

# VALENCIA COUNTY BOARD OF COMMISSIONERS

## Public Hearing Meeting

July 8, 2009

PRESENT	ABSENT
Pedro G Rael, Chairman	
Donald E. Holliday, Vice-Chairman	
David R Medina, Member	
Ron Gentry, Member	
Georgia Otero-Kirkham, 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 Pedro Rael at 5:00 P.M.

2. Chairman Rael led the Pledge of Allegiance

3. Approval of Agenda

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

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

Louis Lucero a retired veteran who resides at 20 Orona shared his concerns of loss of life and property on Orona Road due to reckless drivers and requested speed humps.

Dick Klapper lives in an incorporated area of the county and suggested that everyone make their home address visible for the 911 emergency.

Valencia County resident and member of the Valencia County Action Committee Mary Wood, said the hospital will not be a county hospital but a hospital for Valencia County and read "quotes of the commissioners" regarding the hospital issue.

Sue Moran a Valencia taxpayer spoke in favor of the hospital and that the hospital can provide jobs and will increase the gross receipt tax.

Bob Gostischa resident of Meadow Lake said the code enforcement is non-existent, with issues going back a year with no results and suggested increasing revenues to enforce the codes, impose and collect fines and spend them wisely.

Mike Wood member of the Hospital Advisory Board reported been notified by the Attorney General Office that the hospital incident is still under investigation.

Dee Miramontes resident of Meadow Lake stated she received over twenty-three hundred signatures that state that they're not affiliated or associated with the Meadow Lake Association and do not agree or approve with what they say or do.

5. Discussion (Non-Action) Items

None.

6. Swearing in of Participants

County Clerk Sally Perea administered the oath to those wishing to speak at tonight's meeting.

7. Public Hearing Items:

- a) Consideration of Appeal of Permit Application for Roadrunner Metal Recycling for Type B Site Design Review of the proposed Full-Service Metal Recycling Plant located in the Rio Grande Industrial Park, which is zoned I-3 Legal descriptions' T4N, R2E, Section 4, NMPM; Tract 4-E-1-A-1, Lands of Rio Grande Industrial Park, LTD, Co; - Alice Torwirt/Joseph E. Rizzo

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Attorney Laurence Guggino representing the Roadrunner Metal Recycling said he knows this is quasi-traditional hearing and he understands and appreciates that Mr. Rizzo is calling in, but he would like to reiterate the objections that he had made at last week's meeting on the concerns, of any conflicts or any bias on a member and he would renew the objection again. The request again was that anybody with a conflict or bias be disqualified or recuse themselves during this hearing. Mr. Guggino asked what kind of hearing this is going to be. Because the ordinance provides that, unless this commission states otherwise this is not a de novo hearing; this is a record hearing on the Planning and Zoning Commission's hearing and so what kind of hearing are they going to have?

Chairman Rael deferred it to the attorneys present, but in all fairness to Mr. Rizzo, who is one of the appellants, he should be on the phone listening to the objection. Chairman Rael called Mr. Rizzo who confirmed that he is one of the appellants requesting the appeal. Ms. Norma Law would be reading his appeal and he would answer questions after.

County Clerk Sally Perea administered the oath to Mr. Rizzo.

Chairman Rael asked the attorneys what the commission needs to do to have whatever material that would be appropriate to make this decision.

County Attorney Adren Nance said the question is to pursue a de novo hearing or just review the record. The ordinance simply says that the commission may option whether or not to make a motion on either party to hold a de novo hearing or take traditional testimony, with or without holding a de novo hearing. So the commission makes the decision whether they want to hear it new or not.

Since the board is limiting the question to the interpretation of the ordinance and both appellants are satisfied with that to be the appeal, it was the Chair's view that they do not need to listen to any related material and he asked fellow commissioners how they feel about this.

Commissioner Gentry said that this needs to be opened up to hear facts and hear what's going on. Just going back to the Planning and Zoning meeting, are we going to review or add this strictly to their record. Commissioner Gentry asked the Board if anyone had received the minutes from Planning & Zoning or any material submitted for their review and consideration other than himself. It was interesting that the attorney was asking him to recuse himself when he was the only one at the planning & zoning, the only one that had the minutes and notes from the records and the only one that has heard whatsoever took place at the P&Z meeting. He said, at this meeting we have no planning administrator to give facts, no reports to verify the facts, no record, and no minutes to verify facts on which they are going to deliberate on. He finds it highly unusual that they will limit the facts to this meeting only and those facts on which we have none. In his opinion this meeting should not be happening since we don't have an attorney to advise them on what P&Z did, or what was testified on or any restrictions that were placed on. Commissioner Gentry recommended postponing this until they have the proper facts before this commission to hear this issue and submitted for the record that this commission is still advised as no material, nor factual evidence, nothing to proceed with this hearing that would make it a legal and a fair hearing to the appellants. He believed that they should table this entire proceeding until this commission gets that information to make an educated decision and hear the facts on which they are going to vote on in this appeal, otherwise he believes this is an erroneous hearing altogether.

Chairman Rael said this can be fixed very easily and understood that Commissioner Gentry has all the evidence in front of him and requested he adhere it as part of the record for this hearing.

Commissioner Gentry said that these were his private notes.

Commissioner Rael asked you are not willing to share these with the rest of the commission?

Commissioner Holliday said he has reviewed the notes for the record.

Chairman Rael asked staff if they have a copy of the minutes. There were no copies of the minutes.

Attorney Guggino said he had a set of the Planning and Zoning minutes that he would gladly share with the commission.

Chairman Rael said they could make a copy of the minutes of the Planning and Zoning meeting and submitted as part of the record so they can have a complete record and the basis on which to make a decision, which they won't make today, they just receive

information so that the objection made by Commissioner Gentry which is understandable, is misguided, because there is nothing coming into a decision today, it is part of the evidence in which we will make a decision next week. That is how we have always done it.

Commissioner Gentry said it is not misguided when there are no official records for us to deliberate over. The minutes that they have here, he would want them scrutinized very seriously. The minutes of the Planning and Zoning does not contain any of the opponent's statements, none of the opposition, nothing to present the other half of the story. He had gone to Planning and Zoning and asked for detail minutes for this meeting and they are not here and the minutes are not a reflection of the meeting, the opponents were not fairly reflected whatsoever, none of the statements, none of the conditions that P&Z commission put on there are clearly stated out.

Chairman Rael said the question is whether we, based upon the record, allow the parties (the appellants) to argue and they are allowed to argue no matter what the commission decides, that is the right you have. Chairman Rael asked Norma Law if she was here for Mr. Rizzo. Ms. Law nodded yes.

Chairman Rael asked if Ms. Torwirt was present today. Ms. Torwirt raised her hand from the audience.

