

# VALENCIA COUNTY BOARD OF COMMISSIONERS

## Organization / Business Regular Meeting

January 7, 2009

PRESENT	ABSENT
Pedro G Rael, Chairman	
Georgia Otero-Kirkham, Vice-Chairman	
David R Medina, Member	
Ron Gentry, Member	
Donald E Holliday, Member	
Eric Zamora, County Manager	
Adren Nance & Dave Pato, County Attorneys	
Sally Perea, County Clerk	
Press and Public	

1. The meeting was called to order by Chairman Rael at 5:00 P.M.

2. Chairman Rael led the Pledge of Allegiance

### 3. Approval of Agenda

County Manager Eric Zamora requested adding a financial matter to the action item regarding CD's that had matured and staff needs direction from the commission as the Board of Finance. Attorney Nance advised the commission that as long as it was deemed an emergency they could do that. Chairman Rael asked how much money was involved and County Treasurer Dorothy Lovato said 2.1 million that was not earning interest.

Because of the amount of money involved Commissioner Gentry moved to declare it an emergency and convene as the Board of Finance to direct the depository of those funds. Seconded by Commissioner Kirkham. Motion carried unanimously and was added as L, emergency item.

Commissioner Gentry questioned the Hospital Mediation of Appeal through Court of Appeals item on the executive session and requested that it be tabled for a later date. He didn't think this was the appropriate time to be discussed in executive session. Chairman Rael said this item has been on the agenda for the required period of time. County Manager Administrative Secretary confirmed the date as December 27, 2008.

Commissioner Gentry gave explanation of the Hospital Mediation of Appeal through Court of Appeals is not to be in the scope of the Open Meetings Act where the Board goes into the Executive Session to start bartering on something. His understanding is Executive Session is for pending or threatened litigation. We have a counsel of record who did not request this, it is not a legal matter, it is not an action by the courts and is not a filing against us. Commissioner Gentry said this is a freelance discussion on an issue that should be a public issue, rather than taking action that has a client/attorney privilege within the Executive Session. Commissioner Gentry believes this is outside the parameters and the scope that is intended by the Open Meetings Act.

Chairman Rael asked County Attorney Dave Pato if there is pending litigation regarding the Hospital issue at the Court Appeals. County Attorney Dave Pato said there is an appeal. Chairman Rael said it would be appropriate to at least discuss the issue on whether the Board can discuss it in Executive Session and make a determination there because they would need the advice of the attorneys.

Commissioner Gentry asked the County Attorneys if this should be discussed in private and would like the ruling before, instead of after, entering Executive Session. County Attorney Dave Pato said this depends on the discussion.

Commissioner Kirkham asked how long Commissioner Gentry would want to postpone this matter. Commissioner Gentry said to place on the next agenda and have our counsel of record present to advise us of what it is about.

Commissioner Medina said he was not aware of this item other than it was on the agenda and he did expect to see counsel present to discuss the matter.

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Chairman Rael said the County Attorneys were present even though they do not officially represent the Board in the Court of Appeals mediation, they do represent us on the legal question on whether or not they can proceed to do any mediation in open session or in close session. He believes it is appropriate to do this in close session and get advice by county attorneys on whether or not this pending litigation can be discussed at this time and he would rather discuss the matter in closed session.

Commissioner Gentry asked the attorney if this was appropriate and in line with the Open Meetings Act. Attorney Nance said the county attorneys are not the counsel in this matter and does not know if they can add anything. If the Board is asking them certain general questions this would be appropriate but otherwise the board would need to wait for the contract counsel.

Commissioner Medina agrees that legal contract counsel that is representing them in this matter should be present. Commissioner Medina feels they should not discuss this matter without the contract counsel present.

Chairman Rael asked if the rule says that both counsel needs to be present. Attorney Pato said they are on contract to advice the Board of Commissioners and are available to advice them on any litigation on which they have not entered into on any appearance. County Attorney Dave Pato answered we are.

Chairman Rael said this settles the matter. We have attorneys to advice us on the pending litigation and we should proceed to discuss this matter in close session.

Commissioner Gentry said he has a letter of notification from the Appellant Court. The fact of the matter is this has already been sent to mediation, it was turned down and put back on the calendar and is scheduled for briefing on January 15, 2009. We have waited eighteen months for this and this looks to be inappropriate for them to start mediating on whether or not the judge's decision was correct and whether or not we should mediate away from the appellant's court hearing this matter. Commissioner Gentry said this is clearly something they should not be doing or have the authority to do especially in the back room. He believes this should be discussed in public. He asked the county attorney again if they felt this was an appropriate item for action under the premises of the Open Meetings Act.

Chairman Rael objected under attorney/client assertive on behalf of the county that you not answer the question and that they discussed the question on whether or not it's appropriate or not in closed session, we will ask you the question there and based upon your advice we will decide whether or not we will go on to do mediation or not. This has been on the agenda for the required period of time.

Commissioner Gentry said the attorneys work for all of them and asked for their opinion in public; is this is an appropriate item to have before them in a closed session?

County Attorney Nance said if it is a question regarding mediation or if we can help, then yes, it is appropriate. The board has a contract counsel that knows this matter and he does not know if they can add anything to it, and, they do not have knowledge of this case. Mr. Nance said if the questions are, for example, how the Court Appeal processes goes, then possibly yes.

