that he knows that the houses have been there for a number of years, and as of right now they would be non-conforming although he does not have a non-conforming applications in his office for these households as of right now, and once it goes through another process does that take away their non conformity is the question, and that he would have to mull for a while because he does not have the answer.

Commissioner McCartney asked when they change the zone of the property wouldn't the grandfather die.

Mr. Martinez stated that he thinks that is the question that they are asking right now, and Ruben Chavez who is his supervisor in the audience and he might be able to shade some light on the subject.



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Mr. Chavez stated that that they would have a newly created lot and not only would that fall under a new set of rules as they are saying but the environmental department will also view it as a new set of rules.

Commissioner Lane asked if the environmental department would look at the septic system.

Mr. Chavez stated yes.

Commissioner Lane asked if that means they are testing the capacity for septic and the capacity for wells.

Mr. Chavez stated that will all come into play.

Commissioner Lane asked Mr. Sanchez if he understands why he is bringing all this up is that being that they are subdividing they are going to be under a new look, and now that they have subdivided they are going to take a look at each individual lot they would fall under the new rules and asked if he understands that.

Mr. Martinez stated that under 154.059 that is a non-conforming use it states: Alterations; if an alteration occurs, an alteration is a change in structure, an increase in the number of structures, or a change in use; where the term alteration is applied to a change in structure is intended to be applied to any change addition or thereof, any alteration to the non-conforming use will take away that non-conforming use so if they alter the use which is an RR-2 to an RR-1 that would take away that non-conforming use and they would have to abide by the current zoning laws which are one dwelling unit per parcel of land.

Commissioner Lane stated that he was not sure if Mr. Sanchez was aware of that or not, and he just wants to make sure that this is what they want and that they will be under an entire different set of rules, and he knows that it is a hard decision to make.

Mr. Griego stated that his name is Michael and he is Mr. Sanchez son in law and stated that one of the houses will be knocked down and the other one they are thinking about keeping it because it is on one acre, and they were thinking about remodeling it and then there is another mobile home on the middle lot and he showed the commissioners on the maps what houses are and what is going to be moved out.

Commissioner Lane stated that he does not need to see what is going to be gone all he wanted was that they were aware that the lot split is approved they are going to have to conform to the new set of rules.

Mr. Sanchez stated that he understood.

Commissioner Lane asked if the other commissioners had questions for Mr. Sanchez.

Commissioner Artiaga stated that she knows the area and she knows the homes and she owns 7 wonderful 100 year adobe houses that people think are awful and they think that she should throw them all down, but they are really nice inside and with a little tender, loving, care they could come back, and she thinks that this is an opportunity, if the property was split they would have different ownership of the property then they would be able to do what they want to do whether they want to knock down the houses or keep them that would be up to them, and especially in that area she owned a lot of property there at one time and she would like to see a lot of the 100 year old houses get saved and remain in the community,



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and she thinks that it is wonderful that the property is going to stay in the family from generation to generation.

Commissioner McCartney stated that this is just a recommendation because the final decision goes to the county commission.

Mr. Martinez stated that is correct.

Commissioner Lane stated that if they do not have anything else to say if they could step back and he asked if there was anyone in the audience that is in favor of this request to please come forward.

Mr. Griego stated that his name is Michael and his address is 2779 Highway 47 and he is in favor of this request.

Commissioner Lane asked if there was anyone else in favor of this request, No one else came forward, and then he asked if there was anyone that is in opposition of this request to please come forward.

Mr. Montoya stated that his name is Santiago and his address is 08 Marquez Rd, and his opposition is that most of the people that live in that area bought a house there with a couple of acres and they like the low density and once someone changes that it would increase the density and the traffic, and that would bring a problem to their community.

Commissioner Lane asked if his property is adjacent to the applicants.

Mr. Montoya stated that he is not adjacent he is on Marquez Rd, he did receive a notice so he is not sure that if they are going to just change the zone for this one lot and it is the only lot that is going to be affected or is it going to be the entire area, or are they are they going to allow him to cut his property in half and sell off a portion of it.

