

April 13, 2011
Agenda
5:00 p.m. Public Hearing/Business
Meeting
Valencia County Commission Chambers
444 Luna Avenue
Los Lunas, NM 87031

Board of County Commissioners
Georgia Otero-Kirkham, Chair District II
Mary J. Andersen, Vice-Chair District I
Lawrence R. Romero District III
Ron Gentry District IV
Donald E. Holliday District V

- 1) Call Meeting to Order
- 2) Pledge of Allegiance
- 3) Approval of Agenda

DISCUSSION (Non-Action) ITEM(S)

SWEARING IN OF PARTICIPANTS

PUBLIC HEARING ITEM(S):

4) Request of an Appeal on an Approved Conditional Use to all allow for the operation of assisted living for the elderly. T7N, R1E, Section 20, NMPM; Lands of Bruce W. Botkins; Lot 50-D-2; zoned OD: Filed in Book 364 Page 3409, of the Office of the Valencia County Clerk, also known as 4 Wild West Ct, Los Lunas, NM (*Mandie Trujillo*) Application#APL11-001/**Eric Zamora/Jacobo Martinez**

5) Request to Amend the Zoning Map from RR-2 to RR-1to allow a lot split to provide her Grandchildren one acre lots; T4N, R1E, Section 24, NMPM; Lands of Pat & Charles Storey; Tract 5-A-1; Zoned RR-2: Filed in Book 328, Page 4016 of the Office of the Valencia County Clerk.(*Gloria Storey-Agent*)Application #ZC11-001/**Eric Zamora /Jacobo Martinez**.

6) Request of Application #A-656071 for Winegrower License dba Wicked Kreations, 70 Crawford Road, Jarales. The location is zoned conditional Use-Home Occupation, RR2/Sally Perea,Clerk

7) Request of Application #A-656072 for Wine Wholesaler License dba Wicked Kreations, 70 Crawford Road, Jarales. The location is zoned conditional Use-Home Occupation, RR2/Sally Perea,Clerk

**BUSINESS MEETING:
ACTION ITEM(S)**

1) Consideration of Application #A-656071 for Winegrower License dba Wicked Kreations, 70 Crawford Road, Jarales. The location is zoned conditional Use-Home Occupation, RR2/Sally Perea,Clerk

2) Consideration of Application #A-656072 for Wine Wholesaler License dba Wicked Kreations, 70 Crawford Road, Jarales. The location is zoned conditional Use-Home Occupation, RR2/Sally Perea,Clerk

PUBLIC COMMENT:

Please sign up on the sheet located just outside the Commission chambers. The Board will allow each member of the public wishing to address the Board a full and complete opportunity to address the Commission.

NEXT COMMISSION MEETING:

♦ April 20, 2011- Business Meeting @ 9:30A.M.
Valencia County Commission Board Room 444 Luna Ave. LL, NM

ADJOURN:

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Valencia County Manager's Office at the Valencia County Courthouse, Los Lunas, New Mexico, (505) 866-2014 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Valencia County Manager's Office at the old Valencia County Courthouse if a summary or other type of accessible format is needed.

Please Silence All Electronic Devices – Thank You!

Please Silence All Electronic Devices – Thank You!

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BOOK 71

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VALENCIA COUNTY BOARD OF COMMISSIONERS

PUBLIC HEARING // BUSINESS MEETING

APRIL 13, 2011

PRESENT	
Georgia Otero-Kirkham, Chair	
Mary Andersen, Vice-Chair	
Lawrence R. Romero, Member	
Ron Gentry, Member	
Donald E. Holliday, Member	
Eric Zamora, County Manager	
Adren Nance & Dave Pato, County Attorneys	
Sally Perea, County Clerk	
Press and Public	

1) The meeting was called to order by Madam Chair Otero-Kirkham at 5:00 P.M.

2) Madam Chair Otero-Kirkham led the Pledge of Allegiance.

3) Approval of Agenda

Commissioner Holliday moved for approval of the agenda as amended. Seconded by Commissioner Andersen. Motion carried unanimously.

DISCUSSION (Non-Action) ITEM(S)

Madam Chair Otero-Kirkham stated they received a call today from Mr. Bob Davey of the Valencia Health Commons and they will be attending the May 4th Commission Meeting for an update.

SWEARING IN OF PARTICIPANTS

Chief Deputy Theresa Sanchez administered the oath to those individuals wishing to give testimony at tonight's meeting.

PUBLIC HEARING ITEM(S):

4) Request of an Appeal on an Approved Conditional Use to Allow for Operation of Assisted Living for the Elderly. T7N, R1E, Section 20 NMPM: Land of Bruce W. Botkins; Lot 50-D2, zoned OD, filed in Book 364 Page 3409, of the Office of the Valencia County Clerk, also Known as 4 Wild West Ct., Los Lunas, NM (Mandie Trujillo) Application #APL11-001 – Eric Zamora / Jacobo Martinez.

