

✦ Board of County Commissioners ✦

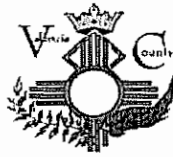
Donald E. Holliday, Chair  
District V

Georgia Otero-Kirkham, Vice-Chair  
Vice-Chair, District II

Pete G. Rael  
District I

David R. Medina  
District III

Ron Gentry  
District IV



**PUBLIC HEARING/WORKSHOP**  
**December 8, 2010 5:00PM**  
**AGENDA**

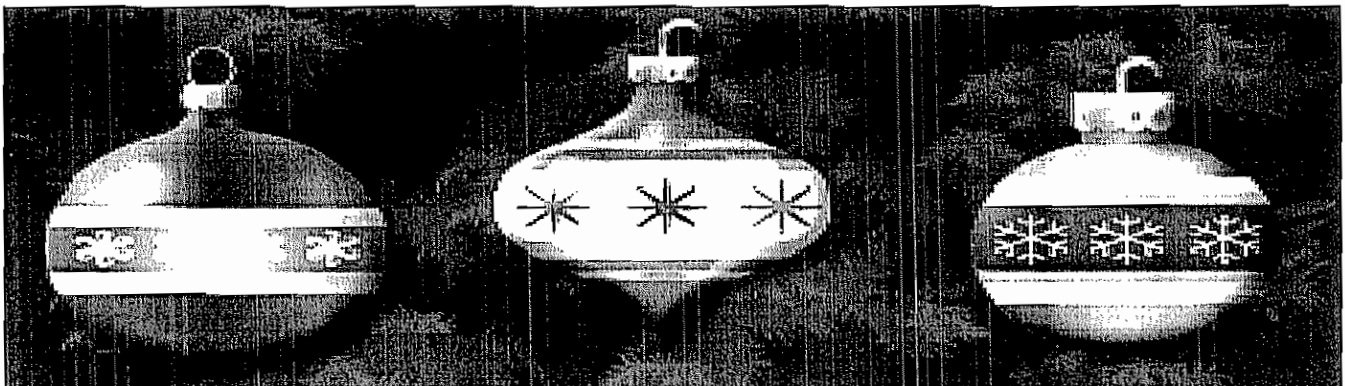
Valencia County Courthouse, Commission Room  
444 Luna Avenue, Los Lunas, NM 87031

*Donald Holliday*

- 1) Call Meeting to Order
- 2) Pledge of Allegiance
- 3) Approval of Agenda
- 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]
- 5) **DISCUSSION** (Non-Action) **ITEM(S)**
- 6) **SWEARING IN OF PARTICIPANTS**
- 7) **PUBLIC HEARING ITEM(S):**

a)	Request to Lease of Public Airport Facility and Operation Agreement.....	<b>Kurt Winker</b>
	<b>ADJOURNMENT</b>	
8)	<b>SOLID WASTE WORKSHOP</b>	

- 9) **NEXT COMMISSION MEETINGS**  
♦ December 15, 2010, Business Meeting @ 5:00PM-County Commission Board Room, 444 Luna Ave. LL, NM
- 10) **ADJOURNMENT**



# VALENCIA COUNTY BOARD OF COMMISSIONERS

## PUBLIC HEARING

December 8, 2010

PRESENT	ABSENT
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.

3) Approval of Agenda

Commissioner Medina moved for approval of the agenda as amended. Seconded by Commissioner Rael. Motion carried unanimously.

4) **PUBLIC COMMENTS**-At the discretion of the Chair (For information only-limited two minutes per person on subjects not on this published agenda.

Valencia County resident Paul Alexander said after reading the article in the local paper and the difficulties with the RFP's (Request for Proposals) on the solid waste he wanted to come forward and offer his assistance in any way he can. He recently retired from the City of Albuquerque after 25 years. Twenty two of those years were working in purchasing, dealing with numerous RFP's (Request for Proposals) and was assigned to the solid waste department and has dealt with every phase of the RFP's. He has extensive expertise in all aspects of solid waste and would like to volunteer his time for whatever he can do to help the county and perhaps get the RFP on the track that the commission wants it to be on. He firmly believes that Valencia County has a serious solid waste problem and has watched it grow and fester over the last few years. He believes Valencia County can have a state of the art program and in most cases the RFP process is how you get to what you need to do with the solid waste program.

