

# VALENCIA COUNTY BOARD OF COMMISSIONERS

## PUBLIC HEARING MEETING

September 8, 2010

<b>PRESENT</b>	
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) Chairman Holliday led the Pledge of Allegiance.

2) Approval of Agenda

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

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

Meadow Lake resident Bob Gostischa said now that they have cleaned up most of the old lake property, there's a lot of trash dumping on the outside of the fence and would like to know who to contact for to get the trash picked up.

5) **DISCUSSION (Non-Action) ITEM(S)**

NONE

6) **SWEARING IN OF PARTICIPANTS**

County Clerk Sally Perea administered the oath to those individuals wishing to speak.

7) **PUBLIC HEARING ITEMS:**

a) Request Quasi-Judicial District Change to Amend the Zoning Map From RR-2 to RR-1 on the Subject Property Defined as: T5N R2E Section 20 NMPM; Tract 19-A-1, zoned RR-2 AKA 79 Jaramillo9 Road, Belen, NM – Jacobo Martinez/Pat Baca Jr.

County Planner Jacobo Martinez said this is a request to authorize a zone change from a Rural Residential-2 to a Rural Residential-1 zoning district. According to the applicant, a zone change is needed in order to provide one acre to each of his children. The subject property is 5.45 acres and the applicant would like to split up his land into four one acre parcels with the current acreage, he would have enough land to split. Assessing the surrounding lands of the subject property, there are a number of properties that are one acre or less making the zone change appropriate with surrounding land uses and density patterns. The Planning and Zoning Commission held a public hearing on the amendment to the official zone map RR-2 to RR-1 on August 25, 2010 and voted 5-0 for approval. The commission found the zone change as described by the applicant is appropriate considering the surrounding land use and pattern development in the area. The zone change as described by the applicant provides adequate infrastructure, public utilities and public services and is consistent with the comprehensive plan that does call for mixed densities and for affordable housing.

Commissioner Otero-Kirkham asked if the split was into 4 or 5 lots and has he taken into account road access to the lots?

Mr. Martinez said it will be split into four lots and Mr. Baca has taken into account the easement that may be taken away from the property and have enough property to cover that. He has 5.45 acres which gives him 1.45 acres for the road.

Chairman Holliday asked if this will violate the two acre green belt.

Mr. Martinez said if the commission approves for a RR-1 then he can split it into one acre lots.

Commissioner Otero-Kirkham also asked if all the abutting neighbors within the one radius were notified of the zone change request.

Mr. Jacobo said all the adjacent neighbors to this property were notified and no one opposed the change.

Commissioner Rael asked if there was any input at all from any of the neighbors one way or another.

Mr. Martinez said there was input from the neighbor across the street that had some concerns on the size of the housing that may be built and was informed on the county's current restrictions on housing in a residential zone.

Commissioner Otero-Kirkam asked if this property was in the flood zone. Mr. Martinez said this property is in the flood zone and has been in the past.

Commissioner Gentry said this property is in his district and asks the commission to consider this request at the next meeting.

Commissioner Medina said he knows the area and the family and this property has been in the Baca family for a long time. (EXHIBIT A)

b) Request Quasi-Judicial District Change to Amend the Zoning Map from OD to I-3 on the subject Property Defined as: T7N R4E Lots 1,2,3,4; the South ½ of the North ½ of the South ½ in Section 26; Lots 1,2,3,4; the South ½ of the North ½ of the South ½ in Section 27; Lots 1,2,3; in section 28 Lands of Bonita Land & Livestock Inc; Zoned OD filed in Book 344 Page 4217 of the Office of the Valencia County Clerk – Jacobo Martinez/Manzano Energy Park/Sherry Faust/Max Kiehne.

County Planner Jacobo Martinez stated the applicant is requesting to amend the zoning map from Outland District (OD) to Heavy industrial (I-3) to allow a solar array facility. According to the applicant, the purpose for the zone change is to facilitate the development of a sustainable energy park. More specifically, the purpose for the zone change is to develop approximately 300 acres of solar array in order to produce power. The Valencia County ordinance does not currently have any language that defines solar arrays or other forms of alternative energy and their proper zoning. The only language found in the Valencia County ordinance that does deal with energy production is found as a permissive use in the Heavy Industrial (I-3) zone. Therefore, the applicant needs to apply for an (I-3) zone in order to develop a facility that generates energy. The Planning and Zoning Commission held a public hearing on the amendment to the official zone map OD to I-3 on August 25, 2010 and voted 5-0 to recommend approval for a zone change with conditions. The conditions of approval are that the development for the I-3 zone change shall be a solar array facility. If a development that is not a solar array facility is created, the zone change will be null and void and revert back to an OD zoning designation. The solar array facility development shall be completed in seven years. If the project is not completed in seven years, the zone change will be null and void and revert back to an OD zoning designation. If zoning language is created by the county to accommodate alternative energy production, the I-3 zone should be changed to that type of zone.