Commissioner Lane stated that if he wanted to cut his property up and sell it he would have to come up before the commission the same way Mr. Sanchez is doing.

Mr. Montoya stated that he was confused because they were talking about changing the zone.

Commissioner Lane stated that they are here to change the zone of their property only not the entire area, they applied to change it from an RR-2 to an RR-1.

Mr. Montoya asked if that zone was going to be changed for that one property only.

Commissioner Lane stated that was correct and it would not affect his property or any of the neighbors.

Mr. Montoya stated that he is no longer in opposition of the request.

Commissioner Lane stated that his opinion of this property is that once they do the lot split they are going to have to abide by different rules, which is one dwelling unit per lot, so if they have 8 houses on that property right now they would have to comply as soon as the property is split.



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Mr. Montoya stated that he only had an issue with it if they were going to change the zone of the entire area.

Commissioner McCartney stated that this is a family split.

Mr. Montoya thanked them for their time.

Commissioner Lane asked the applicants to come back to the podium and asked the commissioners if they had any other comments or questions before he entertained a motion.

No questions from the commissioners.

Commissioner Lane stated that he would like to entertain a motion.

Commissioner Edeal stated that they would split the land and the all the houses would have to be placed one on each lot from where it is now.

Mr. Martinez stated that where the zone will be changed and they do the lot split there would have to be one dwelling unit per parcel would be the rule.

Commissioner Edeal stated that he would like to make a motion to recommend for approval to the county commission.

Commissioner Artiaga seconded the motion.

Mr. Martinez called for a vote.

Commissioner Edeal stated yes.

Commissioner McCartney stated yes.

Commissioner Gaudette stated yes.

Commissioner Artiaga stated yes.

Commissioner Lane stated yes.

Mr. Martinez stated that the Planning and Zoning commission recommended the zone change for approval to the County Commission and they will make the final decision and the planning office will let Mr. Sanchez know when they will go before the County Commission.

Mr. Sanchez thanked the commissioners for their time.

- C. CONSIDERATION OF WHETHER TO HEAR AN APPEAL TAKEN FROM A TYPE A ADMINISTRATIVE DECISION FOR A NON-CONFORMING USE APPLICATION:** Legal Description: T5N, R1E, Section 12; Westernmost portion of Tracts 67, 68 and 46-C-2; zoned RR-2; Filed in Book 360, Page 24544; of the office of the Valencia County Clerk; Also known as 1 Eddie Lane, Belen, NM.

Mr. Martinez stated that there was an application made to the planning and zoning department in late January for a zoning decision on a non-conforming use, on February 14, 2012 the planning and zoning department, through a Type A administrative decision denied that non-conforming use, the non-conforming use is a Type A process in which administrative



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decision can be made and therefore it was denied. On February 28, 2012 there was an appeal made on that decision for the non-conforming use. Now, the appeal, which was made by the applicant which are represented here Mr. Chavez and Mr. McDonald, they appeal process states that the appeal goes to the County Commission under 154.062 appeals, there is a provision for the P&Z on its own motion, may order review of any decision of the department within 60 days of the decision. He wanted to bring this up at this meeting to provide the P&Z department any opportunity if they wanted an opportunity to hear this appeal because there is no trigger that they have in the ordinances books that allows the Planning & Zoning Commission to make that motion to appeal a type A decision and so he is trying to create that trigger here and provide the commissioners with that availability to make that motion to hear the appeal made by the type A process.

Commissioner Lane asked if they had heard this case in January.

Mr. Martinez stated no, the non-conforming use was provided for an administrative decision in January and the administrative decision was made and there was an appeal on that decision and he is providing the planning and zoning board the opportunity to hear that appeal if they would like to hear it.

Commissioner Gaudette asked if otherwise this appeal would go directly to the county commission.

Mr. Martinez stated that is correct.

Commissioner Lane stated that he has never been through this yet.

Commissioner McCartney stated that they could also appeal the decision of the Planning board because it would ultimately go the county commission.