Commissioner Otero-Kirkham asked Mr. Alexander if he would be willing to sit down with the commissioners on a one to one basis and listen to what the commission would like to see come out of the solid waste RFP's and give the commissioner's some ideas on that. He certainly would was Mr. Alexander's response.

Valencia County resident Clarke Metcalf commented on when issues that the commissioner's feel extremely passionate about, it is extremely hard to make decisions as to when or whether to recuse themselves. It is important before making a decision to focus on the possible appearance of impropriety that might result. When there is a clear conflict of interest, recusal should be instinctive and obvious, as the commissioner's vote has far reaching consequences. Always keep in mind the ethical responsibilities of their office, especially when the costs fall upon the tax payers.

Bosque Farms resident Lilly Drye stated the county needs improvement and believes recycling can be cost efficient and a reasonable way of disposing of certain household materials helps to reduce impact of garbage collection at the county dumpsites.

Valencia County property owner Leo Court is concerned that illegal dumping is occurring on his property and feels that the county needs a comprehensive solid waste plan in motion that would clean up illegal dumping. Conejo is not designed or centered for the wide range expansion of Valencia County.

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

None

6) **SWEARING IN OF PARTICIPANTS**

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

**7) PUBLIC HEARING ITEMS:**

a) **Request to Lease Public Airport Facility and Operation Agreement – Kurt Winker**  
 Mid-Valley Airpark Property Owners Association President George Winters stated he has been a resident of Mid-Valley Airpark for fifteen years. He is not a pilot and does not own an airplane but elected to move to Mid-Valley because of the area it's in. Their membership has requested that Mid-Valley Airpark property owner's board enhance and properly maintain the premises so that they can be a further benefit to Valencia County. Neither Valencia County nor any other entity has ever contributed to any enhancements or maintenance of the airpark. Both residential and commercial property owners have always contributed to those costs. As taxpayers of Valencia County they are asking that the commission approve this lease so that they can continue to service Valencia County.

Mid-Valley Airpark resident David Hamann responded primarily on Commissioner Gentry's comments from the November 17<sup>th</sup> commission meeting in which he stated he would be ashamed for Valencia County to lease the air field and also Mr. Jim Crawford who included remarks about Mid-Valley in his interpretation of another commission meeting in which he distorted the facts about their community and their good people. This is a brief profile of what Mr. Crawford called an elitists club and rich playground in which the residents of Mid-Valley live in. There are many of income levels in the Mid-Valley community. Some residents are teachers, single parents, from an airplane mechanic to someone that sells bicycles and model trains, some are retired and living on social security and their savings and others have served their county in the armed forces. Yes they are elite in our minds and as our rich playground, most of the residents live on an acre or less, homes must conform to certain requirements of their covenants. There are no mansions to his knowledge and most of them live in homes that are less then 3,000 sq. ft. The businesses in Mid-Valley's rich playground are far from Rodeo Drive in California. These people are hard working and have had limited success throughout the years. As a reminder, because someone has something that you don't, doesn't mean they are elitists or rich. This is a beautiful community right in your backyard in which visitors, business people, residents and citizens of the county are proud to be a part of contrary to Mr. Gentry's comments that we should not look to the past but to the future. We are asking that the county become a partner with Mid-Valley as they grow together and look to the future. In the past forty years Mid-Valley Airpark has contributed to an excess of twenty million dollars in property taxes and never asked the county for assistance. We are looking to the future in preserving two miles of asphalt, that's equivalent to two miles to the north bound lane of highway 314 and yet can you tell me where any two miles stripe of asphalt can contribute two million dollars in revenue. Will the commission hide behind emotional rhetoric and stalling tactics of a few or look to the future with them.