Commissioner Gentry said it looks like when they come out of Executive Session they are going to vote on something to mediate something even without our counsel here. If all we're going to ask is how the Appellant process works then this would be appropriate. But if the Board is going to go to Executive Session to cut a deal to divert the hospital funding or postpone the Appellant Court hearing on the 15<sup>th</sup> to dodge the reality of finally getting to the end of this trail then he doesn't believe it's something that the county attorneys can get on it because they are not the counsel of record on that particular litigation.

Commissioner Kirkhams was concerned that if this item is placed on the agenda next week and counsel of record of that litigation is present, could the board then go into Executive Session and advice us and as long as counsel of record is there, we can discuss it. County Attorney Nance said the matter could be discussed in Executive Session with the counsel of record.

Chairman Rael then said if contract counsel fails to appear and continues failing to appear then this commission can do nothing. He disagrees and believes the rule was misinterpreted. Generally they should be present and it is a good idea but he doesn't think it says that they shall be present or it's a violation of the Open Meetings Act. This is not what the rule says. If there is a determination based upon the County Attorney's

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advice and if there is a problem after you hear what the questions are in which they seek advice, then they can come back and do it in the open and they have fixed the problem in one meeting and is an immediate cure with no violation. County Attorney Dave Pato said this correct.

Chairman Rael proposed to leave it as it was and discuss it with them in closed session and if they make a determination that they're running into a problem then they won't do it, and if they do, they come out in the open and re-discuss it so that the public gets to officiate in public notice under the Open Meetings Act.

Commissioner Gentry said since none of them knew what this was about and when they come out of Executive Session, they could not tell what deal was cut because it was client/attorney privilege and their attorney wasn't even here. He said it was an improper use of executive session and believes it is to divert the briefings having to be filed on the 15<sup>th</sup> of the month. He felt that this could be postponed to the next business meeting, put on the agenda and talk to counsel of record who has represented them and whom they have been paid almost \$30,000, advise them on what they should do.

Commissioner Kirkham made a motion to approve the agenda. Seconded by Commissioner Holliday. Motion carried 3-2. Commissioner Gentry voted no. Commissioner Medina voted no.

#### **4. Approval of Minutes – December 10, 2008 Public Hearing Meeting**

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

#### **5. Introductions of Present Commissioners**

Chairman Rael requested that each Commissioner introduce themselves.

Commissioner Medina said he represents District III which includes Belen, Jarales, Pueblitos and part of Bosque. This is his third year.

Commissioner Ron Gentry said this is his fifth year representing District IV which consists of the southern part of Valencia County, Rio Communities, Adelino, a small portion of Tome, Las Maravillas, Tierra Grande and part of Belen (Downtown), portion of Bosque and Los Trujillo's. He said it is a pleasure to be here for another term and pledges to his constituents and the public that this term will be open and forth right and above board on his dealing as a commissioner.

Chairman Pete Rael is the Commissioner of District 1 which covers the northern edge of Los Lunas including the southern part of the Isleta reservation on the west side of the River and down to Peyton which he and Commissioner Medina have a common boundary that goes West to Highland Meadows. He has been on the Commission for two years and enjoys this work enormously. This is similar to his work as a trial attorney.

Commissioner Georgia Otero Kirkham is the Commissioner for District II which is from Tome to the Peralta Grade School and up to Placitas del Cerro, and the University over to the River. This is her second term and enjoys being the commission of that district and promises to work for the county and without a personal agenda.

This is Commissioner Donald Holliday's first year as a Commissioner representing District V. This includes part of Bosque Farms, Peralta, Meadow Lake and part of El Cerro, Lake View Acres. His first year will be quite an experience and he will try to do the right thing and be open to the fairness of the people. He owns his own business known as Holliday Fencing and he introduced Ellen Holliday, his wife of twenty-five years. Both look forward to serving the people in Valencia County.

#### **6. Commissioner Communication/ Questions**

Chairman Rael said this commission, with the difference of one commissioner, managed one thing, which is very important, they've experienced interesting issues, discussion and disagreements and agreements the last couple of years. Despite all this this commission has managed (in a time of a weak economy - nation wide), to maintain expenditures within budget amounts. This commission will be able to maintain within the budget without alarming any employees of cutting hours or termination. Chairman Rael complemented his fellow commissioners for sticking to this critical issue and keeping this institution financially solid.

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Commissioner Kirkham said the board should be proud of the fact that they built two new fire stations, a new district courthouse, paved many miles of road, hired salary fire personnel, increased the sheriff's budget and added more deputies. We still have lots to do and even though the board has not agreed on everything, 85% percent of time we have voted unanimously. The commission does have the counties' true interest and best interest at heart.

Commissioner Medina gave credit to the county staff and the county manager.

Commissioner Holliday said he would like to see this commission try to recruit more businesses to the county to provide jobs and increase tax revenues. Commissioner Holliday said our children would not have to leave Valencia County as long as there are well paying jobs.

Commissioner Gentry said he wanted everybody to just hang on and watch, this year.

**7. Action Items**

**a) Resolution 2009-01, Chairperson & Vice-Chairperson**

Commissioner Kirkham nominated Pete Rael for Chair. Seconded by Commissioner Holliday. Discussion. Commissioner Medina said this commission has worked well and there was a time when he believed they needed change but he is willing to work with the commission and for the county. The chairmanship should have changed but he will be voting yes in respect to the Chair and the rest of the Commissioners. Motion carries 4-1. Commissioner Gentry voted no. (See Exhibit A)

Chairman Rael nominated Don Holliday as Vice-Chairperson. Seconded by Commissioner Kirkham. Both Commissioner Medina and Commissioner Gentry in respect for Commissioner Holliday voted yes. Motion carried unanimously. County Clerk Sally Perea announced Resolution 2009-01.

