



October 12, 2011  
Agenda  
5:00 p.m. Public Hearing 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

*Georgia Otero-Kirkham*

**SWEARING IN OF PARTICIPANTS**

**PUBLIC HEARING ITEM(S):**

- 4) Consideration of a request for a road vacation for portions of Palomar Place

**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:**

- ♦ **October 19, 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!**

# **VALENCIA COUNTY BOARD OF COMMISSIONERS**

## **PUBLIC HEARING MEETING**

**October 12, 2011**

<b>PRESENT</b>	
Georgia Otero-Kirkham, Chair	
Mary J. 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 led the Pledge of Allegiance.

3) Approval of Agenda

Commissioner Gentry moved for approval of the agenda. Seconded by Commissioner Andersen. Motion carried unanimously.

### **SWEARING OF PARTICIPANTS**

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

### **PUBLIC HEARING ITEMS:**

4) Consideration of a Request for a Road Vacation for Portions of Palomar Place – Eric Zamora.

County Manager Eric Zamora presented the road viewers report on Palomar Place which is a county maintained road and on the county inventory. While resurveying his property Mr. Ken Cordova identified that his property line was in the middle of what the county considers Palomar Place. Mr. Cordova contacted the road department who were able to verify Mr. Cordova's fence was approximately twelve feet too far to the south. He has relocated his fence back into what should be his property line. Upon review by the road department and discussions, the situation was evaluated and at the time it appeared that the road was in the wrong location. There was an easement on the north side of Mr. Cordova's property line. It was a mistake on the county's part in which they assumed that they could just move the road into that easement. They moved dirt out of that road easement to widen it and make it passable and at that time it was determined that the easement was a privately owned easement and not for public ingress and egress. Hence the situation as today, Mr. Cordova has installed a fence along his property line which cuts off the old road and the new road is cut in the wrong location on private property. The road viewers were asked to take a look at this situation and Mr. Jon Clemons, road viewer, will present their recommendation. As the subdivision was platted it ended the road Palomar Place in a cul-de-sac. That Cul-de-sac extended on to James Road which is approximately 150 ft. of roadway. That is the section of road that is being looked at to vacate, just at the end of the cul-de-sac. There is an alternate route to James Road to the south and a left turn to the east to get on to James Road. So no one will be denied access. There are petitions for and against closure of this road.

Road Viewer Harley Jon Clemons stated he and two other road viewers went out to the property and looked at it and as Mr. Zamora summarized it is private property and there is a cul-de-sac and from his understanding residents of the county have been using this as a road for some time. It is not that portion that they are considering closing, it's not actually a road and the county did cut in a road on the private property. They did look at that, they looked at the petitions and the majority of the signers are for closing the road even though it's interesting that some of the signatures are on both petitions. In the road viewers opinion it would serve the county, the owners of the property and the residents of the area if vacating that portion of the road was accomplished.

Valencia County resident Joan Artiaga spoke against the closure of the road as this road has been driven on for over seventeen years. When she sold lot 73 she granted herself a forty foot easement so that she could always get through. When the Cordova's realized

their lot line was in the wrong place they went to the county who decided to use county equipment for three days and cut a road, a 40 ft. easement through the Ashby's lot. The county took out many truck loads of dirt and created a big hole and now instead of the water going down Palomar Place into an arroyo on the other side it makes a big puddle and is eroding out the corner and taking more and more of the Ashby's property. Ms. Artiaga recommends and respectfully asks the county to return the dirt that they took and if the county doesn't want to maintain that small piece that's fine with her as she has the 20 ft. for her and another vehicle to drive on that easement. After the county removed that dirt, that area is now 2 ft. lower than Mr. Cordova's property. She doesn't want the county to close her road and would like her Palomar Road sign back.

Ms. Rita Ortega who resides on 16 Palomar Place has lived at this residence for twenty years. Ms. Ortega also expressed her opposition to the closure of Palomar Place. If Palomar is closed it will divert her to an alternative route which would be an inconvenience to her. They have used this road for twenty years and no one ever expressed their objection to it.

