

VALENCIA COUNTY BOARD OF COMMISSIONERS

Public Hearing Meeting

May 12, 2010

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

2) Commissioner Medina led the Pledge of Allegiance.

3) Approval of Agenda

Commissioner Otero-Kirkham moved for approval of the agenda. Seconded by Commissioner Rael. Motion carried unanimously.

5) PUBLIC COMMENTS – At the Discretion of the Chair. (For Information Only- limited to two minutes per person on subjects not on this published agenda).

Valencia County resident Sue Moran praised Commissioner's Otero-Kirkham, Gentry and Medina for their responsibility in working together to unite the county and Chairman Holliday for his effective and unbiased leadership. She thanked the commission for supporting what the people want, a hospital.

Mary Wood a concerned citizen of Valencia County expressed her thoughts on the actions of the commissioners in accordance with their responsibilities and the importance of keeping honesty within the commission.

Valencia County resident Dianne Mattson had concerns on the sheriff placing his name on county vehicles and requested that in the future any county elected official be prohibited from placing their names on any county property as it would be an extra expense to remove the sheriff's name from these vehicles if he is not re-elected.

Commissioner Otero-Kirkham informed the commission on her attendance at her first Valencia Health Commons Board meeting and said a lot had been accomplished. The individuals attending were Mr. Davey, a representative from Stern Brothers, Cathy Chavez, Robin Hahn and Mary Merrill. The board approved the RFP (Request for Proposal), the MOU (Memorandum of Understanding) and some distribution information. The RFP's will be going out in about a week and will have three weeks to return them. There were requests to change the site and some sites were mentioned. Letters will be sent out to those land owner's acknowledging the fact that the board did receive their proposals. It was a progressive meeting and Commissioner Otero-Kirkham will report back to the commission after the boards meets again in June.

6) PUBLIC HEARING ITEMS:

a) **Requesting Appeal on Approved Side Yard Setbacks in an SR Zone District Allowing for a Five (5) Foot Side Yard Setbacks Section 7N T3E NMPM, Lots 55B1, Lots 117B1 thru 12B1, Lots 162C1 thru 199B1; Lots 203A1 thru 208A1, Lot 209B1, Lot 210B1 and lots 211C1 thru 217C1 Eastland Hills Subdivision, Survey Plat M-112 of the Office of the Valencia County Clerk, Valencia County, NM –Jacobco Martinez/Cypress Estates Limited Partnership.** County Clerk Sally Perea administered the oath to those individuals wishing to speak. County Planner Jacobco Martinez stated after the lot size variance was appealed, this was brought before the county commission and the commission approved that appeal. Mr. Goodwin and Mr. Mechenbier then brought the side yard variance to the Planning & Zoning Commission which was heard on March 24, 2010. The Planning & Zoning Commission found that the builder would utilize stucco material to build the homes on the subject property, the builder would need to follow the process as set out by the restrictive covenants by Cypress Gardens Eastland Hills Estates and the potential for larger homes would be in the public interest. There is a current issue with wind and sand because of the lots having been grated recently. This is a request for a five foot side yard

setback, the current side yard setback suburban residential regulation is 7.5. The Planning & Zoning Commission did vote 5-0 to approve the side yard setback with two conditions; one was that homes were not to be built with any wood siding and two was that Mr. Mechenbier would need to follow the covenant process for Eastland Hills Cypress Gardens.

On April 9, 2010, Cypress Estates Limited, owning parcels located near the subject property, filed an appeal for that decision. According to the appellant, the applicant failed to demonstrate that special conditions and circumstances exist which are peculiar to the property as compared with other property in the general vicinity and the applicant has also failed to satisfy 154.058(D) (3) which states no variance shall be granted which allows the establishment or expansion of a use otherwise prohibited or subject to conditional use procedures.

This request was first submitted for departmental review on December 1, 2009. Six departments returned comments; Rural Addressor had no adverse comments. The Sheriff's Department stated that traffic impact should be checked. Public Works commented that the subject lots are located on private roads not maintained by the county. Code enforcement commented that a new grading and drainage plan needed to be updated and the fire department stated that there were some safety concerns because of the setback distances in reduced lot sizes.

Commissioner Otero-Kirkham asked if the commission was allowed to know who Cypress Estates Limited is and who are the partners?

Mat Myers stated he is the attorney representing Pat Owens, one the members of Cypress Estates Limited. There are other partner's and he doesn't know who they are but he's representing them and is appealing this on behalf of Cypress Estates Limited Partnership. Ms. Owens currently owns 460 lots in the Eastland Hills Subdivision, so she has an interest in the variance that was granted to Mr. Mechenbier who is represented by Mr. Goodwin.