Chairman Rael clarified that the appellants are welcome to argue if that is what the commission decides and that is what is in question, whether to accept more testimony or go with the record. That is the question, are we going to allow live testimony in addition to the record or are we going to allow the record to come in, which we've already done and allow the parties to argue, on the limited question that both parties stay satisfied that this is an interpretation, a strictly interpretation of the ordinance, whether it allows what has been requested or it is not allowed in what has been requested.

Commissioner Medina said he brought this up with the county manager and he is looking at three items on the agenda. We do not have any record of what was discussed in P&Z so we're just here to hear the people. That he will be voting, and this might be apparent, and there are no items from P&Z, is his concerns right now.

Chairman Rael asked the other two commissioners of their impression of whether to receive testimony and the record at this time.

Commissioner Kirkham said without a doubt she will recuse herself. She does not have any comments but does agree with Commissioner Medina that there are other items on this agenda that they do not have information on, that we should have and does not understand why they do not have the minutes from Planning and Zoning.

Chairman Rael stated for the record that the commission has received Valencia County Planning and Zoning Commission proceeding which is a three page document that has been handed to him. Chairman Rael asked Mr. Guggino if these will be presented as an exhibit.

Attorney Guggino said he will make these an exhibit in reference that today he had talked with Administrative Assistant of Planning & Zoning Fanicela, that these are a reference of the meeting, and that the discussion of that meeting are the approved minutes from Planning and Zoning Commission on the April 22, 2009 hearing. Attorney Guggino clarified that he was only given a section of the minutes of this particular issue as he requested and she did print these out of her computer.

Chairman Rael said they will receive them as an official record from the Planning and Zoning (**See Exhibit A**) and asked Commissioner Holliday how do you feel about taking testimony? Commissioner Holliday said that the board should have more information. Chairman Rael said then we will proceed to hear more testimony as that is the commissions' wish.

Commissioner Gentry said the minutes that he has that were approved, are not the same ones, not the same format, not the same minutes, it does not have the same contents, does not know where the attorney got these. The minutes presented are a different set. Attorney Guggino said all he did was present what was given to him by staff.

Commissioner Gentry asked if these were the official minutes that were voted on because these are two pages and he is not saying the contents are not the same, they are done differently and he has not read these at all. That the commission is going to hear testimony, we need and do not have sufficient records before us for this hearing. He

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thinks this is improper for the commission to go ahead and just take testimony and then through out the week, we cannot talk about it, then we come back to vote and the board will be voting with the absence of what was said in Planning & Zoning, without the minutes or anything, just on testimony given today. He does not think that is the proper procedure.

Chairman Rael said that is an appropriate concern and could resolve simple by acquiring the detailed minutes of the record from Planning and Zoning in addition to what we hear today. He believes they are able to proceed with the hearing. Chairman Rael read the persons appealing are Mr. Rizzo and Ms. Torwirt and asked Mr. Rizzo if he can hear the commission. Mr. Rizzo replied yes.

Commissioner Medina asked if they are going to get more information for the other items.

Chairman Rael said it is the consensus of the commission to hear more information so this is the way to get it.

Attorney Guggino said they could do the presentation as they did for the Planning and Zoning if they wished. The appeal is solely to the determine the issue of the meaning of the ordinance.

Chairman Rael was told that Mr. Rizzo and Ms. Torwirt were here to appeal this matter and would like to hear from them. Chairman asked Mr. Rizzo if Norma Law was his representative who would read a statement made by him.

Mr. Rizzo said that is correct, and only because of the difficult of the telephone. Norma Law will read the appeal and has signed copies of his statement that she will hand out to everyone, which he prepared before he left New Mexico and he will stand by and be available for any questions.

Chairman Rael asked Norma Law if she had the copies. Ms. Law stated she gave the copies to Marilyn and gave to each commissioner. Chairman reassured Mr. Rizzo that each of commissioners has a copy of his appeal statement.

Mr. Rizzo's representative, Norma Law, read the appeal as prepared by Mr. Rizzo. **(See Exhibit B)**

Chairman Rael asked Mr. Rizzo if there was anything else he wanted to add for the record in support of his position. Mr. Rizzo said this is basically and strictly not a permitted industry under the ordinance that we have now. He had nothing else to add at this time but would stand by for any questions.

Chairman Rael asked fellow commissioners if they had any questions. There were no questions from the board.

Chairman Rael asked Mr. Rizzo how many miles or blocks he lived from the proposed site?

Mr. Rizzo said that he lives two and half miles from the site.

Chairman asked Mr. Rizzo if he owns property near the site. Mr. Rizzo said he does not, only owns his home.

Chairman asked Mr. Rizzo if he would like to listen to the balance of the testimony that will be presented. Mr. Rizzo said he would appreciate that.

Chairman Rael called Ms. Torwirt to present her presentation and any material she would like the commission to consider.

Mr. Metcalf handed out copies of her presentation to the commission **(See Exhibit C)** and said that before she begins with her presentation she would like to go back to the I-3 and a reference to Mr. Rizzo and herself, by the attorney of the Roadrunner and by Chairman Rael, that was reported that they did not have standing, therefore she shared part of an order that she has from the Valencia County Planning Office, Public Works Department dated June 4, 2009 from Fanicela Ayala that read that upon departmental review, it was determined that the request has merit and will be heard by the Board of County Commissioners. Pursuant to 154.062 (B) (1) of the Valencia County Code, anyone withstanding may appeal the P& Z Commission's decision to the County Commission within 15 days of the official decision. This appeal is being made by Alice J. Torwirt and Joseph E. Rizzo. Ms. Torwirt said the rest of the letter refers to the legal description of property and the fact that the date has been changed. She said reading this for is not much for the commission but for the public, who were told in the article in the paper that they did not have standing and she was correcting the record.

Ms. Torwirt said that the Roadrunner Metal Recycling Plant will submit a final site plan to the commission. That she does have a statement format of a recycler site plan from the

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internet by titled storm water compliance in the metal recycling industry. Ms. Torwirt said this is how the plant would look like if full compliance (pictures were presented in packet) with EPA regulations. She requested that the commission review and examine if there are any resemblance to the site plan of digital art wrecking yard. The Roadrunner representative is obligated to explain to the commission and the public on how exactly why they feel these industries are similar. If they can not do so, the appeal must be granted. As stated in the appeal Dr. Rizzo and I feel that the metal shredding industry does not qualify under Valencia County Ordinance 154.137 permitted use, and anticipated that the plant site intentions will be retained similar uses. She gave the number of reasons. She recommends to the commission that in order to deny this appeal, you are legally and duty bound to find the metal shredding plant and an auto wrecking yard are similar. Roadrunner Metal Recycling industry does not qualify under Valencia County permitted use. You must follow the law of Valencia County, and she asked the commission to look at the poster of pictures taken from the Southwest Auto Recyclers in Albuquerque, American Iron and Metal from the website and American Iron Metal from Colorado Springs plant. Chairman Rael asked Ms. Torwirt if she would like the pictures to be part of the record. Ms. Torwirt said yes. **(See Exhibit D)**

Attorney Larry Guggino asked Ms. Torwirt who had taken the pictures? Ms. Torwirt said she had taken one and one was given to her, but stated they went to Colorado Springs and took pictures.