**b) Resolution 2009-02, Open Meetings Act**

Commissioner Holliday moved for approval. Seconded by Commissioner Kirkham. Motion carried unanimously. (See Exhibit B)  
County Clerk Sally Perea announced Resolution 2009-02.

**c) Resolution 2009-03, Parliamentary Procedures and Robert's Rules of Order**

Commissioner Gentry moved for approval. Seconded by Commissioner Kirkham. Motion carried unanimously. (See Exhibit C)  
County Clerk Sally Perea announced Resolution 2009-03.

**d) Resolution 2009-04, Inspection of Public Records Act**

Commissioner Kirkham moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously. (See Exhibit D)  
County Clerk Sally Perea announced Resolution 2009-04.

**e) Resolution 2009-05, Establish Holidays & Work Hours**

Commissioner Medina moved for approval. Seconded by Commissioner Kirkham. Motion carried unanimously. (See Exhibit E)  
County Clerk Sally Perea announced Resolution 2009-05.

**f) Resolution 2009-\_\_, Signature Authority on Checks**

Commissioner Medina moved to leave it like it is and not adopt the Resolution. Seconded by Commissioner Gentry. Motion carried unanimously.

**g) Resolution 2009-06, Establish Depositories**

Commissioner Kirkham moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously. (See Exhibit F)  
County Clerk Sally Perea announced Resolution 2009-06.

**h) Appointments Boards, Commissions & Committees (See Exhibit G)**

**Planning & Zoning Commission** - Chairman Rael appointed Mike Peters for District 1. Commissioner Kirkham will retain Steven Otero for District II. Commissioner Medina appointed Porfinio G. Silva for District III. Commissioner Gentry will retain Sally Benavidez for District IV. Commissioner Holliday will retain Jim Lane for District V. Commissioner Gentry moved for approval. Second by Commissioner Holliday. Motion carried unanimously.

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**Indigent Board** – Commissioner Holliday moved for approval. Seconded by Commissioner Kirkham. Motion carried unanimously.

**Emergency Medical Services Board** – Commissioner Gentry moved for approval. Seconded by Commissioner Medina. Motion carried unanimously.

**Regional Dispatch Board** – County Manager Eric Zamora appointed Fire Chief Charles Eaton as his designee. Commissioner Medina moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

**County Board of Registration** – Commissioner Medina moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

**Employee Unclassified Positions** – Appointed Business Manager Kenny Griego. Commissioner Medina moved for approval. Seconded by Commissioner Gentry. Motion carried unanimously.

**Fire Chiefs** Appointed Rio Grande Estates Fire Chief Jason Gonzales and Peralta Fire Department deleted due to Peralta being incorporated. Commissioner Gentry moved for approval. Seconded by Commissioner Medina. Motion carried unanimously.

**Mid-Region Council of Governments** – Commissioner Medina moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

**Executive Board** – Commissioner Medina moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

**Water Resources Board** – Appointed Donald E. Holliday as alternate. Commissioner Gentry moved for approval. Seconded by Commissioner Medina. Motion carried unanimously.

**Regional Planning Authority (RPO)** – Commissioner Gentry moved for approval. Seconded by Commissioner Medina. Motion carried unanimously.

**VC Transportation Steering Committee** – Commissioner Gentry moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

**Regional Transit District Board** – Commissioner Gentry moved for approval. Seconded by Commissioner Kirkham. Motion carried unanimously.

**Workforce Investment Board** – Commissioner Medina moved for approval. Seconded by Commissioner Gentry. Motion carried unanimously.

**Mid-West CAP Board** – Commissioner Holliday moved for approval. Seconded by Commissioner Kirkham. Motion carried unanimously.

#### **New Mexico Association of Counties**

a) **Board of Directors** – County Clerk Sally Perea announced that a Board of Directors Elections will be held January 12, 2009. Elected Officials who are interested must let her know by January 8, 2009. This position was held by the outgoing commissioner Lynette Pinkston.

b) **Multi-Line /Risk Management Board** – Business Manager Kenny Griego was appointed as representative and Barbra Baker as the alternate. Commissioner Gentry moved for approval. Seconded by Commissioner Medina. Motion carried unanimously.

c) **ML/RMB** – Commissioner Medina moved for approval. Seconded by Commissioner Gentry. Motion carried unanimously.

d) **Worker's Compensation Board** – Business Manager Kenny Griego was appointed as a member and Jacquelyn Chavira as alternate. Commissioner Medina moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

e) **Animal Control Advisory Board** – Chairman Rael appointed Howard McKinstry for District I. Commissioner Kirkham appointed Mark Rosenblum for District II. Commissioner Medina retained Gail Goodman for District III. Commissioner Gentry appointed Jim Shaw for District IV. Commissioner Holliday appointed Fred Moore for District V.

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Commissioner Medina moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

**Older American Advisory Council** – Commissioner Gentry moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

**Hospital Board** – Commissioner Gentry appointed Mike Wood. Commissioner Kirkham moved for approval. Seconded by Commissioner Gentry. Motion carried unanimously.