For the record Commissioner Gentry wanted it made clear that he or no one on the commission has ever called any resident of the Mid-Valley Airpark an elitist.

Mid-Valley Homeowners Association Treasurer Ms. Longmire stated she whole heartily agrees with all of Mr. Hamann's statements and also added that the airport is very convenient as it is an ideal place for people to stop as the Albuquerque Airport is too busy. Most of the residents have aircraft radios in their homes so they know when someone is coming in and when they may require a tie down or need something to eat. They are met at the gas pumps, where they usually stop and they are taken to a restaurant. Also, thanks to the volunteer pilots at the airpark and surrounding airports that have donated their time and the use of their airplanes. 1,200 – 1,400 children have experienced their first airplane flight. They have been trying very hard to maintain the runway and taxiway in a same manner but there will be a point when they will need more then they can supply themselves. Ms. Longmire asks that the commission enter into an agreement with Mid-Valley Airpark in order to create an avenue for them to receive some funding from the state to maintain what they already have.

Mid-Valley Airpark Manager Kurt Winker said they have spent over \$50,000.00 per year every year of their own money to maintain and keep up their own roads up within the Airpark. They have however, been unable to keep enough in reserve to rehabilitate the runways and taxiways, over forty years of public use at their own expense. The bill for the rehabilitation of their runways and taxiways is around \$500,000.00. The county can help but only if there's a lease agreement signed, due to the New Mexico State Anti Donation clause. The State Aviation Division can also assist depending on available funds but again only if there's a lease in place. All they ask for is the opportunity to recover some of their unused taxes and the county's assistance in helping them to get some state tax money. They're not trying to bail out or do a freebee whatsoever, they are asking for a

Minutes of December 8, 2010 Public Hearing Meeting

method from which they can possibly obtain some assistance in order to maintain this forty year asset to the community and to the residents of the Airpark. Mr. Winker addressed some of the questions brought up by Commissioner Gentry at the last starting with user fees; they already pay user fees and they will continue to do that to operate the Airpark. Tie downs, Commissioner Gentry was very concerned that there were none included in the lease but that has been remedied. Lot 5 has been transferred into the Mid-Valley Property Association and included in the lease. Tie downs have already been installed; signs have been ordered and should be in this week. Liability, the New Mexico Tort Claims Act limits the county's liability to \$750,000.00 per occurrence plus the medical which is just right at about a \$1,000,000.00 and that's state law which is something they can't change. The incorporation of the Mid-Valley Airpark means the corporation is responsible for the liability and therefore it doesn't transfer directly to the homeowner, indirectly it does. Mid-Valley Airpark Property Association already has all of the liability for the Airpark. Miles are maintained according to county statute. The county will get to add that to miles maintained because the county gets paid for every mile maintained of roads and according to the county statute for public purposes, roads and runways are the same for maintenance.

Chairman Holliday asked Mr. Winker what a user fee is. Mr. Winker said it's basically a fee paid by people who use the airport, the runways and the taxiways. It's a common term used in aviation, user fees can sometimes be used at larger airports for every takeoff and landing. They can charge an access if they're going to use the runways, you have to pay some sort of fee and every airport will operate slightly differently. The way that they have been supporting the airport for the last forty years is by every person paying into the association and the association takes care of the business aspect of it, all that is required to run a business.

This airport is unique and some of that uniqueness is that the previous county commission voted to put in place an air space ordinance for both airports protection which was very forward thinking.

Valencia County resident Mike Wood is concerned about the safety and but also doesn't believe in supporting private ventures. Why should the county consider funnel money to a private club?

Valencia County resident Brian Benoit suggested that because forty percent of the business that comes in from people that live outside of the airpark who come in land, takeoff and use the tie downs that the fee be charged to them. Then those fees can be used to pave the runways.