County Planner Jacobo Martinez stated this is an appeal on an approved Conditional Use to allow for the operation of assisted living for the elderly. This request was originally heard at the February 23, 2011 Planning & Zoning Commission Hearing. After hearing testimony from the applicants, and after taking public comments on the matter, the Planning and Zoning Commission voted 3-0 to approve the Conditional Use request. The approval was based on the conditions that there shall be a maximum of four patients and one in-house provider for a maximum of five people living in the housing facility. The applicant shall comply with these conditions and the Conditional Use will be reviewed in six months from the date of this letter.

The appellant did provide testimony at the public hearing and the applicant has filed an appeal and is in standing to appeal this process. According to the applicant the Planning and Zoning Commission should not have approved the request according to County Ordinance 154.004 which states: "The provisions of this chapter shall be held to be minimum requirements. Wherever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the more restrictive or that shall govern." The applicant has argued that the covenants restrict this use in the community and the county shall govern accordingly.

Ms. Mandie Trujillo is in opposition of the elderly assisted living facility being placed in her neighborhood located six miles west of I-25 on Highway 6. This is a private subdivision which consists of twenty acres divided into twelve lots. This is a residential area with a shared well and the residents maintain their own roads which are private dirt roads. When Mr. Sedillo purchased his property in March of 2010, he was provided with a copy of the covenants and knew this area was for residential single family dwellings only. They didn't know about the first hearing, Mr. Sedillo was approved and they later found out what Mr. Sedillo was planning on doing and went in and appealed it. They attended

the last hearing and stated their objections. To have a commercial facility in their neighborhood is a big issue because all the twelve lots are on a shared well, every lot is metered, the meters are read every month and everyone pays in to the account according to the amount of water they use and there are ten homes currently on this well. Every owner pays into that well account monthly in the event something happens to the well and the money goes towards any repairs. Recently the well went out and a new well had to be drilled at the cost of \$28,000.00. Safety concerns are also an issue because they are quite a distance from any emergency services.

Madam Chair Otero-Kirkham said they were given some restrictions which states no more than four patients reside there and even if there's one live in and one part time person, would be a maximum of six. If a family of six moved in would you be as concerned or is it your concern that the water consumptions might be higher because it seems the assisted living would be like a home atmosphere.

Ms. Mandie Trujillo said the assisted living regardless, you have to get a business license, so it's considered commercial. They have accountants that have lived in this community and they relocated their business because they knew it was residential only. It's all about the commercial portion of it because when the community well was re-drilled, the State Engineers wording on the well permit was very specific, which is domestic use non commercial use. They use so much water per foot but should the State Engineers Office find out that they are not using it in compliance with their permit, they could shut them down. If the Commission grants this Conditional Use, by law they have to treat everyone else equally and what's to stop someone else from coming in later also wanting to start a business in our residential community. Since the Ordinance doesn't specifically state that a Conditional Use for an elderly care facility is in that, they've equated them with a daycare facility. They're saying the two are similar and as you know a daycare and an elderly care facility are very different. The Conditional Use does state, "to be approved if the proposed use is appropriate considering the adequacy of public facilities and services existing or planned for the area or affected by the use." They do not have any public facilities, nothing out there is public, it's all private.

Anthony Sedillo said if you were taking care of your grandparents in your home would your neighbors be able to tell you that you could not have them there.

Paul Trujillo legal counsel for Anthony Sedillo stated Mr. Sedillo has been approved twice for a Conditional Use for an elderly assisted living facility. The first time he withdrew his request in order to try and workout some differences with the neighbors upon his recommendation. When they thought they had the issue resolved and was placed before the Planning and Zoning Commission again, it was apparent the neighbors had other contentions with the facility and yet after that hearing Planning and Zoning once again unanimously approved the Conditional use. After that they had an appeal, that's why they are here this evening.

Commissioner Holliday asked Mr. Sedillo if those were his parents he was moving into the mobile home and do you live there? No, but it will be like I'm taking care of my parents and someone else will be living there full time was Mr. Sedillo's response.