Mr. Victor Swihart who resides on 17 Palomar Place said his main concern at this point is safety. There are several residents who are in their sixties and may or may not have medical needs. There currently is no sign identifying this street as Palomar Place, so it concerns Mr. Swihart that an emergency unit may not be able to locate his residence.

Mr. Ken Cordova resides on 02 Palomar Place, and the owner of the property in question, said he has made the access to his property the same as any one else that resides on Palomar Place. He has moved his fence to his property line which is a couple of inches in from his property line. His mailbox is there temporarily until they figure out what's going to happen with the road and if the cul-de-sac is cut then he'll move his mailbox to the cul-de-sac, if not his fence is a few inches in so he can push his mailbox in which is not a big deal.

Madam Chair asked Mr. Cordova if the 40 ft. is left open and he placed his fence there, would it conflict with him. No, they can leave it open or close it was Mr. Cordova's response.

Commissioner Gentry asked Mr. Cordova if he accessed his residence off of Palomar. Mr. Cordova said no, he has access to his home through James Street. He wants it made clear that the petition to keep the road open, stated that he opened the road, that is incorrect, the road was opened prior to his purchase of the property. He did not open that road.

Madam Chair asked Ms. Benny Jaramillo, who owns Lot 75, if she knew when she purchased that lot that the road was already there. Ms. Jaramillo answered that her dad had purchased it and yes they knew that road was there and she would like to keep it open.

County Attorney Adren Nance stated there are two different issues here; there is the issue of the private easement that Ms. Artiaga retained for herself on Lot 73, Block 7, that is a private easement and the county has no ability to vacate that. The portion that the county has the ability to vacate is the portion that goes on the other side, the prescriptive side. Madam Chair asked how big is that. County Manager Eric Zamora said it's about 20 ft. What happened was the existing road was about 20 ft. wide. There was about 10 ft. on the north side of Mr. Cordova's fence or on the Ashby property, lot 73 and when the road department went in after Mr. Cordova moved his fence, the county widened the road to the north. So right now it is about 20 ft. again but within that 40 ft. easement.

On lot 74 the prescriptive easement hangs over a bit. On lot 73 is where there is a private easement. So what the county would be doing is on lot 73 we would be vacating the county's interest in it, which just means the county is not going to maintain it anymore. Now there is an issue whether Ms. Artiaga or other members of the public, according to that easement, can use it but the county will no longer maintain that or the prescriptive part that goes over a little bit. If we vacate it there will be no easement on that lot 74 because that's only a prescriptive easement, there'll be nothing there and then it'll be the issue of what's left over that the county as a government will have nothing to do with it anymore.

County Attorney Dave Pato said it becomes a public road when it's been used and when it's accepted for maintenance by the county, it becomes a county road. Attorney Nance agreed and said it does not show up in the deed records but it is legally the county's road to maintain and the county commission needs to decide whether it's appropriate in this circumstance to get rid of the maintenance of the road and any ownership interest that the county has or whether or not the county should maintain it. What it would do to the

Minutes of October 12, 2011, Public Hearing Meeting

individuals who own it with the easement is that they will not have a right to build anything on that road but it will not show anything in their title record. It will maintain that the county has that road and it's just like a regular easement although it doesn't show up in the title record. What's before the commission today is to consider whether or not to vacate that interest.

Pasqual Armijo resident of Valencia County asked if there's a law or rule that after it's been opened for a certain time, you cannot close it.

County Attorney Adren Nance said yes basically it's a prescriptive easement or adverse possession, which is a road that is being used and maintained by the county. There is a law that says that it becomes the county's. There is another law which we are addressing here that says the county may vacate it if you follow this certain process. So the process that we're in right now is the question whether or not we should walk away from what we have had for ten years. Mr. Armijo also questioned the fact that you cannot divert an arroyo if it's going to hurt someone else and by the county moving that dirt that's exactly what they did.

Madam Chair asked if the county is intending to put the dirt back.