Valencia County resident Mary Wood also expressed her concerns on the lease being considered between the Mid-Valley Airpark and Valencia County, who was involved in writing of the lease agreement and if Commissioner Rael was paid for any services as an attorney in providing his knowledge and service to the Mid-Valley Airpark.

Mid-Valley Airpark Manager Kurt Winker stated this is a public use airpark and its seventy percent of the traffic is from outside of the Airpark. Mr. Rael has never been paid any amount of money to go over the lease. He has seen it as their commissioner for that district because he was the one they had gone through to bring it to the commission. He is not a retained attorney in this matter whatsoever.

County Clerk Sally Perea administered the oath to Jim Lane who wished to give testimony. Meadow Lake resident Jim Lane said he has sat in the commission meetings week after week and has listened to the squabbling that has continually occurred on simple matters that would make Valencia County a better place to live. The question that needs to be asked would be to continue to fund and not specifically funds out of the county but to fund an airport that benefits so many people. Would that be a positive thing for Valencia County or a negative thing for Valencia County? From the testimonies that he's heard, if the lease just means that they only going after state funds and federal funds that are available, what would it cost anyone in this county in taxes or the general fund, the way he understands it that would be zero. All the issues that were brought up have been addressed. He is in full support in signing the lease if it means that it is everything that was presented before the commission.

Commissioner Gentry addressed Mr. Winker and yes he did ask the questions, yes he probably has enough experience to ask those questions and wants it understood that he is an avid supporter of aviation. Mid-Valley is where he learned to fly and has owned a couple of airplanes and currently owns a hanger at Conchas Airport and supports it. He

congratulates and applauds anybody that does pursue aviation. The lease states when it comes to the liability of officers, directors and members the corporation will indemnify and defended each of it's officers, directors and members to the full extent of the law against any such person by reason or fact that the person is or was an officer, director or member of the corporation. You indemnify them and it was his understanding that Mid-Valley Airpark members would be liable for the indemnity which was going to be done for the county, but they are exempted in the bylaws. Mr. Winker said that's correct. So it's the corporation and the corporation really has no assets, Commissioner Gentry said. Mr. Winker replied, it's the corporation and as far as the assets they have eighteen acres of land, everything in the bank account and the power to raise money.

Commissioner Gentry then said if Mid-Valley Airpark gets sued then the county gets sued and Mid-Valley Airpark indemnifies the county against any cost whatsoever.

Mr. Winker said that's where they ended up with the problem last time because it was the way Commissioner Gentry phrased it that got Mr. Winker on an incorrect track because Commissioner Gentry said "all legal fee's" and the contract specifically says each person has their own legal fees as far as attorneys go, so that's separate.

Commissioner Gentry said so then it's a fact that Mid-Valley Airpark is not going to indemnify the county against lawsuits?

Mr. Winker stated that's not what he said; the contract says that Mid-Valley Airpark will not pay each other's attorney fees. Commissioner Gentry also made mention to a \$10,000,000.00 lawsuit, the New Mexico Tort Claims Act has a limit on what the county can collect or what someone can collect from the county in a lawsuit, a total of \$750,000.00 and max medical claims of \$300,000.00, which the county is basically at \$1,000,000.00. They cannot collect more than that and what he said was impossible to do was to indemnify the county against a \$10,000,000.00 lawsuit that cannot happen. The county's liability is subject to the New Mexico Tort Claims Law, that is the maximum that can be collected and consequently that would be the maximum that Mid-Valley Airpark would have to indemnify the county for.

Commissioner Gentry had a letter from Steve Koppleman, Chief Counsel for the Association of Counties Risk Management who had reviewed the proposed lease with respect to insurance and liability issues. The county will need to procure supplemental insurance coverage for the airport since the New Mexico County Insurance Authority does not provide airport coverage. It is his understanding that such a policy will cost between \$10,000.00 and \$15,000.00 annual. Article 13 requires both parties to procure \$1,000,000.00 of liability coverage. This is not an adequate amount of coverage and in Mr. Kopleman's view the exposure for an airpark requires a minimum of \$5,000,000.00 of coverage. The county needs to be named as an additional insured under the Mid-Valley Airparks policy. While the indemnification clause in Article 14 is quite broad, there could be a problem if the airparks insurer raises any defenses if a claim is filed.