Mr. Paul Trujillo attorney representing Anthony Sedillo said he takes exception with this being called a commercial facility, it doesn't sound right or ring true, and it's residential in nature. It happens to be residential for business purposes, for the elderly, it hardly constitutes a commercial label. Commercial to him would be more along the lines of a chicken farm or a massage parlor or a facility for playing bingo or of that sort. He agrees with Planning and Zoning that it fits in very well with a residential type situation, especially rural residential. So he does take exception in charactering this as a commercial endeavor. Mr. Sedillo will not be able to operate that facility until he receives approval from the other state agencies and as far as the Office of the State Engineer is concerned, he certainly cannot speak for the State Engineer, however if the State Engineer were to pull the permit based on Mr. Sedillo's housing of four elderly individuals then he would certainly think that the community association would have a civil cause of action in the District Court against Mr. Sedillo for that. Virtually all of those issues can be addressed by other agencies. The approval they are asking for tonight is only the first step in the process, the majority of those concerns will have to be addressed by Mr. Sedillo and irresponsibility on his part can be addressed in the District Court if that happens to be the case. Mr. Sedillo is and has contributed to the repair of the well. He's willing to contribute to the maintenance of the road. The issues as to the transportation of the elderly are no different then the issues of the other residents of that community, no different then transportation, safety and health for many of the elderly in Valencia County

which is for the most part a rural community. It could be contemplated that a family of four elderly individuals might buy a residence there and would it be the commissions proper role to step in and say we're sorry these people are too old to live in that area.

Commissioner Holliday asked if the mobile home was rented out prior to today.

Mr. Sedillo said it was occupied for nine months rent free. Commissioner Holliday said he has concerns with a mobile home out in the middle of the mesa with one hundred degree temperatures and it doesn't look like he has much as far as recreation for the elderly to do. Mr. Sedillo said he plans to install porches.

Commissioner Holliday said if that is his intentions he would like to see those in place prior to placing people there. The elderly do require some special needs and it's up to us to look out for their needs.

Richard Sutton who resides at 22 Wild Wolf also came forward to state his concerns and opposition against the approved Conditional Use Permit to allow the operation of an Elderly Assisted Living Facility in his neighborhood. The residents of the community have the right of peace and tranquility in their homes and community and ask the commission to revoke the six month Conditional Use Permit already granted to Mr. Sedillo and not permit this facility in their community. The three core issues are the roads, the water usage and safety concerns.

County Attorney Dave Pato asked if Mr. Suttons address was 22 Wild Wolf Road and if he was related to the Broadfields and if he lives there and if there is additional family that also lives there. Mr. Sutton said yes that's his mother and stepfather, there are six individuals, four adults and two children that live in his home and they have never run over their monthly water allotment.

Ms. Anna Kayler who resides at 03 Wild West Ct. who has lived in this community for six years also came forward to express her concerns and objections on the approval of the Conditional Use Permit allowing for the operations of an Elderly Assisted Living Facility. She knows what the Ordinance states and she being an accountant and owning her own business, she chose to live there. Her clients can't come to her home and she chose to do something different called "Eating Meetings." She picks up their financials and they meet in restaurants and go over their financials. She does this out of respect for her neighbors. The safety issues for the elderly, roads and water issues are also her concerns.

Commissioner Gentry asked County Planner Jacobo Martinez since the water seems to be the major issue, to give a call to the State Engineer and get a determination to see if there's anything that may have been violated or may cause a problem.

5) Request to Amend the Zoning Map from RR-2 to Allow a Lot Split to Provide her Grandchildren One Acre Lots: T4N, R1E, Section 24 NMPM; Lands of Pat & Charles Storey Tract 5-A-1, Zoned RR-2, Filed in Book 328 Page 4016 of the Office of the Valencia County Clerk (Gloria Storey-Agent) Application #ZC11-001-Eric Zamora / Jacobo Martinez

County Planner Jacobo Martinez stated this request is to provide a zone change from a RR-2 to RR-1 zoning district. According to the applicant, a zone change is needed in order to provide one acre parcels of land to her grandchildren. The subject property is 2.5 acres and the applicant would like to split up this land into two one acre parcels. After assessing the surrounding lands of the subject property, most of the surrounding area is agricultural land. The Planning and Zoning Commission held a public hearing on the proposed zone change on February 23, 2011. No objections were made at the public hearing. The Planning and Zoning Board voted 3-0 to recommend approval of the zone change.

Ms. Priscilla Gloria Storey stated she is trying to get her estate in order. Her son owns the house in front which sits on two acres and she would like to give each grandchild an acre.

6) Request of Application #A-656071 for Wine Grower License dba Wicked Kreations, 70 Crawford Road, Jarales, NM. The Location is Zoned Conditional Use-Home Occupations, RR-2 - Sally Perea

County Clerk Sally Perea stated the applicant is requesting a consideration of application for a winegrowers license doing business as Wicked Kreations in Jarales. The location is zoned Conditional Use-Home Occupation RR-2. The requirements have been met and Mr. Lopez is present to answer any questions the commissioners might have.

Madam Chair asked as a Home Occupation would a person actually have to live and work out of the residence, is that correct? That's correct was Mr. Martinez's response.

Commissioner Andersen said he's asking for a winegrower's license, so does that mean he's going to grow the vines?