Attorney Guggino asked if she knew where this was geographically located and if she had any indication that the Roadrunner Metal Recycling Company will not abide by all and each of the regulations. Ms. Torwirt said she does not know that, and does not believe that they have submitted the final site-plan.

Chairman Rael asked the commissioners if they had any questions. None.

Chairman had one question for Ms. Torwirt, and asked how far she lives from the propose site. Ms. Torwirt asked why this would matter. Chairman Rael said he is trying to determine what her position is under the county code and if she did not want to answer the question, so such it is. Ms. Torwirt said that is alright, I am about one mile from where that will be. If I were to follow the roads, I am further than that, but do not pay attention to the roads, so to qualify I am about one mile.

Chairman Rael asked Ms. Torwirt if she had anything else to present. She did not.

Clark Metcalf, Larry Lindberg, William Dean, Mike Wood, Tom Walton, Mark Bell, Tom Greer shared their concern that no notices were given to the public, allowing for public comments, heavy truck traffic on the highways, water usage, traveling through least resistant traffic areas (residential) and types of restrictions of auto salvaging yards

Commissioner Gentry said everybody has been grilled about how far their homes are and we all know that the community is growing and developing. He asked Mr. Greer, are you aware that there is subdivision plated, property and infrastructure right next to this that is not inhabited yet. Mr. Greer said absolutely, actually it was approved, in this chamber, a seventy unit subdivision at the golf course community to a group of developers in California, who he knew for sure were not notified, and even though they live beyond this mile limit from here, had this been a business, this might simply discourage them from ever wanting to develop that property.

Commissioner Gentry asked the County Attorneys what is the real notification area according to our ordinance? Attorney Pato answered 100 ft. Commissioner Gentry said a hundred feet is all that we require notifying somebody. Mr. Greer are you aware that this plant is built in the Industrial Park and there is approximately 300 feet going north and it is owned by the same partnership that is selling this property and nobody has to be notified because they were the ones that were notified, only those people were notified, not the people in the subdivisions adjacent to the park.

Mr. Greer said he was giving the Planning and Zoning Commission a lot of credit because I thought the notification area was a mile.

Commissioner Gentry said he has heard this over and over "Are you a mile or are you 2.5 miles" I have heard it said that you had to be a mile or else. In fact I see where some are coming from but are you aware of the notification list. Mr. Greer said he is aware that he was not on there. Commissioner Gentry said it might interest you fourteen people were notified. Of those fourteen notified only two are in New Mexico. One of them is the property owners who are selling the property and the other one was me. Virtually you can say the residents and the people, none of them, have a reason to say they're affected, according to some theories, should even worry about it.

Mr. Greer said he spent two days going door to door and handing out flyers and talking to people and they are furious with Valencia County for failing to notify them and to give them an opportunity to comment on what is going on their back yards. People who live on



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Western Blvd are only about 50 feet from their back doors, from highway 304 where these trucks are going to be trafficking. Same thing with the mobile community across the way, their houses are backed up entirely to that roads easement and they were not told about these trucks and traffic or even any kind of activity down that road.

Chairman Rael asked if anyone was in favor of the appeal and clarified to stick to new material and try not to be repetitive.

RJ Griego a commissioner from Socorro was concerned and asked the commission questions regarding traffic and trucks traveling through 304 and going through his community with trucks hauling metals and how many trucks will be traveling through hwy 304.

Chairman Rael clarified that the commission is not there to answer questions but to hear testimony and evidence.

Commissioner Gentry to clarify, said all of them, 304 is the inlet and the outlet in both ends and there is no other access ingress or egress, everything goes on highway 304 one way or another. Two hundred and something a day was the testimony.

Mr. Griego said he heard tonight that there could be up to a variety trucks going up the highway through 304 or 47 so he is really concern about the traffic, as you all know we have in our district, eight dairies, a ton of farmers, trucks and tractors, everyday traffic and now more trucks. He is concerned for his community.

Howard Snell who resides at 19 Jerome Highway, estimated about a mile from the site, shared his concerns on the zoning of the industrial park and that 304 highway was designated the first safe Bicycle Route of New Mexico which is Bicycle Route Number 1, it was named that because it is a peaceful bike route to ride. He asked the commission to consider not approving the recycling plant.

Commissioner Medina requested a five minute-break. 6:58 pm.

Chairman Rael called the meeting back to order, and said the board heard testimony from those in favor of the appeal. Now we will hear those in support of the Roadrunner Metal Recycling Plant.

Attorney Guggino said that James Warren would be presenting what the facility is and what exactly they do; discuss why they are similar under the ordinance to an auto wrecking yard. How the ordinance defines an auto wrecking yard.

Chairman Rael got Mr. Rizzo back on the phone as stated for the record.

Attorney Guggino repeated the statement as presented earlier for Mr. Rizzo benefit.

Co-Owner of American Iron & Metal in Pueblo and Colorado Springs, Jim Warren said they are a company of a scrap metal processing company and auto wrecker. They located a piece of property that is I-3 industrial zone property in Valencia County. It is a very good fit for their company and everything about it works for them, the zoning, the power, the depth of the ground water, the climate and the surrounding area of New Mexico for recycling. They believe they are in fact an auto wrecker, they were established in 1981 in Colorado but before that he grew up in this business. He has advertised in the yellow pages and Qwest and Dex, in the yellow pages under Auto wreckers, and under Metal Scraping processing. Mr. William submitted, as an exhibit, a box of telephone books from New Mexico and Colorado Springs, two or three years old, that says they are auto wreckers.

**(See Exhibit E)**

Mr. Warren said they are an industry, in recycling and recycling is an industry that used to be called a junk yard. We are processors, some people call us junk people, we are definite an auto wrecker – we do wreck cars, we have revolved into a recycling company, a company that takes discarded metal items, auto bodies, appliances, pipe and whatever is metallic we transform that into a product that is recyclable for steel mills. He clarified that they are not a steel mill they are an automobile shredder. Automobile shredder is a piece of equipment that process metal for steel mills.

Colorado is a very tough state to do business and they visit their yards and they are required to do quarterly reports, and Mr. Warren clarified that the "fluff" mentioned by the testimonies heard earlier is not called "fluff" it is only "fluff " when all the metallic are removed. It is called ASR (Automobile Shredding Residue) and this is from wreck cars. That material is tested on quarterly basis at their plant, and they follow guidelines that can not have high levels of chromium or lead or all the other metals that Mr. Ron Gentry was explaining. They have to comply with water and air in the State of Colorado and they will

have to comply with water and air quality and noise in the State of New Mexico. If they do not comply, they will shut us down. They are here to invest a lot of money, and we are going to comply. We are a scrap metal processor; we will have a pile of scrap metal. I know in Pueblo and Colorado Springs we have been thanked by our officials, because we have gone in and cleaned the neighborhoods up. People will put this material in their back of their trucks and drag cars in and they will sell that for real U.S dollars and when the price is up, the area gets cleaned up. Now if you look at Pueblo it is a decent town, as well as Colorado Springs. It is because of industries like this. Every town or city needs a sewer department, landfill and a recycling center; they need a processing facility to handle what they handle. He asked are we here to make a profit? Absolutely, but are we going to do something good for this county, absolutely. We are not opening up a strip joint at the end of town or an adult shop at the end of town; they are doing something good for this community.