Mr. Winker said it doesn't surprise him because they are not aviation people and he received the same information that the policy would cost somewhere around \$10,000.00 for a \$1,000,000.00 liability policy that had a maximum payoff out of \$750,000.00 plus \$300,000.00 medical. Mr. Winker is very concerned as a taxpaying citizen that the same policy through Mid-Valley Airpark insurer, a \$1,000,000.00 for the airpark costs \$2,100.00 a year. Why is the county's risk so poor that it pays five times the airparks insurance rates for the same policy? Commissioner Gentry said Mr. Winker might have misunderstood when he read the letter, Mr. Kopelman is saying they do not provide that insurance, the county can't buy it from the Association of Counties Risk Management.

Mr. Winker said he supplied the county attorney with a contract as to where Mid-Valley gets their insurance at 1/5<sup>th</sup> of what was quoted in the letter. Mr. Winker also agreed they'd be willing to increase Mid-Valleys and add the county as an additional insured. This has already been covered. There are two policies, one for the officers and one for the airport.

What Commissioner Gentry was looking for was what the indemnity policy was for the county, if the airpark was going to indemnify the county.

Mr. Winker said that policy is still in the works because he keeps getting different returns back and there can't be an indemnity policy without a lease. They have a quote out, they're working on it and it'll be back, he's assuming sometime this week.

Commissioner Rael asked Mr. Winker if he had any idea of what it may cost to add the county as an insured within the Tort Claims Act which is a \$1,000,000.00.

Mr. Winker said that has gone back to the insurance adjustor. There are some contractual things that are being reviewed due to the indemnification that also has to be covered and that part is still being worked on. Mr. Winker expects it to go up and the airpark will cover it.



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Chairman Holliday said the commissioner's had all received the letter from Steve Kopelman and had recommended the dos and don'ts.

County Clerk Sally Perea administered to oath to Georgia Ann Meyers who wished to give testimony.

Los Lunas resident Georgia Ann Meyers stated Mr. Winker made the statement that the county has to sign a lease in order for the Mid-Valley Airpark Association to be eligible to access state money and asked that the process be clarified as to how this works. It's money that comes from the county?

Commissioner Otero-Kirkham said its money that comes through grants from the state for airport use. This would be a twenty year lease.

Mr. Winker said the way it works is because the airpark is public access but the land is privately owned, the state, the county or any municipalities are not allowed to put funds into a private entity for the protection of the taxpayers. Consequently it can be done through a lease acquisition, many other different methods and once that's done, the county can then put in for grants through the state and if everything goes well their going to want a return on the taxpayers money, so what they do they have to make sure the airpark is open for twenty years to the public so the public can get a return on the money they put into this entity and because of that, it has to be maintained correctly, it has to be insured, it has to stay operating and if for some reason there is a default in the lease, Mid-Valley has to pay all that money back. It's basically an insurance policy for the public to get a return on their investment while at the same time allowing access to put public funds into something for the public good. Mid-Valley couldn't do this if they were privately accessed airport, but because we're open to the public and everyone can us it, it would be available if a lease like this was signed. The insurance policy is a liability policy; it's not a guarantee against the loan.

Commissioner Gentry, for the record, read a letter from Mr. David Floger State Aviation Department Director which is addressed to Mr. Zamora in which it states, Adren Nance sent a copy of the revised lease for the Mid-Valley Airport to him for review. He forwarded a copy to the New Mexico Department of Transportation, who is in charge of the aviation office, the Office of the General Counsel for their comments. The preliminary opinion of the office of the General Counsel is that this lease does not transform the airport into a publicly owned airport. It is the office of the General Counsels opinion that there is no real control vested in the county for the day to day or the long term operation and maintenance of the airpark. They also pointed out that there is no provision for public parking, administration or maintenance, etc. As it was discussed in previous meetings, an airport is more than just a runway and taxiway and believes that the office of the General Counsel feels this lease allows to much to remain under private control if we consider what is normally controlled by a city or county at a public airport, he has doubts about whether or not the Mid-Valley property owners would be willing to give up their required property or the amount of control they now exercise at the airport. In view of the office of the General Counsel's comments, he does not believe the aviation division could enter into a grant agreement with the county under the provisions of this lease.