**Tierra Bonita of Valencia County** –Repealed.

**Judicial Complex Committee** - Commissioner Gentry moved to abandon the Judicial Complex Committee. Seconded by Commissioner Kirkham. Motion carried unanimously.

**Accident Review Committee** – Commissioner Kirkham moved for approval. Seconded by Commissioner Gentry. Motion carried unanimously.

**i) Approval of County Organization Chart**

Commissioner Medina moved for approval with the County Managers changes subject to presenting the final chart, at a later date. Seconded by Commissioner Gentry. Motion carried unanimously.

**j) Initiatives Discussion for 2009**

None.

**k) Other Organizational Issues/ Discussions**

None.

**L) Board of County Commissioners convenes as Board of Finance**

Commissioner Medina moved to convene as Board of Finance. Seconded by Commissioner Gentry. Motion carried unanimously.

**I) CD deposits 2.1 million dollars (an added item) declared as an emergency.**

Treasurer Dorothy Lovato gave a brief description of the treasurers duties when dealing with CD's. Local banks are called on a weekly basis to verify interest rates. Ms. Lovato said interest rates can change from day to day and at this point in time interest rates are very low and recommended that the CD's be placed with "My Bank" which has the best interest rate, of 2.20 percent, as quickly as possible.

Commissioner Medina asked what the 2.1 million dollars in CD's is for. Treasurer Lovato said there are three CD's of five hundred thousand dollars each and are for General County Fund. The CD of three hundred thousand dollars is for Indigent fund.

Commissioner Kirkham made a motion to deposit at "My Bank" at the highest interest rate and at the recommendation of the Treasurer Dorothy Lovato. Seconded by Commissioner Holliday. Motion carried unanimously.

Commissioner Medina moved to re-convene as Board of Commissioners. Seconded by Commissioner Gentry. Motion carried unanimously.

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

Director of Meadow Lake Association Rosemary Lebrecht requested assistance from Valencia County for cleaning Meadow Lake. Ms. Lebrecht shared her concerns of having over flowing dumpsters in Meadow Lake and security lights have not been installed at the Meadow Lake Community Center and she questioned the status of it.

Commissioner Holliday said his suggestion is to organize with local trash haulers and set a day for trash dumpsters. County Manager Eric Zamora said staff met with PNM on the security lights and the process will begin, to place the security lights.

Mr. Bill Lebrecht a resident of Meadow Lake requested tougher penalties for trash haulers who do not cover their trash when traveling to Conejo Transfer Station, and suggested putting up signs that implement that. County Manager Eric Zamora said the county passed a "Solid Waste Management Ordinance" and upon request of the residents, a paragraph was added that included a "requirement of covering trash". The ordinance was placed on hold until a fee structure was placed. Mr. Zamora invited Mr. Lebrecht to meet with him to discuss the matter.



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Mike Wood read a prepared statement that said an approval for a hospital was passed a year ago by 80% of the voters. A lawsuit represented by James Sanchez was filed. The nine plaintiffs of the lawsuit were all represented at no cost to them. This was done with total disregard as to what the 80% of the voters had passed. The lawsuit was lost, the appeal was filed and as of today the appeal was lost. To redirect taxpayer levy monies which were voted to be used for new hospital could possibly be considered illegal and result in criminal abuse and dishonest representation for one or more of the commissioners. At this point, Chairman Rael stated to Mr. Wood's that his two minutes were up. Mr. Wood continued to state, what does it matter if the commission is obligated to serve the law, it does, he said. That is why the commission was elected to be put on these jobs and accept judicial responsibilities. Mr. Wood's stated he wrote this not in bitterness and he respects each of the Commissioners but wants to know what is going on with tax payers money. He received a letter recently from the Assistant Attorney General Zackary Shandler that indicated that she (he) will be in support of working with him and advised him that the Civil Division of New Mexico Attorney Generals Office phone number 827-6000 and should be the one that's contacted with situations such as this where there is suspicion going on.

Chairman Rael allowed Mr. Wood to go on passed the two minutes because he knows that Mr. Wood has a deal of concerns about this issue but over the past two years of Chairman Rael's service, Mr. Wood has accused him publicly and falsely, and he did it here again today, of making some kind of deal or engaged in something that was improper. He has specifically accused numerous times of having made deals with Presbyterian Hospital, Chairman Rael said. He has publicly and falsely accused him with having some illegal relationship with his former partner and friend James Sanchez. Chairman Rael stated to Mr. Wood that he has accused him and at least two other Commissioners in the past of shady dealings, at this point Mr. Wood starts to leave the meeting and Chairman Rael states to Mr. Wood that he would like for him to listen. Chairman Rael states, let the record show that Mr. Wood has left. He will not continue his statement because it will do no good but disagree with the statements and the disruptions of these meetings of such talk and false accusations without any semblance of truth whatsoever. Chairman Rael vehemently denies that and as Chairman he will not tolerate any such behavior on the part of any member of the public. This is not something that belongs in a democratic society and he will put an end to this one way or another because it is not appropriate.

Chairman Rael said he has invited Mr. Wood on numerous occasions to discuss all his ills regarding the hospital issues and he has not done it. Mr. Wood did appear at his office with another person and demanded to see him after he and Commissioner Gentry had had a disagreement on the hospital issue. Chairman Rael said Commissioner Gentry and he disagree but that does not permit someone to barge into his office and demand to see him. This is totally inappropriate and as Commissioner he will not tolerate strong man tactics, intimidation or bullying tactics to prevent me or any fellow Commissioners from representing their constituents to the best of their ability. This is what we are here to do and we may disagree and we will, very appropriate in a democratic society. To protect the rights of the constituents he will do whatever the law allows him to stop this commentary and false accusations.