Everyone talked about peace and quiet, well, they also want peace and quiet. His plant will probably, he says probably because of the power situation, will not be running between the hours of 8:00 – 5:00. It will not be running when everyone is out on their porch in the summer evenings and having BBQ in 7 or 8 in the evening. This plant will be running early in the morning and shut down early.

Traffic- they have done a traffic study, it is ready for Planning and Zoning, there will be approximately 25 loads a day going to that plant and they do have their own fleet of trucks, they could send trailers and they would use a very convenient roads, if Hwy 47 is not convenient then they will steer away from that, they would do everything in their power to please the people in that community that they could possibly do. If it means telling the truckers not to go on Hwy 47, we will do that. This means that there will be one truck, now this is from 8:00 –4:00 pm approximately every ten minutes. I do not know if that is a lot to you, but that is not a lot to him. That is at full capacity. After capacity we do except to have fifty full time positions in one year of completion.

Water Usage - in the first year less than three acres feet. Approximately eight or nine homes are an estimate and am not a water expert. He said he has been doing this all of his life and is healthy, it is a clean business, and we put our bio material product on concrete. Keep trucks on recycle asphalt.

Golf courses - There are three shredders in Denver, (using a picture to demonstrate his point) the circle indicates one mile, there are golf courses within that one mile area and also residential within that one mile area and nobody is impacted. Mr. Warren submitted the pictures for the record as an exhibit. (See Exhibit F).

Mr. Warren also submitted two pictures as part the record of their two plants located in Pueblo and Colorado Springs, Colorado and said they are very proud of their facilities and are the finest in Colorado. (See Exhibit G & H)

They are members of the scrapping and recycling industry and they go to conventions every year and pay attention of what is going on. They are environmental stewards and do the right thing or you are out of business. Mr. Warren requested that the commission read the Environmental Stewards booklet that is part of their organizations. That last year with both facilities in Colorado, paid out twelve million dollars for scrape metal.

They had people that were out of work, sat with them and had them pick up scrape full time; they are making between thirty thousand to forty thousand a year picking up scrap and selling it to us. He believes there will be people who are out of work and will want to work on cleaning out their yards and selling their metal to us. We will help those people; we will trim our margins to help those people because we like people out there working.

Mr. Warren was asked what would they do if they make money down here, would he give back to the community and he answered he would do it through education- maybe through schools or churches.

Are we an auto wrecker or similar use, we are not similar, we are an auto wrecker, shredder and recycling. We would like to be part of your community, we believe we can make your community better, I know there are people against us, I know before the Planning and Zoning Commission meeting, Mr. Gentry as a citizen, not a commissioner, told me he did not want this here but he wished me good luck. I believe Mr. Gentry should recues himself as he has been asked, Mr. Warren said. You did go into our facility, as you were asked and you did go to both facilities. The last facility you left in Colorado Springs you told my son and wife "you guys may be hotshots here in Colorado but you are not anything in New Mexico" and you are absolutely right, we are nothing here but we want to be something, we want to be your neighbor, we want to be your recycler, we want to take your wrecked cars, your aluminum cans, we want peace with you, we want your vote and we are good people. My son is going to move his wife and daughter and son down here,

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do you think he would want to move down to pollution. No, we are not the people you think we are, give us a chance, and let us show you what we can do. The state of New Mexico can shut us down if you do not want us there. Just give us a chance and God bless you all.

Chairman Rael asked the people who filed the appeal, if they have any questions for Mr. Warren.

Mr. Rizzo asked what objection Mr. Warren would have to regulate the application to conditional approval. So the type of confrontation that you are getting could factor the public that could help you out rather than filing an appeal on a conditional one where all the issues can be discussed and all possible changes can be made to in order to make it work.

Mr. Warren said it is the permitted use, for the I-3 zoning. The uses are permissive and are an auto wrecking and a similar use.

Chairman Rael clarified Mr. Warren's statement to benefit Mr. Rizzo by stating that the answer is conditional use not necessary because of use that you are going to engage in as submitted.

Mr. Rizzo said an industry in general is not on the permitted list. It should be considered on its own merits as conditional approval.

Mr. Warren said there were conditions put on them at the Planning and Zoning Commission meeting. Higher fences, more trees, some CFC removal equipment, they felt there were some conditions that they did agree to even under permitted use.

Mr. Rizzo had no other comments but would like the commission to consider if this is a permitted use or conditional use.

Chairman Rael asked Ms. Torwirt if she had any questions.

Ms. Torwirt said that in Colorado Springs they have fifteen foot high concrete walls with nice screens and asked why they are not going to do that here, also the number of trucks that she quoted, she had heard that at the Planning and Zoning Commission meeting. She heard that Mr. Warren had stated they would start at twenty-five trucks then, now it is under twenty-five. The trucks coming down highway 47 and/or I-25, where are they going through once the trucks get off highway I-25? You said at the meeting last week they will go through I-25 and where are they going to go when they get down to Belen, they will go through downtown Belen, correct? Mr. Warren said that is correct. Ms. Torwirt said she wants everybody to know that they will be coming right down through Belen. Mr. Warren said they will try to find the most convenient route. The fences will be chain link fence and slabs so that there is no graffiti to deal with. He presented pictures of the fences located in Colorado.

Commissioner Holliday asked what is the current price being paid for junk car in today's market. Mr. Warren said today's market in Pueblo is at \$130.00 a ton as is.

Commissioner Holliday asked will they be bringing any metals from other states to this facility or will it be local. Mr. Warren said no, it would be all local, but would like to draw as far north and south as much as they can and this would probably take a couple of years to clean the farm equipment, cars and scrap that is laying out because the price is up and people start to move and we get a few people involved to knock on doors to get scrap metal. Within a couple of years this area could get cleaned up and then we just keep going out. But it would definitely stay in the State of New Mexico. We would definitely like to be involved in cash for clunkers and we think that everything we do is good.

Commissioner Holliday asked if the company will be recycling the water they will be using. Mr. Warren said they would be using recycled water, and will be contained in concrete tanks and they will have sand and water separators installed and clarified that the State of New Mexico's water table at the proposed site drilled at 100 feet and did not get water.