Commissioner Otero-Kirkham asked Mr. Myers if Ms. Owens had received notice of the P&Z meeting. Mr. Myers said he doesn't think Ms. Owens received notice of the original Planning & Zoning Commission hearing but she does have property surrounding the area, the subject of the variance request and is impacted by the decision of the Planning & Zoning Commission to grant that variance. It's his understanding that Ms. Owens was the developer of the first phase of Eastland Hills.

Commissioner Gentry stated if Ms. Owens owns property adjacent to this, then she had to have been notified.

Mr. Myers said you would think that she would be entitled to notice but he doesn't think she received notice; however her son Mike Milam was present at the Planning & Zoning Commission Hearing on March 24th and did speak on the variance request. Mr. Myers believes that Mr. Milam was there as a resident of the Eastland Hills Subdivision. Cypress Estates Limited Partnership is in opposition on specifically, that the applicant Mike Mechenbier did not meet the requirements of section 154.058 of the Valencia County Ordinance and this is the basis for their appeal. For this reason they ask that the variance that was approved by the Planning and Zoning Commission be denied. It's clear that even if the variance request were to stand they have to comply with the underline covenants which require a seven foot side yard setback.

County Attorney Adren Nance asked Mr. Martinez and Mr. Myers if these concerns that have been brought up were presented to the Planning and Zoning Commission at that meeting.

Mr. Myers stated he was not present at that meeting, but believes some of these concerns were brought up by Ms. Ginger Brown who was there representing the homeowners association and Mike Milam who addressed the wood siding issue.

County Planner Jacobo Martinez asked Mr. Nance to clarify which issues of the December 19th meeting and Mr. Nance stated the issue as to what is required for a variance as set forth in 154.058 and if they were not met.

This was not brought up according to the minutes was Mr. Martinez's response.

Commissioner Rael asked what is the basis of the standing issue that applies for the objections by Cypress Gardens. Mr. Myers stated the issue arise from the proximity of the lots owned by Cypress Estates and some standing arises from the fact that Cypress Estates was the original seller of the these lots to the purchaser. These lots had gone through a foreclosure process and were the subject of the variance request which was originally owned by Cypress Estates. Cypress Estates created the restrictive covenants and in the covenants there were certain minimum lot size requirements and minimum setback requirements. Cypress Estates has an interest in those restrictive covenants being adhered to because they continue to own property within this subdivision.

Commissioner Rael asked if the entity appealing this have property close enough to the area affected that they were required to be given notice.

Mr. Martinez stated the appeal was brought to them by Mike Milam, the son of Ms. Owens, who was given notice and did speak at the planning and zoning meeting.

Commissioner Rael asked if the covenants were private within the people that own lots within the subdivision or were they adopted by the county as part of its ordinance?

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Mr. Myers stated the covenants were recorded in the Valencia County real estate records, so they affect all of the lots within the Eastland Hills Subdivision, including the lots that are the subject of the variance request.

Commissioner Rael asked if these covenants were adopted as a condition of the approval of the subdivision by these commission or prior commission.

Mr. Myers said it's his understanding that the Valencia County Zoning Ordinance and the restrictive covenants are two separate issues.

Commissioner Rael stated the restrictive covenants are private covenants enacted amongst the original developer and amongst the people that own lots. Commissioner Rael's view is that the county doesn't touch those covenants and cannot change them because they were not a condition of the original subdivision therefore they are not part of the county ordinance. The only thing the commission can consider is whether or not the conditions of the local ordinance were met in order to justify the variance. Mr. Myers agreed with that.

Commissioner Gentry said it seems to him that the special condition and circumstances exist for this particular land. The land has been downsized and therefore the request is because this land is particularly smaller than the other that would be the special request. Would that not be true?

Mr. Myers said he would disagree as the conditions of the property cannot be caused by the developer, who decreased the size and then claim there is something unique and particular about it and now has to get a variance. Usually it's an existing condition, geographic or typographic conditions on the land. It's not usually from having the land voluntarily decreased in size.

Commissioner Otero-Kirkham asked Mr. Myers what he wanted from the commission, was it to help Ms. Owens keep the covenants because the commission has no control over the covenants and Mr. Myers said what he was asking was that the commission overturn the variance approval of the Planning & Zoning Commission based on the fact that the applicant didn't adhere to the requirements of the Valencia County Ordinance Section 154.058. Commissioner Otero-Kirkham asked how long has it been since Ms. Owens developed in Eastland Hills? Mr. Myers did not know and Mr. Goodman said it was in 2003.