Torrez Leyba a resident of Meadow Lake read "A Call to Greatness", He urged citizens to become more involved with their community.

Bob Gostisha was of a firm belief that the only way they were going to get rid of trash was to have mandatory pick-up and if people couldn't afford it, someone would pick up the slack or help pay for it. On another subject he said the people had voted for a hospital, he was not here to accuse, chastise or ridicule anyone, but a hospital was voted for and if they can't have a hospital he would like his money, and he wanted it back with interest.

Jim Lane a resident of Meadow Lake said he is tired of picking up other people's trash. Code Enforcement people Johnnie Mirabal and Hoss Foster are supposed to be spending forty hours a week up there. Neighbors have open trash, dogs are getting into it, and it's blowing into people's yard, how can two people drive by it week after week. On another issue he had called on a little puppy that had been dropped off and after several days of calling and no one showing up, and for the forth time last year, a neighbor who has 18 dogs, they had to listen to a dog being killed. Animal Control seems to think this isn't their responsibility, to put an end to that. If you've listened to a dog been torn up by other dogs for 45 minutes, it's not a good way to start the year.

## 9. Action Item(s) Business Meeting

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**a) Accept Findings of Fact & Conclusions of Law for Decisions**

**i) Amend the Zoning Map from C-1 to C-2 to allow for the operation of a retail commercial center for the following; portable storage buildings, landscaping/building materials, RV storage facility, computer service shop & weekend flea market; T7N, R4E, Section 29, NMPM; Meadow Lake Subdivision, Unit 3, Tracts 8,9,10 & 11; consisting of 1.7 acres; Zoned C-1; also known as 741 Meadow Lake Rd. , Los Lunas, Valencia County, NMI JKL Enterprises, Inc. David Seville-Agent –County Commission**

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

**b) Approval of Holy Trinity vs. Valencia County Settlement Agreement – County Commission**

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

**c) Financial Matters**

**i) Resolution 2009-07, "Increase of Expenditures" – Wilma Abril**

Commissioner Kirkham moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously. (See Exhibit H)

County Clerk Sally Perea announced Resolution 2009-07.

**ii) Consideration of Approval; Payroll/ Warrants – Wilma Abril**

Ms. Abril presented the computer printout list of all checks issued by the Manager's Office on January 02, 2009 covering vendor bills processed. Check #97404 thru check #97559 inclusive for the total of \$ 442,793.47. Commissioner Kirkham moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously. (See Exhibit I)

Ms. Abril presented the computer printout list of all checks issued by the Manager's Office on January 02, 2009 covering payroll process. Direct Deposit Check #9186 thru direct deposit check #9356 inclusive. Deduction Check #97427 thru deduction check #97467 inclusive. Payroll Check #83793 thru payroll check #83884 inclusive. Listing total \$368,706.47. Commissioner Kirkham moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously. (See Exhibit J)

Ms. Abril presented the computer printout list of all checks issued by the Manager's Office on December 19, 2009 covering payroll process. Direct Deposit Check #9015 thru direct deposit check # 9185 inclusive. Deduction Check #97368 thru deduction check #97403 inclusive. Payroll Check #83698 thru payroll check #83792 inclusive. Listing total \$363,627.42. Commissioner Kirkham moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously. (See Exhibit K)

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

Commissioner Kirkham moved to go into Executive Session. Seconded by Commissioner Holliday. Roll call vote. Commissioner Kirkham voted yes. Commissioner Holliday voted yes. Chairman Rael voted yes. Commissioner Gentry voted no. Commissioner Medina voted no.

Commissioner Medina was concerned that they might be violating the Open Meetings Act and if he attends this will be part of the violation if one is found. Attorney said yes. Then it is my right that I do not have to attend executive session, Commissioner Medina asked. It is your right not to attend, Attorney said.

Chairman Rael stated, for the record, that three Commissioners had attended Executive Session along with County Attorneys Dave Pato, Adren Nance and County Manager Eric Zamora.

Commissioner Kirkham moved to go back into Regular Session. Seconded by Commissioner Holliday. Motion carried unanimously.

County Attorney Adren Nance reported the matters that were discussed in Executive Session: Possible mediation of the Appeal before the Court of Appeals. The question was whether or not the public body (the County Commissioners) has the right to direct



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contract counsel to go into mediation. Our answer was yes, County Commissioners have the right to do that and no final action was taken.

Chairman Rael asked in open session does this body politic have the right to suspend the appeal regarding the hospital issue to mediation. County Attorney Adren Nance said you have the right to tell the contract counsel what the client wants.

Commissioner Kirkham moved for approval of the summary. Seconded by Commissioner Holliday. Roll call vote. Commissioner Kirkham voted yes. Commissioner Holliday voted yes. Chairman Rael voted yes. Motion carried unanimously.

#### 11. Action Item(s)

##### a) Consideration of Hospital Mediation of Appeal through Court of Appeals

Commissioner Kirkham moved for approval with addition to instruct County Attorney's to suspend appellant procedure for the meantime. Seconded by Commissioner Holliday.