Mr. Martinez stated that is correct, and there is a process of appeal.

Commissioner Lane asked if that appeal would not get heard today.

Mr. Martinez stated that they are not hearing the actual appeal today what they are deciding on is if they would like to hear the appeal.

Commissioner Lane asked if it was just giving them an invitation to vote on whether or not they want to hear the case before it goes to the county commissioners.

Mr. Martinez stated that is corrects, and there is also both sided that are representing the appeal and they might want to speak on behalf.

Commissioner Gaudette asked what authority they have to hear this case, because right now what Mr. Martinez is saying is that it goes directly to the commissioners and he is carving out an invitation for the P&Z board to be involved.

Mr. Martinez stated that under 154.062 appeals The P&Z, on its own motion, may order review of any decision of the Department within 60 days of the decision, and he is just providing a trigger.

Commissioner Lane asked if they all decided that they don't want to hear the case everyone would just go home and then it would go before the commission.



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Mr. Martinez stated that is correct.

Commissioner Artiaga asked what would be the advantage of the P&Z commission hear the appeal as opposite to or in addition to the county commissioners.

Mr. Martinez stated that would be up to them to decide.

Commissioner Lane stated that the advantage would be that it could give both sides a taste of going before the count commission and presenting their case and did not know what the disadvantage would be, and the commission has taken faith in some of the P&Z's motions because they do not have the final decision and it is like a rehearsal and what it does is gets the case out there to the public before it actually shows up before the commission with a little more information or with things that they may have missed.

Commissioner McCartney stated that he thinks that someone should be able to speak from each side since they have been sitting in the meeting for an hour.

Commissioner Gaudette asked if they want to be heard in this setting.

Mr. Martinez stated that today would not be about the hearing itself but weather or they want to be heard in this form that is something that could be asked to them.

Commissioner Lane asked the audience if there was a spokes person from each side or does everyone in the audience want to speak.

Mr. Martinez stated that there is one person from each side to speak on behalf and it would be useful if they did speak.

Commissioner Lane asked if they go the route that they would allow each side to speak would everyone else be okay with that and would the people want to hear that, and he asked if the person representing Mr. Chavez could start.

Mr. McDonald came forward and stated that his name is Norman and he is an attorney in Belen and he represents Mr. Edward Chavez who is present here today, and they filed a type A administrative procedure with the planning department for a request of verification of legal non-conformance they submitted supportive documents and Aden Nance was involved in the process and he wanted other documents and they submitted them, and ultimately they request was denied, they filed a timely notice of appeal and now it's a procedural matter as to who is going to hear their appeal, and in their position they are willing to defer to the wishes of this body weather the P&Z hears the appeal additionally and then whatever party feels aggrieved to the at decision would have the remedy to take it to the county commission or it could go directly to the county commission, they were not requesting that this matter be specifically heard by this body this was a courtesy in large part by Mr. Martinez to give this body the choice and they will defer to their wishes and present their appeal to whomever, he will not get into the merest of the appeal but they believe they have the appeal to present to get a reversal of the decision.

Commissioner Lane stated that one good thing that could be funneled through this meeting is that it comes out in the news paper and anyone that is involved is notified and it does look like by the amount of people here today that everyone that needed to be notified was, and his concern is that if the P&Z chooses not to hear the appeal and it goes straight to the commission it looks like the public on both sides has been notified that there is going to be something.



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Mr. McDonald stated that it is fair to say that there is a large amount of interest in this decision.

Mr. Sanchez stated that his name is James and he is an attorney from Belen, and his recommendation is that the clients involved are paying their attorneys to try to resolve this issue they have been through litigation and they have a decision in conjunction from Judge McDonald to stop what they believe is an illegal use in this RR-2 property, the operation of a sand and gravel business and since his clients are paying him to be here today he respects the process of the commission and he believes that there is a valid purpose for it, but in this case he would think that it is a waste of his clients time to ask him to present the same case to this body that does not have a final decision making authority and so he would ask the commission to defer it to the county commission and just let us urge it to the final body that does have a final decision, and the benefits that normally see like the Chairman already suggested that occur where some issues might come up that have not been thought about, they fought this like dogs in court already it's been a hard and long fight and he thinks that they have uncovered everything and it is just a question of how will the county commission rule on the appeal.