The development as described by the applicant is appropriate considering the surrounding land use and pattern development in the area, it enhances the county's protection for public health, safety and welfare, it will provide quality public utility that will steer urbanizing development to areas with adequate infrastructure and utility, it strengthens the economic base of the county. Conditions can be placed on an I-3 zone as long as both the developer and the commission agree upon those conditions.

Commissioner Otero-Kirkham asked how many people will this employ, when do you anticipate this will be up and running and as for vehicles traveling up and down Meadow Lake Road, do you think this will have an impact?

Ms. Faust said during the construction there may be two hundred people employed, maybe more. Once the facility is actually commissioned, there will probably be on site, three shifts with six people which will be two per shift and there will be the administrative and management aspect of it as well so probably about ten employees. They are pushing to have this done by late 2011. There will be some impact during construction but once it's commissioned there shouldn't be.

Commissioner Otero-Kirkham said one of the things they need to do is talk about doing some ordinances in place for solar and wind generators.

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Commissioner Medina said instead of changing everything, can't we just amend the county ordinance?

Mr. Martinez said by adding some language they would be amending the ordinance and after thinking about this he feels there may be a couple ways they may be able to approach this, to actual create language that deals with alternative energy and alternative energy facilities because the county is just starting to learn about the impacts they might currently have. They could try another route and put in some amendment language for a special use zone but believes if they want to be more comprehensive with the county zoning ordinance and we want to understand the impacts of this type of alternative energy a little bit more than further study would be required.

Commissioner Medina said this looks like it's the thing of the future, how are other cities or counties dealing with this in regards to their ordinances.

Mr. Martinez said he has spoken to other counties on this issue and some counties do have some regulations on wind farms and wind alternative energy but nothing specific on solar energy as of yet. The only thing that they have of their zoning ordinance that allows for this is using a special use ordinance.

Chairman Holliday asked, Mr. Kiehne how will you get the energy out of there, transmission line, underground or overhead? There is an existing three phase power line from the very east end of Meadow Lake that comes off the mesa parallel to the road out there and goes into the substation just as you start going up the hill to Meadow Lake. Since this is about ten mega watts they may have to build a parallel facility to accommodate the increased power. That's a decision that will be made at a point in the future depending upon the capacity of the existing three phase power line was Mr. Kiehne's response.

Chairman Holliday also asked you will assume all costs in that? Mr. Kiehne said yes, it will be the requirement of the applicant to sell the power and or to pay, for example to PNM (Public Service Company of New Mexico) for the transmission to meet their transmission requirements and it could be that the power line already has some excess capacity that can be utilized or could be that they would have to build a parallel facility adequate to cover ten mega watts of power. The energy can be sold here in New Mexico or directly to PNM (Public Service Company of New Mexico) or other power companies.

County Attorney Dave Pato asked do you have any PPA's (Power Purchase Agreement) for this electricity that you are planning to sell. Mr. Kiehne said no, at this point but they have a large list of people who buy this kind of alternative power and before power can be delivered they'd have to have a power purchase agreement and they'd also have to have a transmission agreement. This is one of the steps to getting that done which is a zoning request.

Commissioner Rael wants an idea as to the capacity to produce electricity. How would it accommodate homes on an average of 1,500 to 1,800 sq. ft? Ms. Faust said about 3,100 homes.

Commissioner Medina asked Ms. Faust if you hope to start construction at the beginning of 2011, why are we looking at seven years, is it going to take seven years to build it.

Ms. Faust said that's primarily for the lenders comfort because this is an extensive project in terms of the financial commitment and they want to make sure they have plenty of time to get it built. Seven years is what has come up before, she doesn't know if that's absolutely necessary, it certainly is not from her viewpoint but it would certainly give them a comfort zone. They are not waiting they are pushing forward.