Discussion. County Attorney Adren Nance informed the board since the county is in conjuncture in the Court of Appeal and if it is to instruct contract counsel to suspend, they make sure this does not impact on where there're at on the appeal.

Commissioner Kirkham said that would be her motion that if mediation does not work then we can go back to where we were.

Commissioner Medina asked counsel that if mediation does not work will we have to go back to the appeals court and ask for a new hearing which could take another year, or six months? County Attorney Dave Pato it would delay however long the mediation takes.

Commissioner Medina said so we are just buying time, that is my understanding. We are asking the Court of Appeals to suspend and not hear it. If this deal does not work out and then we go tell the public, okay public, we had a mediation and it did not work so we are going back to the Appeals Court but I am going to collect your taxes for the next six or seven months and try to get another hearing.

Commissioner Kirkham said we can also come back and tell the public we went to appeal and we lost. We have to go the Supreme Court and we have to appeal again. Is that correct counsel.

Chairman Rael said we can also tell the public the mater is resolved because we reached settlement agreement. This is the point of the whole thing. It is standard operation procedure in mediation, to try to reach a friendly resolution.

Commissioner Medina said this is now in front of the Court of Appeal, let them decide and tell us yes or no.

Commissioner Kirkham said if they say no. Commissioner Medina said if they say no, you cannot do it, and then we will not build a hospital. Commissioner Kirkham said there is a possibility we can resolve it ourselves and come to conclusion and build a hospital.

Commissioner Medina said he understands every commissioner has their view and he respects that, but to be so close to find out yes or no and then a road block is thrown again. He asked why this was not done two or three months ago, why now when we are so close. Commissioner Kirkham said her concern is she does not know what the Court of Appeals decision will be. If we all approach the other party and say that we all want to build a hospital, how can we resolve this issue and build this hospital. Whatever the Court of Appeals says are we sure there will be no other appeals. We are not sure.

Commissioner Medina said as sitting Commissioners we are not sure what we're going to do. Commissioner Kirkham said if we can come to some kind of resolution with the other party that we can move forward and actually build this hospital. Once the Court of Appeals grants that decision and whoever is not the winning side files another appeal what happens then. Commissioner Medina thought that two, three weeks ago we'd hear from the Appeals Court and said this has always been his intentions, that he would do what the court rules.

Chairman Rael interjected because we are not two or three weeks from getting a decision from the Court of Appeals. This is incorrect and untrue. With all due respect

Commissioner Medina, I do not know where that information came from. There is a briefing schedule where the first brief, which means written arguments, is due on 15<sup>th</sup> of this month. Forty-five days after that the response briefs are due from our side of the equation. Twenty days after that, replied briefs are due. And then, because we are on the general calendar set for oral argument, because we are on the calendar getting the full treatment, that will happen months after that, not right away. After the oral arguments, our attorneys or the other side attorneys will argue the case live before the Court of Appeals. After that the Court of Appeals will submit it for themselves for decision and they can take as long as they want which is many, many months to give us a decision. We are not about to get an answer, with all do respect, we are nowhere near of getting an answer. We are not even within one year of getting an answer from the Court of Appeals. This does not include the time that would be included if one side or the other does not like the resolution and I suspect if we do not settle and either side does not like the resolution then

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there is another time limit where you can take it to the Supreme Court of the State of New Mexico. This can take another two years if they accept the appeal. Questions of this sort, they are inclined to listen because it's a question of substantial public interest. Chairman Rael asked County Attorneys if he is correct in what he has stated on the times of the decision after the briefing. Attorney Dave Pato he was correct. Commissioner Medina apologized but those are his feelings.

Commissioner Gentry said he was not a lawyer or a banker but I have kept up with it. As of the 30<sup>th</sup> of this month we have asked the court where we're at. The response was this was sent to mediation on September 15, 2008 and return to court on October 17, 2008. Then it was put on the general calendar. This was thing to do, to get on the general calendar. Once it went on the general calendar the clocks starts ticking and the pro bono plaintiff attorney then has to go to work, which is the Mr. Sanchez that you have heard about. We are at the point now where the biggest process is filing the brief and telling your story to the court whether you are right or wrong. If we delay it now then that pro bono attorney doesn't have to do any work. If we wait a week then he has to file the filings with the courts to tell him why he thinks that the judge was wrong, not why we are wrong, why the judge was wrong in ruling that the county was acting properly. This is not, in my opinion, Mr. Chairman, an appeal on the merits of the hospital where it is going to be built and how much we are going to give to Presbyterian or whether we are going to do a deal in Belen. This is not what the Court of Appeal or the Plaintiffs' have filed on. My understanding of what they filed on was saying that they believe the judge erred in saying that Valencia County had acted properly in its going forward and issuing a contract to go into development of a hospital to utilize the operational money which we are currently collecting. That was brought up in about three cases; the Judge ruled that we were acting appropriately. This appeal is saying we think the Judge ruled in error. This appeal isn't to mediate whether we build a hospital or who manages the hospital. This is not the nuts and bolts of this appeal and this is not going to be in the briefs. Presbyterian has given us in their mediation, they want fifty percent of the money in Los Lunas and thirty percent in Belen and all of the different things that Mr. Sanchez has listed to us. When we went into mediation before and we said that is not what the people wanted, the issue is, is this money and the county being handled properly in going into a contract. He believes that we raise a couple things and number one I still believe this action is inappropriately being considered and manipulated in a close session. I intend to ask the Attorney General for an opinion and go through facts and the background of why we got here.