Commissioner Gentry said this basically says there's not going to be any grants or money coming from the state and feels that everyone agrees the airport does not meet the federal standards and cannot receive federal grants. The business of getting free grants is a pretty elusive thought. This is not going to work unless the county digs into its road funds and starts paying for that.

Mike Wood asked it be clarified whether this is a public or a private airpark that is open to the public. Chairman Holliday said it been made clear that it's a private airpark.

Commissioner Otero-Kirkham requested copies of all the letters Mr. Zamora has received in regards to inquiries he has made. Mr. Zamora said it was a letter addressed to him in March 2010.

Commissioner Rael stated the point has been brought up whether or not there is any public benefit from continuing to have a safe runway for the general public. The discussion has been that it is publicly owned, privately owned and leased. Just to mention in his prefacing, if it's publicly leased then it becomes an effective public airport for all intent and purposes. That is what it is and there is no difference between that and a publicly owned airport for the legalities of what they are trying to accomplish here and wants that made perfectly clear. In terms of public benefit, Commissioner Rael asked for a rundown on the minimum money spent at the Belen Airport and what benefit it is to the public in comparison to the Mid-Valley Airpark in the last forty years.

Mr. Winker said unfortunately the county doesn't have an airport in the county that is big enough to handle everything that goes on within the county. The Belen Airport is a fine airport, they do a lot of things that Mid-Valley Airpark cannot do and vice versa Mid-Valley Airpark does a lot of things that Belen Airport can't do. Both the airports together are what make such a great public service. It's a concept of both airports that service the county. Belen Airport has been receiving public funding for a long time and Mid-Valley Airpark has been footing the bill on their own. Being in the national airspace system is very important to the aviation industry. Mr. Winker has a letter which states that Mid-Valley Airpark is privately owned, with public access and an important part of the National Airspace System and can provide that letter to anyone interested.

Commissioner Rael said he would be interested in seeing the letter and including it as part of the record and would like all the letters mentioned at tonight's meeting made available.

County Clerk Sally Perea administered the oath to Clarke Metcalf who wished to give testimony.

Valencia County resident Clarke Metcalf asked if the airpark has been giving its services away free to the public, what if they just started charging the public. So why give it away if you can't afford to.

Mr. Winker said part of it is just public service and part of it is the logistics of trying to collect money from people that come in, stop, get fuel and leave. There is already a mechanism in place through the fuel taxes to place money into the state fund, which meant for this type of thing and Mid-Valley is not getting any return on that whatsoever.

(SEE EXHIBIT A)

#### 9) NEXT COMMISSION MEETING:


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

#### 11) Adjournment

Commissioner Kirkham moved for adjournment. Seconded by Commissioner Medina. Motion carried unanimously. Time 6:35 P.M.

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

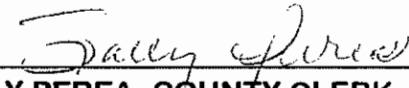
  
~~Georgia Otero Kirkham~~ **DONALD E. HOLLIDAY, CHAIRMAN**

  
~~Georgia Otero Kirkham~~ **GEORGIA OTERO-KIRKHAM, VICE-CHAIRMAN**

  
~~Donald E. Holliday~~ **PEDRO G. RAEI, MEMBER**

  
**RON GENTRY, MEMBER**

  
~~Laurence Romero~~ **DAVID MEDINA, MEMBER**

ATTEST:   
**SALLY PEREA, COUNTY CLERK**

7-5-2011  
**DATE**

BOOK 070

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