Commissioner Gentry said he has a concern with taking this large amount of property and changing it to I-3. It could be very devastating and this property is right next to the core community residential Meadow Lake area. He asked if there was no method that you could have taken this and they could have applied for a variance for a conditional use.

Mr. Martinez said no, as he reads conditional uses under outland district, outland district reverts back to RR-1, RR-2 (Rural Residential) zoning laws and under RR-1 and RR-2 zoning laws you can have a conditional use which provides a conditional use for an energy facility which does not generate power and unfortunately this does generate power and that's why he didn't feel it was appropriate to go into that conditional use zone. For the variance itself, the land needs to have special characteristics by which to cause a variance and this land doesn't have any special characteristics that he sees.

Commissioner Gentry asked so basically you're saying there's no other way other than just to get an I-3 designation?

Mr. Martinez said under the counties current zones laws, he believes that's true. The red flag for Commissioner Gentry was seven years, he has a concern that the zoning stands regardless of the use. First you rezone the property then you designate the use. If the use and the application go away, the zoning stays.

Mr. Martinez said he shares the same concerns about this being I-3 and he did speak with the county attorney and their feelings were if the conditions were agreed upon by the developer and the commission then those conditions would stand in court.

County Attorney Dave Pato said Mr. Martinez explained it well; they worked through the code together and came to that opinion. The zoning code itself in respect to the imposition to conditions, therefore it's possible that a condition is imposed at some point the court might say that wasn't a valid condition, the zone change is going to stand, that's a possibility, but if they have the applicant come before the commission and they stipulate to the change and they stipulate that it will revert back to the OD (Outland District) zone if they don't meet their obligations within this time period. The county has the agreement of the parties and thinks the court will likely enforce that agreement, especially if that's a matter of record in a Public Hearing and that's part of the commissions decision, that will likely stand. If they have any objections to that imposition they can then appeal the decision of the board granting it with that particular condition. If they do appeal the commission has reorganization in their agreement that they will be subject to the conditions and feels the court will endorse that agreement to the parties.

Commissioner Gentry asked would it be wise for the commission to have a written agreement with the applicants to that language.

Mr. Pato said they can do that or have them testify here at the Public Hearing, note their stipulation to the condition and all come to agreement to the condition and maybe on the finding and facts and conclusion of law although unorthodox, we can have a separate signature line for them where they by agree to the conditions set forth on the findings and facts and conclusions of law. He would see no concern about that and therefore it's clear to a court in the future that these folks expressly agreed to these conditions.

Commissioner Gentry said if you feel legally comfortably that the conditions that the Planning and Zoning Commission placed on it, that it is only for that solar field and it reverts back as legal method would be workable. What he would look at as a commissioner would be a starting date, so this doesn't float out for ever. He would ask for a three year construction startup and not a seven year finish.

Mr. Kiehne said he is not thinking of using any stimulus money. It's difficult to speculate on time tables and the reason they requested the seven year last was primarily for the comfort of the lender and they are hopeful and anxious to get started because what is motivating them are what are called federal tax credits and right now are pretty high. As far as the three years, they would prefer to leave it as recommended by Planning and Zoning and there was the discussion of the three years. They do want the commission to approve their zone request because that is an important part of their loan application package. They would not be terribly upset if the commission voted to accept the zone change request but requiring that they start major construction within three years. The reason they are pushing hard for this is because they don't know if Congress will extend the tax credit dates. Right now they expire in 2012, so they want to be in business and start construction in 2011. If the commission decides on three years instead of seven, they would thank the commission for that, but would hope that they would agree to the seven years. If the planning staff does amend or redo the zoning ordinance and they become part of that zoning ordinance by having a new zone, then that zone would naturally stay in place in perpetuity, it wouldn't be limited by the three or seven year period, in other words had the county had a zone that they could use and they had given them that zoning, they wouldn't be asking for three or seven years.

Mr. Pato said that's correct, they would just been petitioning for whatever zone change that was a permissive use that they would need.

Mr. Kiehne said so following that in the next year they come up with a new zone and they are in that zoning, they wouldn't be faced with three or seven years either.

Mr. Pato said you'd be grandfathered in their correct zone and you'd still have to meet the conditions in the three or seven years otherwise it would revert back to OD (Outland District) which was agreed to do.