County Manager Eric Zamora said the county has been in discussion with the Ashby's who own lot 73 since the county took the dirt off their property. They have been adamant that the county return that dirt to their property. What that'll do is, is that the county will restore their property the way it was, it will leave a 12 ft. gap between the soil bank that the county built up, down to the old roadway and then over to Mr. Cordova's new fence location. So there will be that 12 ft. gap and that historically has been part of that drainage pattern. It's about twenty truck loads of dirt is what the county took out.

Mr. Ken Cordova said everyone keeps saying about taking my property, the road is on my property, the road does not go on his property. His surveys, deeds and everything show that the road is on the adjacent lot. There is nothing in the courthouse showing that that road is on his property. He did go to the road department and straightened it out and he told everyone well in advance before he moved his fence what he was going to do. Everyone had plenty of time to react, his fence is on his property line, there's no records showing that the road goes through his property, everything was messed up and what he did was straightened everything out.

Madam Chair said what the attorney was trying to say is that a prescriptive easement is an easement by necessity. So at some point and time they were using a portion of your property before you put the fence up. So even though it's not documented anywhere, it's a road. Mr. Cordova said it's documented that the road is on the adjacent lot. Madam Chair said that's the easement that Ms. Artiaga cut out of lot 73.

Road viewer Mr. Clemons said his thought was that Mr. Cordova should not be penalized because they moved the lot over and if we allow him to have his property rights then we're taking the property rights from lot 73, is there a space or are the property lines directly adjoining?

Mr. Zamora said the two properties are directly adjoining and he believes the easement was created by separate paper documents.

Attorney Dave Pato said there is a warranty deed that takes out that 40 ft. easement on lot 73 not on the Cordova's. So there is a road there on paper along the Ashby's property, 40 ft. that connects those two roads. So again, to simplify this for the commission and to clarify the consideration that is today, the commission needs to decide based on the road viewers recommendation whether or not the burdens outway the benefits and whether or not there's also means of access. Presented here today is a warranty deed that reflects that there is a 40 ft. easement on lot 73, even presented with a recommendation of the road viewers that the burdens outway the benefits and there is also alternative means of access, so from that and from the testimony heard, the commission can make their decision as to whether or not vacation is warranted.

Mr. Clemons said that was part of their recommendation is that they looked at Mr. Cordova's property and said okay, he's moved his fence and has a valid point to want to move it and then they looked at lot 73 and said even though ten years they've had this lot, had this road open and everyone has been using it, they didn't think it was proper for 40 ft. of somebody's property to be removed. Naturally that is an easement but they thought by vacating that portion of the easement of the road, then that would not directly affect the residents there. They drove the distance to see that they had access to their property but that would reinstate by vacating that easement or that road, it would then return that land to lot 73 and from the testimony of what some of the residents have said, that by removing the dirt it has rerouted the water flow. It was the road viewer's

recommendation that the dirt be replaced, it would have the least effect on the county and the residents. He understands some of the residents object to it being vacated and in his opinion it's still the proper thing for everyone to do. (SEE EXHIBIT A)

**PUBLIC COMMENTS**

Those members of the audience making comments were Valencia County residents Mark Rosenblum, Mike Wood, Clarke Metcalf and June McClellan.

**NEXT COMMISSION MEETING:**

The next Regular Meeting of the Valencia County Board of County Commission will be held on, October 19, 2011 at 9:30 A.M. in the County Commission Room at the Valencia County Courthouse.

**11) Adjournment**

Commissioner Holliday moved for adjournment. Seconded by Commissioner Andersen. Motion carried unanimously. TIME: 6:07 P.M.