Commissioner Holliday clarified the proposed site is sixteen acres and asked if there were any other property that they might want to purchase in the future. Mr. Warren said they believe they can do what they can in that site. Commissioner Holliday said that sixteen acres does not seem a whole lot of land for growth. Mr. Warren stated that in Colorado they have an eight acre site and they are shredding metal. Commissioner Holliday asked about how many acres for shredding metal. Mr. Warren stated about four acres, and they are doing less than half than what they are trying to do here. He clarified they bring in the materials, processes and ship it out. Commissioner Holliday asked if they will use the railroad. Mr. Warren stated yes.

Commissioner Holliday asked if the EPA is involved with the railroad and recycling center when delivering product. Mr. Warren said yes.



Commissioner Medina asked if they will be working from 8:00am to 5:00pm.

Mr. Warren answered in Colorado Springs we start our summer hours at 4:00 or 4:30 or 5:00, the machine will shut down at 8:00am and the plant shuts down at 11:00am.

Commissioner Medina asked if they are open seven days a week. Mr. Warren said they are not and will probably shut Monday thru Friday.

Commissioner Medina asked if the companies in Colorado are open on weekends and if they are what are the hours. Mr. Warren stated they are open from 8-12 on Saturdays and do not run their equipment on Saturdays. It is convenient for people to sell their aluminum can and household products and it had been requested by the local people.

Commissioner Gentry said that during the Planning and Zoning hearings Mr. Warren invited everybody to tour and see the plants. He would get a bus and take them down there. Mr. Warren said that is correct. Commissioner Gentry said a few people took him up on the offer and he had calls from his constituents saying they had been there. He also went invited; he saw the new plant and the old plant in Pueblo. He was very impressed with the plants and one of the people said it was state of the art plant. If that plant is desirable here, he does not have any quorums of being state of the art.

Commissioner Gentry asked Mr. Warren if he is a licensed auto wrecker or if he has ever been licensed as an auto wrecker. Mr. Warren said they are not licensed as an auto wrecker or a recycling facility because it is not required in Colorado.

Commissioner Gentry asked if he was aware that in New Mexico they have an auto wrecker statute that requires an auto wrecker license. Mr. Warren said if it is required we will have one.

Commissioner Gentry asked if they have been in an auto dismantling business, take parts and sold parts retail and have people come pick-up. Mr. Warren said they are not in the auto salvage business; they are an auto wrecking business.

Commissioner Gentry read some of the introduction that Mr. Warren had said on the permit application to Valencia County Planning and Zoning. "Roadrunner Metal Recycling buys ferrous and non-ferrous scrap metal for processing. As processors, we turn scrap metal into raw materials for steel mill, foundries, smelters and refineries and so forth. Then our processing operations focus on heavy duty metal shredding similar to state of the art shredding plants in Pueblo and Colorado Springs and so forth".

Commissioner Gentry said he does not find in Mr. Warren's presentation in the Planning and Zoning that it was mention "Auto Wrecker" not once, not on your application, there is no place and it is by your own submission that you are an auto wrecker. The definition of auto wrecking yard, "the area of land used for the storage, wrecking, dismantling, disassembling, or sale of inoperable motor vehicles, trailers, farm equipment or parts thereof". Commissioner Gentry asked Mr. Warren if this is the type of business you have in Colorado. Mr. Warren said that is exactly what we are.

Commissioner Gentry asked so you do those things. Mr. Warren said we handle farm equipment.

Commissioner Gentry said do you sell those parts, do you take out those parts and sell them retail. Mr. Warren said, no it does not say that in that definition, it does not say retail sell for parts.

Commissioner Gentry said that when he met them for the first time he had said he would not oppose this but it was brought up before the commission improperly. It should be a conditional use and he does not have a problem with conditional use. That was my statement. In this application to Planning and Zoning not once did you mention auto wrecking which we require as similar use until now. I just read you the auto wrecking yard definition. You told me a minute ago, you have never been licensed or you have never done that, but now you say you do all that, okay. That will be decision somebody will have make whether you are an auto, you set, sell, disassemble, retail just like the presentation. Mr. Warren said all of the above. Commissioner Gentry said a while ago you told me you never done that, so which is it. Mr. Warren said we do not sell parts, we are not in the salvage business, we are an auto wrecker, and we are a recycler, auto metal shredding processor.

Commissioner Gentry asked if it was possible to put up a concrete fence and concrete the floors in New Mexico. The comment back from your son is that we don't think they have to worry about that and think it is okay.

Commissioner Gentry asked is there any covenants on this land or are they planning to give any covenants on this that came with the land originally. Mr. Warren said there are not but they are in the process and believe it is zoned 1-3.

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Commissioner Gentry asked if Mr. Warren was familiar with our roads. Mr. Warren said I am not. Commissioner Gentry said your traffic study shows where your entrance and exit is and does not project the study throughout the county and that is the portion of the traffic study. What the people are talking about is the impact further out.

Commissioner Gentry asked how about the people that brings metals from their yards. Mr. Warren said he does not mean to be smart, but I am sure they pay road taxes, sales tax to run on those roads.

Commissioner Gentry said that is what worries some of the people in our community. There are only three routes. 1) highway 304 that runs south, 2) highway 47, 3) main street in Belen; to get to your place from the rest of the state and we have logistics problems that the rest of us maybe considered that you are not aware of and that is what I am trying to add for you to be aware, that you are not aware of and those are our logistics concerns.

Commissioner Gentry asked if they were going to do an Air and Water study for us. Mr. Warren said this has been submitted. They run water into the chamber of the shredding operation and we do not admit particulates. Commissioner Gentry said that he thinks he has a good process there.

Mr. Warren asked if he had seen the plant in Colorado Springs. Commissioner Gentry said no, he did not but his son had mentioned that they are required to take the entire residue out everyday and that it is not left there. Mr. Warren said that is correct. Commissioner Gentry asked if he intends to do that in Valencia County. Mr. Warren said absolutely.

Commissioner Gentry said for the record, you will remove the "fluff". Mr. Warren said it is ASR, it is to remove all the metal out of that and once the metal is removed, we will remove that. Commissioner Gentry when you pile it up it is a pile of residue. Mr. Warren said I can not say. If you put a condition on me tonight to remove everyday and if we have break downs, if we have problems it may sit a day or two but, no, they are not going to sit stock pile.

Commissioner Gentry said he was told that when this comes out the water, you wash it and you suck the metal out and the rest goes into a pile, that is the fluff or the residue or somebody referred to it as garbage, it would not matter if you are moving it out on a daily basis, is that what you planned to do. Mr. Warren said they intend to move all of their materials, not just the ASR, fluff or the CSR shredder on a daily basis.

Commissioner Gentry asked if they will be moving this to a landfill. Mr. Warren said hopefully not but some of it will go to the landfill and the rest of it into energy sources in Colorado. In fact some of that may even be moved to the Pueblo site. There is a large plant they are building and we may rent some of that material to the Pueblo site.