But the real nuts and bolts is, lets panic now and not make the plaintiffs file their briefs on the 15<sup>th</sup> of this month – next week. Then it is out of their hands and the courts start listening to it and the facts are all laid out, not the maneuvering that we do here. The other thing I believe is that we are not taking into consideration that this commission, with it's proper authority, according to the courts and according the judge said we can legally and properly enter into a contract with the Valencia County Health Commons of 501C-3 non-profit group to develop the plan, the financing and the building of a hospital. We voted on a 4-1 vote on a dulling, constituted meeting and that is a legal contract for thirty-six months that they will produce. There is a stipulation that they understood the appeal was there, against the judges ruling, if the court's ruled that the judge acted properly. The judge has already ruled that we acted properly and we have gone into a contract with the Health Commons Board and given them a signed contract for the next 36 month to produce. So we have a group out there working and doing their job. That is where we are at right now and I believe that what we're doing or this action that you may take is going to undermine and circumvent a valid contract that this commission has gone into with Health Commons to develop a hospital.

Our mediation wasn't privilege to what you want to do but the last mediation was basically to turn it over to Presbyterian and divide the money up for urgent care facility and all. I believe that's, number one, illegal to do, either it goes to a hospital or 24 hour emergency care facility in Valencia County not to an Albuquerque hospital, or should go back to the tax payers as they asked for with interest and in a quick manner before we stall this for another two or three years and collect another 3 million dollars, which we have in the bank now.

With these times I say go ahead and move on to the court and get a decision, live with the decision or give their money back. We are not and I do not know what your direction is that you are going to give our contract attorney. He has been here, I have his notes of what he has told us, he has been there, he went there, and he talked to them. They wanted a deal to take it and do something else with it. We as a commission said no, now that the votes have changed to be perfectly candid, now we're back to trying to make that deal again. I think that as Commissioner Medina mentioned we are only about eight days

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from now locking into step the closure of this. So if we go now and intervene are we going to be asking the courts to tell us to build it in Los Lunas, or in Beien or tell us to build an urgent care center? The courts are not going to do that because the legal issue is whether we are acting properly under the judge's order. It's not the nuts and bolts of constructing a hospital, so very eloquently, we are being sifted over to think we are going to mediate the nuts and bolts of building a hospital. This is not our job and why we got out of it.

Commissioner Gentry asked counsel if we go to this mediation, as Commissioner Kirkham stated, we are not going to stall this for three weeks until mediation is over and the court says okay now we will set the date for you. Correct me if I am wrong, but we will go to the back of the calendar because their calendar is going to move on. They are not going to reserve a block of time for us, I would believe.

Attorney Dave Pato that is my understanding of how it works. Commissioner Gentry said okay so we just take this time out and we're going to mediate about where we build it, what size it is, whether it's an urgent care, an emergency center or are we going to mediate on whether Judge Olguin ruled wrong or she ruled right and that is what the appeal is about unless I am wrong. County Attorney Dave Pato said what we are meditating is anything that is needed to potentially reach a favorable resolution for both parties. Commissioner Gentry asked if the Health Commons Board will be invited to intervene because they have standing in this and also we have a signed contract to do business with and we are under minding their ability to execute that contract. County Attorney Dave Pato said they could be invited if it helps the resolution and the goal of mediation is to reach a resolution.

Commissioner Gentry said his question was that they were over here, we've passed the issue, of course we've changed the votes tonight, 3-2, it was 4-1, now are we going to take those contracts, those valid contracts that we signed and under mine them without any liability or responsibility. Not even addressing what we owe the people, the honesty and forth rightness we owe public. 79 % percent of them voted for it. Now we are in there, typical old politics, we are maneuver the money and they say follow the money. Now that the money is there, three million, sitting in the bank and we do not know how much more we are going to collect. We are only one week to starting the final steps to do it. I do not understand what authority we have to mediate and barging away in a private meeting, out of the public with anybody, the public's money and public's trust. That is all I have to say on it and I have the documents and I have the Presbyterian's, I've heard Mr. Rael comments. I have a docket this thick of all the things, the dates, the times, coincidences and everything that has happen in this issue. All this will be brought to light but I don't know if we're not getting our round of good public servants and cutting a deal or trying to cut a deal. This is my personal opinion and I am not putting any accusations on anybody but I say this whole thing does not fit good government responsibility. I have trouble telling my constituents I know what you voted for, the district courts agreed the county acted properly, we have the contracts in place to do it and now we are going to wheel and deal it away because somebody has to file a brief in one week if we don't take this action tonight. What's wrong with waiting two weeks if this mediation is going to work?

Commissioner Kirkham said she has not changed her vote and her vote has always been to try to resolve this issue. I firmly believe and have learned in the process that tying up a hospital in a lawsuit, and in appeal again and again is moving the hospital forward. She has been in court and sat and waited for a decision up to eight months and up to ten months and year and I think that we as citizens of Valencia County can take this in our hands, bring all the parties that need to come to the table and resolve the issue and move forward. Taking this into another lawsuit or another appeal, I do not understand. I am certainly not a lawyer, and this brief that has to happen on the 15<sup>th</sup> of this month, that is not a decision the court is going to give us that day. This is a process that needs to be done. I cannot tell my constituents yet again, that we are still in court, but, I want to tell my constituents we have a plan, before they have to pay their taxes in November again in 2009 and not that it's still stuck in court. That is the only reason and I have not changed my mind, I voted for the contract because I think we can settle this. We do not need to have a board tell us, we should be able to pass this as the governing body in Valencia County and the people of Valencia County to settle this and move forward. She did not understand why it had to be tied up in court.