Commissioner Otero-Kirkham asked does Ms. Owens now intend to develop those four hundred lots she has. Mr. Myers said if she could find the funding for it she would. Commissioner Otero-Kirkham also asked if Ms. Owens found the funding, would the two feet make a difference and for the seven years when she did have the proper setbacks did she not find funding to develop it? Mr. Myers said he felt the two feet would make a difference and he didn't know why exactly she hasn't been developing it. It looks like the covenants weren't in place until 2004.

Commissioner Rael asked if the commission votes to grant the variance, the covenants will still be there to protect the seven foot setback and you'll still have the right to enforce the covenants without this commissions' decision affecting that at all, am I correct. That's correct Mr. Myers responded.

Mr. Mark Goodwin had met with Sarah Holcomb who represents the EPA (Environmental Protection Agency) and looks into violations of graded projects and of this morning Pat Owens denied ownership of any property adjacent to this project. The Planning & Zoning Commission granted us a variance to five feet with the condition that we comply with the procedures of the restrictive covenants, which we have agreed to do. We did not agree to abide by the seven feet that is shown in the restrictive covenants, but we have agreed to comply with that process and have yet to get to that process, Mr. Goodwin said. (EXHIBIT A)

b) Ordinance 2010__, Solid Waste Collection & Disposal – Eric Zamora

County Manager Eric Zamora stated after taking into consideration the comments from vendors and the public, it was determined that it would in the county's best interest to revise the ordinance, make it a little broader and be able to accomplish several tasks when it comes to solid waste collection within the county. With the help of the county's legal staff and Mr. Martinez Environmental Coordinator, the ordinance has been revised. There was a letter submitted by James and Donna Crawford who stand opposed to mandatory trash taxation and collection.

Commissioner Rael said Section 50.06 H directs the county manager to develop mandatory county-wide collection service operated through contract, is there anything in this ordinance that permits the county manager to develop a county wide collection service operated by the county or is it limited to contract?

County Attorney Adren Nance stated the way it's written, the answer is no. It specifically says contract.

Commissioner Rael said we desperately need some sort of system but what he has a problem with is that this limits us to contracting with people on a contract basis that may or may not work out and does not permit this county to consider the option of having a county operated curb side pickup which could provide up to fifty county jobs in today economic. By not giving ourselves the option of going on a county operated method, which would provide jobs, we have cornered

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ourselves if we get a lousy contractor and then we will be dealing with the contract and if it doesn't work we will be looking for another contractor. These are his comments regarding the ordinance, otherwise he feels the county absolutely needs this, but would like to see it changed.

Chairman Holliday said the last time this was brought before the commission; they did ask to have the option of having a countywide operated curb side pickup looked at. He asked what the contract time would be and County Manager said four years extendable to eight years. Chairman Holliday feels whatever contractor gets the job, they will be creating jobs in the county and after four years if it doesn't work out the county can take over.

Commissioner Gentry feels this would be a very large corporate endeavor to be taking on a solid waste program. If we want to go in and start a system like that, we can come back and change the ordinance. The first contract goes out for four years or renewal; we can come back if the commission sees that it's not working. It takes thirty to sixty days to change the ordinance so the commission can do what they need to do. This county isn't big enough, doesn't have the technology, doesn't have the staff base and feels they should keep it to a contract and go with that.

County Clerk Sally Perea administered the oath to other individuals wishing to speak on this matter.

Meadow Lake resident Bob Gostischa stated he would not like to see his government in the solid waste business. Government is not meant to run a private business. A business runs for profit, it doesn't run to see how you can prolong something that's not working right.

Meadow Lake resident Jim Lane is definitely for mandatory trash pickup. It's quick, easy and professional. We've made stride in this county lately and we shouldn't wait any longer.

Valencia County resident Mike Wood stated as far as trash pickup goes, it has to be mandatory, we have to keep the county clean. We are obligated to do that. The way to do that is if we need more people with the existing contract or contractor we could force them to hire more people.

Chairman Holliday stated it's been a year since the commission started working on this and we can't delay this any longer, it's not going to work perfectly, nothing does. We're going to have to give the contractor time to work out the bugs, but they will get it worked out. The county will have control and we can tell them how we want to see it done.

Tierra Grande resident Sue Moran expressed her concerns as to how this would impact Tierra Grande, as it's an extremely rural area and how the county would handle the disposal of large items. Ms. Moran recommends that a town hall meeting be held to make people aware how this is going to work. Chairman Holliday stated first let's get this going; the county is not going to solve all the problems at one hit but we'll work on it. We'll get one problem solved, get that working smoothly and then tackle the next problem.