Commissioner Gentry said the plant in Pueblo and the fluff from your old plant that you stock pile down, Mr. Warren said that is not fluff that is ASR. Commissioner Gentry asked what is ASR. Mr. Warren said ASR is Automobile Shredding Residue that still contains metallics. Commissioner Gentry said that contains the metal pieces. Mr. Warren said no, it does have metal pieces in it and does have the car seats, tires and everything else mixed with it - it is unprocessed material and we will still process this.

Commissioner Gentry said so this is your first grinding that you stock pile and asked if the fluff is the second process. Mr. Warren said it is the third.

Commissioner Gentry asked if they will have a pile here like they do in Pueblo. Mr. Warren said no.

Commissioner Gentry clarified that the in coming and out going product, the material in and out will be stalled on concrete. Mr. Warren said that is correct.

Commissioner Gentry said you will not have any of these metals on just the ground. Mr. Warren said no. The rest of this will be on concrete and you will have the drains under the entire plant like the one in Pueblo, one under the shredder and where the residue is at.

Commissioner Gentry said you have to present the Planning and Zoning a storm water drainage plan and asked if this has been developed yet. Mr. Warren said yes, it has.

Commissioner Gentry said this is something that interest him personally and believed the Commissioner of Socorro would be very interested because where this plant is at; we have some real down pours where water gushes out. That and both parks do not have a drainage plan, everything gushes out of the Industrial Park, shoots across a couple of pieces of farm land and shoots into the irrigation ditch and not into canals, it floods the irrigation ditch, which waters cattle, stock and irrigates all those farms and that is why they have concerns. Do you have a storm water plan or are you doing one, because it was not presented at the Planning and Zoning, Commissioner asked. Mr. Warren said absolutely.

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Commissioner Gentry asked are you going to have a pressure holding ponds for run off. What would you do for the run off? Mr. Warren said they don't have that yet but will be addressing the problem areas.

Commissioner Gentry clarified that there will not be any water running off in a storm situation. Mr. Warren said no, not on my property. Commissioner Gentry said only on your property. Mr. Warren said it is contained on all his property, the water. Commissioner Gentry asked if it is going to be on line container or is it going to be able to percolate.

Mr. Warren said that some of the ponds are going to be asphalt crushed, the material tends to be pact and stays pact. Fifty percent of the site will be completely under concrete and FDA approved and a special water system that is underground.

Commissioner Gentry said my question is are the storm water and the drains water going into these ponds, that is not going to percolate into the ground water or to Rio Grande, because ground water is less then a hundred feet. Mr. Warren said not if we do it proper and not at 100 feet, we did not hit ground water.

Mr. Warren said that they started at 100 feet did not start water at the walls and this is at the final plan.

Commissioner Gentry said if the right agency determines that you are allowed to have it where it cannot percolate. Mr. Warren confirmed that they do quarterly tests and are testing their water and soil.

Commissioner Gentry said the other real issues that has come up and why people are concerned are the lights and traffic and everything at three or four in the morning is something that makes it all nervous. But if it goes through without conditions, then you can do that and there is no control we have over that, otherwise we could restrict it if it were conditional. We can strict it to hours of operation but that is your time frame; you gave us a very clear one on that.

Commissioner Gentry said if this Commission actually rejects this application, then you go back to Planning and Zoning and everybody that has talked about and needs to talk about, that they want conditions on this site that takes care of the things I think are conflicting plans, so maybe you guys can straighten these things out with me. The Commissioner that put those conditions is here, as you are aware and I just want to check on them. I have a water of availability from New Mexico Water Company. We had somebody testify that the company is really giving out stuff to everybody. Is that your intentions that you will get a letter from them or from the State Engineer that the water is available because I know that the State Engineer will not issue the water availability certificate to a subdivision or another business behind you. Did they say just get from the water company or get a water availability approval from the State Engineer?

Mr. Warren said he does not have that direct answer, I know that there is water on site. He believes that they could buy water shares and trade for the water on site.

Commissioner Gentry said no, there are no water rights, you have to bring that with you, and they talked to you about that I am sure. That is one of the questions out there and I have always taken a position to defend the water rights when available, and someone on this commission previously has questioned this and it is not irrelevant to the question now. I would like to see Planning and Zoning gets your water availability approval from the State Engineer and the Traffic Study you say you are doing. You're also doing your quality study and that was not a condition that I found but a double roll of staggered conifers and I guess that's a double roll of staggered conifers at a minimum planting height of 8 foot. That means staggered evergreen trees I believe. And in the front of your building, is the parking lot going to be like your design, and this design that the attorney took is different from the one that is shown. Correct me, this is the one that you presented to the Planning and Zoning, do you have one similar and on your front designs, which is I think is pretty decent, you showed a parking lot and you had a berm, are going to put a three foot, six foot and I do not know what the Planning and Zoning understood the berm is going to be. If it is going to be three foot high but the one you had in Pueblo is ten feet high. You told me that you were not going to put that big of one, here. Mr. Warren said but we are not putting a ten foot berm here it will be three feet. Commissioner Gentry confirmed a three foot berm and it is only going to be in the front and it is not going to be around the property. Mr. Warren said it is only in the front.

Commissioner Gentry confirmed only in the front but at the hearing you testify that it was going up on the west side and we asked about the height and your engineer said no, because of the slope, so it is not the same thing that I am hearing now that I heard in Planning and Zoning. On these minutes they actually reflect that you are not going to put

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the berm. That Planning and Zoning required that berm around it and an 8 foot fence on that had to be slabbed, it had to be completely fenced and that is what I understood. But it says just a row of trees in the front and an 8 foot fence around the sides that does not have the berm. That is when I found out we are not really putting a berm and I thought Planning and Zoning said that there will be a berm around it. Which I felt comfortable protecting the run off and also added to the height of the 8 foot fence. I saw your fences which I thought the chain link was pretty nice fence that you had up. I thought concrete was much better, that is what I mentioned to your son. Other than that I cannot find a clear record of what the Planning and Zoning did.

Commissioner Gentry asked do you understand or can you tell me what the conditions are that you think you have to meet, just for information.

Mr. Warren said he did not have those in front of him but he does believe it was trees, I believe conifers; I believe it was an 8 foot fence.

Commissioner Gentry asked Planning and Zoning Commissioner Jim Lane if he could add to this and shed light on this so that his constituents will understand what is being required.

Planning and Zoning Commissioner Jim Lane said what he recalls, it was a three foot berm in front only and we did ask about going around the entire property and they said I believe because of the slope of berm that they will be putting it on the other three sides and we requested an eight foot fence, were they had a six foot fence, double row trees in the front, minimum planting of 8 foot and also we put a CFC crane height requirement, requested refrigerated air to cool down for the crush metal instead of having them reject some of the water for heating and cooling.

Commissioner Gentry said that is fine and I agree, with those thing on there now and noticed in Pueblo and Colorado Springs they had quite the operation inside the buildings, he didn't know if that is required in Colorado or not. It was indicated that everything was going to be out in the open here and asked if that was correct.