Mr. Kiehne said they would make sure the commission is not worried about this potential event, they would be happy to enter into separate agreement that was discussed as a possibility or sign on in the minutes of the meeting in front of you, which would be appropriate.

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Mr. Martinez said he spoke with Isleta Pueblo on this and right now they don't have any reservations on this but they would like to be part of the site design review process. There is a concern as to how close they are to their property line. Kirtland Air Force Base may have some concerns in regards to the flight zones and flight patterns depending on the type of solar array facility this is going to be.

Valencia County resident Bob Gostischa expressed his support of this and would like to see the Planning and Zoning Department come up with the proper zoning ordinance to accommodate this type of zone request.

Commissioner Rael said his understanding is, if conditions are placed and agreed upon by the developer, the I-3 zone is going to be limited to that use and no other use. He agrees ordinances have to be updated but this is what the county has to work with now and everyone can rest assured that Mr. Pato is correct that if there's an agreement by the developer, that the use is going to be limited, that will work adequately for now.

Commissioner Medina said if the commission could just amend the ordinance for this particular case instead of making it an I-3. If they could amend it and then work on a new ordinance that would address this.

Mr. Pato said you can't amend for this particular case but there is a process in the county ordinance for legislative amendments to the zoning ordinance in which they can follow the same process as they otherwise would for amending any ordinance. It would affect a wide number of people and would have a lot of public input on the proposed change. Mr. Martinez has been reviewing this process to see what the proper classification would be what this probably would fit under as a permitted use and he's been exploring that and it's a complicated process.

Mr. Martinez said he will be attending a conference in a couple of weeks regarding alternative energy and alternative regulations.

Planning and Zoning Commissioner Jim Lane stated he lives about one mile from that site and if there's anyone that it would affect negatively it would him. He is 100% for this type of project, if it remains this type of a project. As a landowner he has great reservations on making this an I-3. He fully supports this project, he supports smart economic development on the east mesa, and he supports the jobs that the construction is going to bring and supports the jobs the site is going to bring. The easiest way of getting this done is converting this I-3 to some sort of an ordinance that fits this type of application better.

Commissioner Gentry said this would be a Special Use I-3 for solar. If it ceases to be solar, it ceases to be I-3 and goes back to OD (Outland District).

Mr. Pato said there certainly can be a provision in there that states so long as substantial completion has started within whatever the agreement is and so long as this property continues to be used for Photo Voltaic Solar Array and in the event that it changes and if substantial completion is not achieved within a certain number of years, it automatically and without action of the board or the applicant would revert back to the OD (Outland District) the zone designation. The parties can agree to it.

Mr. Lane said so it can run with the land, so that fifteen years from now and solar is out and removed the solar panels, then it would revert back to OD (Outland District) automatically. Mr. Pato said if the commission wishes to structure it like that and have the applicant agree to those conditions, then yes.

Chairman Holliday asked Mr. Martinez to start on this as soon as possible, so the county doesn't miss out. (See Exhibit B)

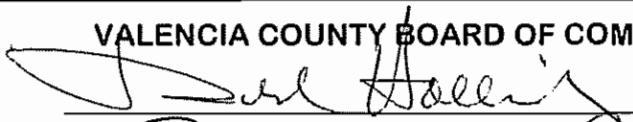
8) The next Business Meeting of the Valencia County Board of County Commission will be held on, September 15, 2010 at 5:00 P.M. in the County Commission Room at the Valencia County Courthouse.

#### 9) Adjournment

Commissioner Kirkham moved for adjournment. Seconded by Commissioner Gentry. Motion carried unanimously. Time 6:16 P.M.

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the September 8, 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**

  
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**DONALD E. HOLLIDAY, CHAIRMAN**

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

  
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**PEDRO G. RAEI, MEMBER**

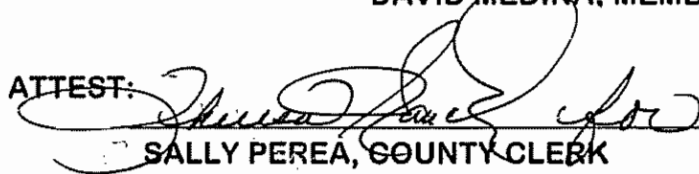
  
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**RON GENTRY, MEMBER**

  
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**DAVID MEDINA, MEMBER**

**ATTEST:**

  
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**SALLY PEREA, COUNTY CLERK**

9-15-10

**DATE**