Commissioner Lane thanked them for their comments, and asked if the commissioners have any comments or questions for either party or are they ready to make a motion, and he stated that he personally agrees with the last statement.

Commissioner Gaudette stated that he would suspect that if they were to hear the case either side feels aggrieved it's going to be appealed to the commission he thinks that they are going to be wasting these good citizens money on their lawyer but he does not think that these citizens need to be spending their money on a dry run and these are very well qualified applicants.

Commissioner Lane stated that he agrees with Commissioner Gaudette.

Commissioner Artiaga stated that in this case she would say that it has already been tried in court and now this is the appeal, and it's the county commission who is ultimately going to have to make the decision.

Commissioner Lane stated that this case has already been aliened enough that they do not need to get involved.

Commissioner McCartney stated that he thinks that they are wasting their money.

Commissioner Edeal stated that he feels the same.

Commissioner Lane stated that a motion needs to be made.

Commissioner McCartney stated that he would like to make a motion not to hear the appeal.

Commissioner Artiaga seconded the motion.

Commissioner Lane asked if they were all in favor.

All commissioners in favor of the request.



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Commissioner McCartney stated that just for discussion for the people that came in support of either side they don't want them to have to come back again and go through the entire meeting again it's bad enough that they have to go to the county commission meeting.

Commissioner Lane stated that he apologies to everyone that had to sit in the meeting for an hour already and just to have the case sent to the county commission.

Mr. Martinez stated that there has been a motion and there has been a denial to hear the appeal so the next step would be that the appeal will be heard by the county commission and they will hear the appeal at their public meeting in April that is the second Wednesday of the April at 5 pm.

7. DISCUSSION:

Commissioner Lane asked if there is any discussion. **Mr. Martinez** stated that he does not have anything that needs to be discussed. **Commissioner Gaudette** stated that he noticed on one of the applicant's letter head the Commissioners names were incorrect. **Mr. Martinez** stated that the P&Z office will get the letter head changed to the right commissioner's names. **Commissioner Lane** asked if there was any other discussion, and he would like to say that his project the Meadow lake parks area association the property has been donated and it has been recorded by the county for all the lake and the lots around there and they are ponding their 3rd pond and if anyone knows where they could get some clay he needs a clay bed liner. **Commissioner Artiaga** stated that she has some clay and she has about 3 acres of clay. **Commissioner Lane** stated that he would swap even for some sand for the clay. **Commissioner Artiaga** stated that the clay is right on the road and it is in her way and she would like him to come and get it and she said it was about 3,000 yards. **Commissioner Lane** stated that now he has to figure out how it get it from point A to point B. **Commissioner Artiaga** stated that all they need is a loader and a dump truck and there is a road right to it. **Commissioner Lane** stated that they have enough members that they could bring shovels and pickups, and the project is moving a long and it is now in the county and he set it up a couple of years ago to not fail once they make this next little point they will be good and he is very proud of the accomplishment in the last two years of the all the members and all the directors that have helped him with this project. **Commissioner Artiaga** congratulated him. **Commissioner Lane** asked if there was anything else. **Commissioner McCartney** asked Mr. Martinez if that house on Highway 314 that was given the conditional use and is storing multiple vehicles there, it's the property that is south of Allsup's. **Mr. Martinez** stated that they were given a variance on his setbacks. **Commissioner McCartney** stated that he must have 15-20 cars on his property and it's an eye sore and the thing that he was supposed to be was restoring cars. **Mr. Martinez** stated that he will check it out. **Commissioner Gaudette** made a motion to adjourn the meeting. **Commissioner McCartney** sounded the motion.

NEXT MEETING: April 25, 2012

8. ADJOURN