Mr. Warren said not everything, some of the building is attached to the actual shredding equipment, there will be an enclosed office and there will probably be an enclosed area to remove fluids – the CFC, and they have to find out what the requirements are for the State of New Mexico.

Commissioner Gentry said that he is glad this is brought up and was a real good point, for those that are not aware of what this is, that Commissioner Lane brought up the fact that you do not accept anything with Freon with all the different gases which refrigerators and other things have in it. Antifreeze, gasoline, the things that Mr. Rizzo talked about. Under one of your conditions that you would have a site that people will come in and put their things there and detox them, so to speak. So that they are not saying, we don't accept them; we will just punch a hole in them and dump them out the road. We all agreed to that in those hearings. That's a condition that is opening the doors, is it not? We wouldn't want to open the doors without that particular attribute there and so that will be done. Is that correct?

Mr. Warren said what we agreed to do we will do.

Commissioner Gentry said that portion will be done in the center when you take out the antifreezes and freon and all that out.

Mr. Warren said yes.

Commissioner Gentry said the way he has it here, the final plat has a design for insulation of a reclamation area for the oils. That is not quite what we are talking about is it.

(Referring question to Mr. Lane)

Mr. Lane said no, what they just described as far as CFC, antifreeze and all those that we talked about and what they agreed to do.

Commissioner Gentry said I just want to make sure because these are those famous minutes that we got to say all those things.

Mr. Lane clarified the reason of not going word by word on the minutes and it was stated that it was too much cost for the county to do that, so what they did was start briefing the minutes of meeting and the CD is available of the minutes. I think it can be transcribed if there is an issue if what was really said in Planning and Zoning. I believe that there is a record and it is a summary and not verbatim.

Commissioner Gentry said he agrees and had picked up a CD but it was done in photo format, where you do photographs and it just wouldn't play, so maybe we can get them done differently. I would think that if you are going to have them brief you ought to say and put what the opponents' issues was, the other half of the coin, on the minutes even if you brief them so.

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Mr. Lane agrees with Commissioner Gentry said he needs to talk with staff about that. Commissioner Gentry said I know we have a staff problem over there. Commissioner Gentry said this pretty much answered all his questions.

Chairman Rael asked if there were any further questions.

Commissioner Holliday stated the conditions and this might sound harsh but there have been other companies that said they were going to do things and have not followed through and that's why this commission wants to make sure they will follow through with these things. Mr. Warren said they will do them.

Jim Lane asked if it happens to come back before the Planning and Zoning for the final review and that is if it comes before us and if these conditions are not meet what would you do.

Commissioner Gentry said if this goes back to Planning and Zoning they can still hear this and review the final proposal unless it goes to the attorneys, they can still impose the conditions that they want to see at that point, if they hear testimony that wants it, and I am sure they will take testimony from the public.

County Attorney Nance stated he believes that is the case.

Commissioner Gentry said if there is anybody that has a real objection or a condition that they would like to see, they could request that, from the Planning and Zoning before it gets final approval. That's good.

Chairman Rael asked if he needed more information to present regarding whether or not the metal recycling plant is under the ordinance and that is the real question. The issue is very narrow, does the metal recycling plant as is described fall under our ordinances, all the reasoning and the difference there are binding and they understand the concerns. We are talking about a very narrow point here. Do you want more information on that point? Mr. Lane said he did not.

Chairman Rael asked Attorney Guggino if he had anything else to present.

Attorney Guggino said no, we just indicated what we wanted to present. What he would like is to ask the Commission to get some guidance from the attorneys on is how the ordinances are construed. The rule in New Mexico is that you apply to ordinary meaning to what is used in the ordinance and you try to go with the intent of this ordinance that was passed and approved on September 15, 2004. He would like to ask the commission to look at, the definition of an auto wrecking yard that Commissioner Gentry read and would also ask also that the Commission eliminate what is being done here and in particular, I think if you read what it says, it is an area of land used for storage, wrecking, dismantling, disassembling or sale of inoperable motor vehicles, trailers or farm equipment, or parts thereof. If you look at it so many uses are wrecking, dismantling and disassembling inoperable motor vehicles, trailers or farm equipment. That's what the testimony was and that is what these people do. I know that Mr. Warren made it clear, if they come in here and even as a recycler, New Mexico will require them to get an auto wrecking license, it is by statute, they have to. They will have to get one and they will get one. I thinks that when you look at this and would like the commission look at the Alba vs. Peoples Energy Resources Corp. which talks about not only how this ordinance and it deals specifically with this ordinance, but also deals with how a power plant and how the court got to a decision that a power plant was a similar use to a facility of processing or production of oil, natural gas, other resources or other types of carbons. The court of appeals said that an electric company is similar to that use, and in listening to the testimony today, what they are purposing to do is similar to an auto wrecking yard in additional to automobiles they do other stuff also. So he would ask the commission and look at that and have the attorneys provided those cases, so that they understand.

Chairman Rael asked if there were any questions for Mr. Guggino.

Commissioner Gentry had a question for Mr. Guggino and said he had asked some attorneys the other day to interpret this, each one interpret differently. The interesting part was that it was explained to him that the attorneys for certain company would try to give us the Frankenstein theory, and I said what is the Frankenstein theory, and they said they will try to tell you that it is similar because we picked up one of every of the nasty things all of the rest of them and made Frankenstein. Now, if you are saying that we have to take each one by concept and take it out, and say it is nasty like this and nasty like that and does this like that one, now we have one, that is what he was calling the Frankenstein theory. Rather than apply it as a whole now, I was here in 2004 when we put this



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ordinance together. An auto wrecking yard was an auto wrecking yard. It wasn't six pieces of explanations within it, and that is how I understood it, when we did the ordinance. Ironically enough in my plan and you can have him disqualify, Mr. Rizzo was the chairman of the Industrial Zoning board that actually put together this part of the packet, so I think we really understood what we were talking about in 2004, and it wasn't the Frankenstein theory. I thought it was funny they explained it that way. Thank you very much.

Chairman Rael confirmed that Mr. Rizzo was still present. Chairman said there was a question brought up by Commissioner Gentry about covenants and did not catch what the relevance was but would like to know if the covenants have anything to do with the zoning ordinances, he addressed the question to County Attorneys. County Attorney Pato said he did not think so, that the words from the language is by and the individual will not be affected by all the covenants enforces according to the ordinance.

Chairman Rael asked can the commission consider applying the covenants. Attorney Pato said the commission can hear but does not believe the commission or the county can enforce covenants therefore the commission can consider it. Chairman Rael said we obviously did the de novo hearing because we have accepted testimony from many people and spent several hours here, with testimony under oath and arguments that are very clear cut testimony from the proponents and the opponenants on this particular project. Is the authority of this commission and de novo hearing like that to either confirm or deny or maybe even a tie. Are these the three possibilities he asked the attorneys. County Attorney Dave Pato said yes.