Mr. Tim Lopez stated the state licenses are very confusing and the way it's listed in licensing is that if you're a winegrower that means you make the wine. Even if you don't make it out of grapes, you can make it out of cherries or whatever process you choose. The second license is wholesale distributor which would give him the right to sell the wine to a wholesaler. They're small and don't have a whole lot of money, so they are looking at producing about 400 gallons a year to start off with. The bonded area within the facility they are using is 5 X 12 ft. for the production area and 5 X 12 ft. for the taxable area. This is all regulated under TTB which is the Taxation and Trade Bureau. This process has taken about 1 ½ years and is probably looking at another year before it's all done. Mr. Lopez will only be using New Mexico fruits like chock cherries, apricots and bing cherries which are more labor intensive but makes a better wine. He is only requesting the right to legally ferment the wine.

7) Request of Application #A-656072 for Wine Wholesaler License dba Wicked Kreations, 70 Crawford Road, Jarales, NM. The Location is Zoned Conitonal Use – Home Occuption, RR-2 – Sally Perea

County Clerk Sally Perea said this is a request for consideration for a wine wholesaler license. Mr. Lopez said this request is for the right to sell to a wholesale distributor.

BUSINESS MEETING:

ACTION ITEM(S)

1) Consideration of Application #A-656071 for Winegrower License dba Wicked Kreation, 70 Crawford Road, Jarales, NM. The Location is Zoned Conditional Use – Home Operations, RR-2 – Sally Perea

Commissioner Romero moved for approval. Seconded by Commissioner Gentry. Motion carried 4-0. Commissioner Holliday was not present for the vote. (SEE EXHIBIT A)

2) Consideration of Application #A-656072 for Wine Wholesaler License dba Wicked Kreations, 70 Crawford Road, Jarales, NM. The Location is Zoned Conditional Use-Home Occupation, RR-2 -Sally Perea

Commissioner Andersen moved for approval. Seconded by Commissioner Gentry. Motion carried 4-0. Commissioner Holliday was not present for the vote. (SEE EXHIBIT B)

PUBLIC COMMENTS:

Donna Sylvester who resides at 1086 Hwy 116 said her concern is that her phone lines have been cut five times in the last seventy five days, her home was burglarized on the 28th of January, saddles were taken and a neighbor who lives north of her also had saddles taken out of their property. They have complained to the Sheriff's Office and the phone company. It is the same section of phone cable that is being ripped out consistently in the last five incidents. There are elderly people that live in this neighborhood and when the phone lines are cut, they cannot get out unless they have a cell phone. She has major medical conditions and she is exceptionally concerned that this continues to happen. As a concerned citizen and victim this needs to be addressed. She had hoped that after the first of the year they would have seen some improvement with law enforcement in the county. If she has to sit out there with a twelve gauge to protect her property, she will do so, but she doesn't think that should be her responsibility.

Madam Chair asked Mr. Zamora to please inform the Sheriff's Office of this.

The next Regular Meeting of the Valencia County Board of County Commission will be held on April 20, 2011 at 9:30 P.M. in the County Commission Room at the Valencia County Courthouse.

11) Adjournment

Commissioner Andersen moved for adjournment. Seconded by Commissioner Gentry. Motion carried unanimously. TIME 6:21 P.M.

NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the April 13, 2011 Public Hearing / Business Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

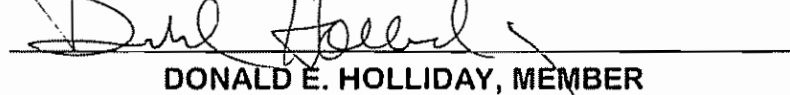
VALENCIA COUNTY BOARD OF COMMISSIONERS


 GEORGIA OTERO-KIRKHAM, CHAIR

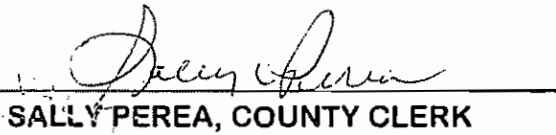

 MARY J. ANDERSEN, VICE-CHAIR

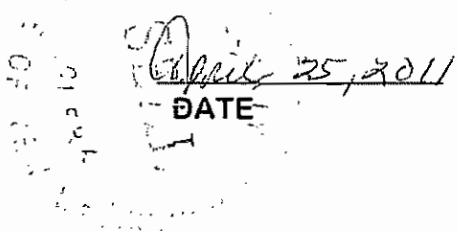

 LAWRENCE R. ROMERO, MEMBER


 RON GENTRY, MEMBER


 DONALD E. HOLLIDAY, MEMBER

ATTEST:


 SALLY PEREA, COUNTY CLERK


 DATE April 25, 2011