Commissioner Gentry said to explain to him what they were going to do with the binding or valid contract that they have with the group of health professionals that are working on developing the funding for it, the operations for it and all of the research, are we just forgetting that contract and now we are going to do our thing.

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Commissioner Kirkham thinks they can come to the table. Commissioner Gentry said are you, because he was not a part of this maneuver, saying that you will insure that Health Commons group can intervene with us? Commissioner Kirkham said they have a right to speak up. Commissioner Gentry asked do they have a right to intervene. County Attorney Dave Pato said if Health Commons is not part of the appeal they do not have a right to intervene. Commissioner Gentry said so they are really not going to be cut into it, they are going to be cut out of it.

Commissioner Kirkham said I have not cut any deals with any one, Mr. Gentry, I have no personal agenda and I resent that. Commissioner Gentry said he understands where the votes are, so let's go ahead and you guys do it.

Chairman Rael wanted to correct a few things that Commissioner Gentry had said and mentioned that his legal background was pretty good and had done well, except for a couple things that are very important and very serious. Commissioner Gentry asked that he just take his presentation and do not critic it. Chairman Rael said he is a public servant just like you are. Chairman Rael said a filing of a brief does not lock anything in and does not preclude settlements in any stage of the proceedings. The briefing does not do anything. Whether the contract with Valencia Health Commons that was entered into with full knowledge of litigation, that is the issue, Commissioner Gentry, that is exactly what has been decided by the courts and I think entering into a contract pending litigation is not engaging into good government.

I think good government would be not to enter into a contract regarding the subject matter of an appeal with a third party that is not involve in the lawsuit, that is not good government, that is the issue that is on appeal. What I think we need to is open the door so we can move this matter forward if we can, if we can't we have taken our best shot as a county commission and I do not think we need the courts to tell us what to do. We are not going to tell the courts what to do. Settlements can include anything that the parties wish to include in a settlement, they can stay within the specific issues of the lawsuit, or include those and expand them as necessary depending what people want to do in order to put other consideration to settle the lawsuit. There are no specific parameters that you can define because there are two parties that are adverse to each other or three or four. They are the ones who define the parameters of the settlement. But there is nothing that locks them because you filed a piece a paper. The parties control the litigation, not the lawyers, the county commission is one of the parties and those other folks on the other side are the other party and If Valencia Health Commons wants to come in and participate they have no standing to do at this point but they certainly are welcomed to participate in any settlement negotiations and discussions.

Commissioner Gentry respectfully disagreed with Chairman Raels eloquent way of twisting it and said you've got the votes so just do it.

Chairman Rael said there is a motion pending to proceed with mediation of Appeal through the Court of Appeals mean while suspending the litigation or at least requesting the litigation be suspended which is exactly described by counsel, that if there is a brief in two weeks and this does not work then the day they are notified the brief will still be two weeks from that point forward. There is a motion made and seconded. Chair called for the vote.

Commissioner Kirkham voted yes. Commissioner Holliday voted yes. Chairman Rael voted yes. Commissioner Gentry voted no. Commissioner Medina voted no. Motion carried 3-2.

Chairman Rael asked attorneys to instruct the contract attorney to do as this commission has directed to request that the other side suspend the mediation and that we wish to enter into a mediation discussion during the suspension of the litigation. That they suspend the litigation and we enter into mediation during that period of time with the other side to see if we can come to a resolution with no perimeters' set. We will just see what happens as we enter into settlement discussion and mediation discussion to the best of our ability. That concludes that matter.

**12. County Manager Report (Information Only)**

None.

**13. The next Regular Meeting of the Valencia County Board of County Commission will be held on January 14, 2009 at 5:00 PM in the County Commission Room at the Valencia County Courthouse.**

**14. Adjournment**

Commissioner Kirkham moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously. Time 8:15:38 P.M.


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**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the January 07, 2009 Organization/ Regular Business Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

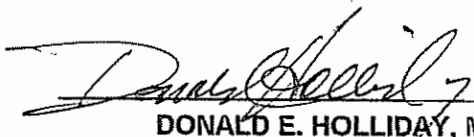
VALENCIA COUNTY BOARD OF COMMISSIONERS

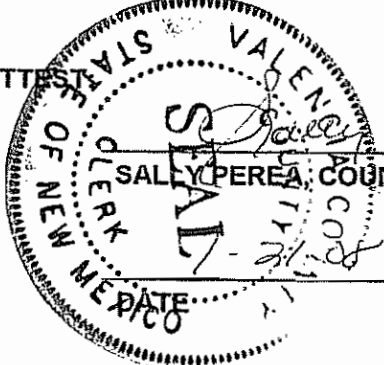
  
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PEDRO G RAEI, CHAIRMAN

  
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GEORGIA OTERO-KIRKHAM,  
VICE-CHAIRMAN

  
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DAVID R MEDINA, MEMBER

  
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RON GENTRY, MEMBER

  
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DONALD E. HOLLIDAY, MEMBER

ATTEST  
  
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SALLY PEREA, COUNTY CLERK