Commissioner Medina stated this ordinance has been in the works for four years. This is a step forward and the county needs to take one step at a time. He is working for the benefit of the county and if down the line they want to get into this business then we'll look at it. We just have to move forward. Attorney Nance stated this ordinance is a framework with the understanding that those details are not necessarily worked out. There are options that have to be worked out; this is only the framework to get there.

Commissioner Gentry stated the one thing the commission has not touched on is the financial impact whether the county runs this or not. If you look at a county run system you have a lot of capital investments. Hauling trucks need to be purchased, you need to have a maintenance yard, and you have to purchase a ton of receptacles, in all, you need to have a lot of financing available. This business itself is probably more costly than outfitting the whole county. Whether this is done through a bond or tax, Commissioner Gentry feels this is a capital burden which may affect what the county has in revenues and feels much more comfortable in mandatory pickup from a professional company that can provide all of the things required to run this type of business. The county is better off to contract out, minimize the county exposure, maximize the cleanup and try to get the county turned around.

County Attorney Adren Nance stated this is the last of the public hearings and at the next meeting this ordinance will be on the agenda for adoption. The county has to adopt it or not adopt it but the vote has to be taken in a roll call manner. If it's approved it will go into effect thirty days afterwards. The commission is free to make changes after that time. Staff may want to make changes after the hearing and after review, but it's up to the commission if there are any changes to be made.

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Marlene Feuer of Waste Management of New Mexico complimented staff on a very well prepared ordinance. She has been involved in other implementations and community meetings are great in keeping the county informed. Everything depends on the cost and all the options should be placed on the RFP's (Request for Proposal).

EXECUTIVE SESSION- Pursuant to Section 10-15-1 NMSA 1978, the following matters may be discussed in closed session: a.) limited personnel matters; Deputy Warden Detention Center b). pending or threatened litigation and c.) Other specific limited topics that are allowed or authorized under the stated statute.

Commissioner Medina motioned to go into Executive Session. Seconded by Commissioner Otero-Kirkham. Roll call vote. Commissioner Medina voted yes. Commissioner Rael voted yes. Commissioner Gentry voted yes. Commissioner Otero-Kirkham voted yes. Chairman Holliday voted yes. Motion carried 5-0.

Commissioner Otero-Kirkham moved to go back into Regular Session. Seconded by Commissioner Medina. Motion carried unanimously.

County Attorney Adren Nance stated the matters that were discussed in Executive Session were limited to Los Chavez Community Association vs. Board of County Commissioners, nothing else was discussed and no final action was taken.

Commissioner Rael moved to approve the summary as stated by counsel. Seconded by Commissioner Gentry. Roll Call vote. Commissioner Medina voted yes. Commissioner Rael voted yes. Commissioner Gentry voted yes. Commissioner Otero-Kirkham voted yes. Chairman Holliday voted yes. Motion carried 5-0.

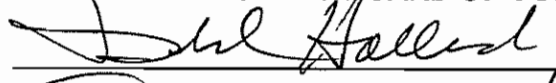
7) The next Regular Meeting of the Valencia County Board of County Commission will be held on May 19, 2010 at 5:00 P.M. in the Los Lunas Schools Administration Building Board Room 119 Luna Ave., Los Lunas, NM 87031.

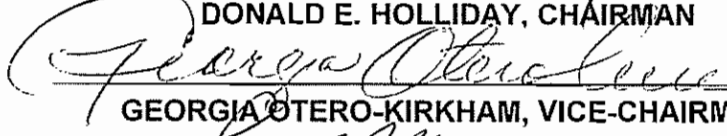
8) Adjournment

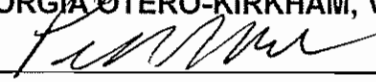
Commissioner Medina moved for adjournment. Seconded by Commissioner Rael. Motion carried unanimously. Time 7.16 PM

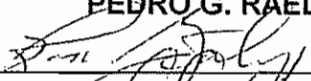
NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the May 12, 2010 Public Hearing Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

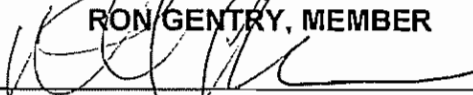
VALENCIA COUNTY BOARD OF COMMISSIONERS


DONALD E. HOLLIDAY, CHAIRMAN


GEORGIA OTERO-KIRKHAM, VICE-CHAIRMAN


PEDRO G. RAEL, MEMBER


RON GENTRY, MEMBER


DAVID R. MEDINA, MEMBER

ATTEST:


SALLY PEREA, COUNTY CLERK

6-3-2010
DATE