Chairman Rael asked if it is the commission prerogative if they wish to do so, to make a decision that eliminate the what else condition, can we do that. County Attorney said that he believes that this commission considers the item that is on the application.

Chairman Rael asked can you see that this matter can go back to Planning and Zoning for additional process, the legal process through our system. County Attorney Pato said if this commission accepts this de novo and believes if they failed to show, they can have Planning and Zoning continue with the obligated process. That is why I mention this to you, and he asked Mr. Guggino if that is correct. Attorney Guggino said the way he understood the appeal to be is the very narrow issue that Mr. Rizzo and Ms. Torwirt said it was, and what I understood it to be was the issue wasn't the sub-plan or anything in the site plan. The issue was really, is the use being proposed a permissive use under the I-3 zone. His opinion is that if this commission makes a decision that this is permissive use, it can be considerably go back to Planning and Zoning, to finish up whatever the last hearing was, if on the other hand the commission finds that this not a permissive use, there I think we would probably have to figure out what is the conditional use or something else. The issue is really narrow and if this is permissive issue under I-3 and that does not absolves us in having to meet the site plan conditions that the ordinance already requires us to do. If they commission finds it permissive we still have to do the site plan process to finish this off, because your ordinance requires so

Chairman Rael said he understands all of that, his question is the real issue that is defined by Ms. Torwirt and Mr. Rizzo and they were very clear of what they appealed from planning and zoning. Beyond that I don't know if we have any other question before us other than that if it is permissible or not permissible under any other than the interpretation of the ordinance. That is my understanding of the issue. Attorney Guggino said that is my understanding of the appeal, and I would argue that is all the jurisdiction that this commission has.

County Attorney Pato said that this commission in what they decide would have instructions for consideration whether or not it is permissive use or not and make a determination on how to proceed with that the application. For example if it were to over turn that it is not under permitted use under the I-3 zone and they would have to go through the Planning and Zoning for them to determine what is permissive use under the instructions to proceed, what is the right plan criteria and the consideration of the board. That would be determined by the Planning and Zoning.

Chairman Rael asked if there were any reasons why the record should not be closed at this time and I am asking the parties.

Mr. Rizzo approved. Ms. Torwirt approved. Attorney Guggino said yes, and for the record I would like to introduce John Kirkpatrick.

Roadrunner Metal Recycling Architect John Kirkpatrick said he is the agent for the client, the architect for the engineering.

Commissioner Holliday asked if Mr. Kirkpatrick was sworn in. Mr. Kirkpatrick said he was. Chairman Rael said that the record will be closed and a decision will be made next week at 5:00 pm at this location and it will be on the agenda.

By consensus the Board called for a minute break.

- b) Consideration for a variance on parcel size in a Rural Residential -1, Zoning District to allow for the subdivision of the subject 1.745 acre property into a 1 acre parcel and a .745 acre parcel. Legal description; T6N, R2E, Section 1, NMPM; MRGCD Map 78, Tract 58-A, consisting of 1.745 acres; Zoned RR-1; Filed in book 360, Page 24158 of the Office of the Valencia County Clerk; also known as 308 El Cerro Loop, Los Lunas, Valencia County, NM – Gregorio Ronquillo/Fred C. Martinez Agent**

Mr. Martinez requested to appeal the Planning and Zoning's denial recommendation to the county commissioners on the variance in a Rural Residential -1(RR-1) Zoning District and gave a brief history that in November of 2006 the county commission had approved the applicant's zone change application to amend the zoning map from RR-2 to RR-1. At the time both the applicant and county were under the impression that the subject property was 3 acres, which would have allowed for the subsequent subdivision of the subject property into two parcels, each being approximately 1.5 acres in size. On February 25, 2009, the Planning & Zoning Commission voted to deny this request for a variance in a Rural Residential -1 (RR-1) Zoning District.

Mr. Martinez said that his client has requested a copy of the CD of the P&Z meeting, have it transcribed at his expense and present it to the board to help them make a decision. Chairman Rael suggested that he make arrangement with staff so that it can be transcribed and submitted to the commission.

Commissioner Kirkham asked, in the past, weren't there three homes on this property?

Mr. Martinez said yes, there were three wells and three separate meters. She asked about the property that surrounds the proposed site, are they smaller lots? Mr. Martinez said they are smaller lots.

Mr. Ronquillo who has invested fifty thousand dollars, has the support of the surrounding neighbors who had come to the P&Z meeting to testify on his behalf

Chairman Rael asked Mr. Martinez if the whole property is zoned RR-1 right now. Mr. Martinez said yes. If you had been able to, would you have divided it into 3 acres? Mr. Martinez said yes, that was their understanding. The house has been there since the 40's and the mobile home has been there about 40 years.

Chairman Rael asked if anyone opposes this variance. No response.

Chairman Rael announced that they will be making a decision on this matter on the next Regular Business Meeting at 5:00pm.

**Consideration to Amend Zoning Map from RR-2 to RR-1 to allow for the subdivision of the 4.15 acres subject property into one 2.15 acre parcel, 1.00 acre parcel and 1.00 acre parcel; Legal description; T7N, R2E, Section 25, NMPM; Tract 4-C-1-B-2 consisting of 4.15 acres; Zoned RR-2; filed in Book 362, Page 13295 of the Office of the Valencia County Clerk; also known as 32 Jerome Drive, Los Lunas, Valencia County, NM – Merrill Robinson**

Mr. Merrill Robinson requested amending the zoning map from RR-2 to RR-1 and gave a brief history and said he wanted to do a family split and his proposal was to do two one acre lots and one 2.15 acre lot. One acre lot would be for his son and his wife; the other one acre lot would be for his daughter-in-law's sister and her husband. The 2.15 acre will stay open and does not have any plans to anything with that it at this time.

Mr. Robinson said there were some questions about the easement and the road that would be used to come into the property and he clarified that the ditch has been abandoned since 1983. When he purchased this property last year and he had gone to the conservancy and asked about opening that ditch again. Conservancy said that would not be possible. Mr. Martinez submitted pictures and a plat map for the record that shows the existing lots. **(See Exhibit A)**

Chairman Rael asked if there anyone who opposes the land split. No response.

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Chairman Rael asked Planning and Zoning Commissioner Jim Lane if any one objected at the P & Z meeting.

Jim Lane said there was a letter that was submitted but the person did not show up.

8. The next Regular Meeting of the Valencia County Board of County Commission will be held on July 15, 2009 at 5:00 PM in the County Commission Room at the Valencia County Courthouse.

9. Adjournment

Commissioner Medina moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously. Time 9:16:48 P.M.

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the, 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

Via Telephone

PEDRO G RAEI, CHAIRMAN

DONALD E. HOLLIDAY, VICE-CHAIRMAN

GEORGIA OTERO-KIRKHAM, MEMBER

RON GENTRY, MEMBER

DAVID MEDINA, MEMBER

SALLY PEREA, COUNTY CLERK

DATE

8-5-09