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the October 12, 2011 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**

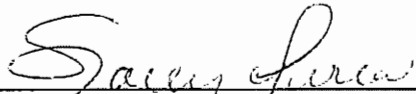
  
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GEORGIA OTERO-KIRKHAM, CHAIR

  
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MARY J. ANDERSEN, VICE-CHAIR

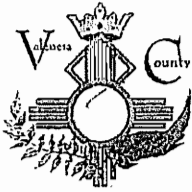
  
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LAWRENCE R. ROMERO, MEMBER

  
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RON GENTRY, MEMBER

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DONALD E. HOLLIDAY, MEMBER

ATTEST:   
\_\_\_\_\_  
SALLY PEREA, COUNTY CLERK

Nov. 3, 2011  
DATE



**VALENCIA COUNTY**  
**Board of County Commissioners**

**AGENDA REQUEST FORM**

**Department Head:** Eric Zamora  
**Individual Making Request:** Ken Cordova  
**Presentation at Meeting on:** October 12, 2011  
**Date Submitted:** October 4, 2011  
**Title of Request:** Road Vacation Request

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**Request:**

Consideration of a request for a road vacation for portions of Palomar Place

**Information Background and Rationale**

Palomar Place is a road identified on a subdivision plat as roadway ending in a cul-de-sac. Based on the information presented to the County by local residents, several years ago a road was cut through to James Road, from the cul-de-sac. Eventually, the road was accepted by the County as maintained roadway. Mr. Ken Cordova, while researching details of his plat, noted that the cut through road was on his property and was not an identified easement. Mr. Cordova contacted the County and petitioned residents in the area to close the cul-de-sac with 15 signatures. Accordingly, there was a petition to keep the original road open with 8 signatures.

On September 14, 2011, three appointed road viewers completed a report for the road vacation petitions (see attached report.) The report states that the road review commission finds that the road to be vacated is no longer needed as a public road and recommends approval of the road vacation.

**What is the Financial Impact?**

None

**Legal:** Pursuant to NMSA 1978, Section 67-5-4 (1905) with the recommendation of the road viewers to discontinue the road the commission "may order the same vacated [ ]"

**Finance:**

No financial impact. WA

**Business Manager:**

The proper steps were taken to vacate the proposed road. KG

If road were closed, would every adjoining or abutting landowner have reasonable access to road system? ☒ Y ☐ N

Finding

Check one of the following:

- ☒ After reviewing the road under consideration for closure or vacation, the road review commission finds that it is no longer needed as a public road.
- ☐ After reviewing the road under consideration for closure or vacation, the road review commission finds that the repairs of the same are burdensome and in excess of the benefits therefrom.
- ☐ After reviewing the road under consideration for closure or vacation, the road review commission finds that it is still needed as a public road and that the benefits from the road outweigh the repairs of the same.

Reasons for finding: REVIEWED PLAT, LOOKED AT SIGNATURES  
ON FOR AND AGAINST CLOSURE  
IT WILL BE IN THE BEST INTEREST OF THE  
COUNTY AND THE LOT OWNER THAT HAD THE  
EASEMENT GRADED TO WIDEN CURRENT ROAD  
IF CLOSING PORTION OF ROAD REQUESTERS  
GRANTED

Was finding unanimous? ☒ Y ☐ N

If any dissenting opinions, give reasons here:

Signatures of Road Review Commission Members:

Signature: [Signature]  
Print Name: HARLEY TON CLEMENS  
Date: 9-15-2011

Signature: [Signature]  
Print Name: DONALD BEE  
Date: 9-15-2011

Signature: [Signature]  
Print Name: Christina Card  
Date: 9-22-2011



REPORT OF THE ROAD REVIEW COMMISSION In Consideration of Vacating or Closing  
County Road Palomar Road Near James Street  
VALENCIA COUNTY, NEW MEXICO

Information of Board of Commissioners viewing the road:

HARLEY JON CLEMONS  
Name  
12 WILLOW TRACE  
LOS LUNAS, NM 87031  
Mailing Address  
505-865-4701  
Phone Number

DONALD BICE  
Name  
5 POPLAR PLACE  
LOS LUNAS, NM 87031  
Mailing Address  
505-865-7342  
Phone Number

Own Real Property in Valencia County?  
☒ Y ☐ N

Own Real Property in Valencia County?  
☒ Y ☐ N

Christina Card  
Name  
17 Vista Del Rio  
Perilla NM 87042  
Mailing Address  
505-610-8885  
Phone Number

Own Real Property in Valencia County?  
☒ Y ☐ N

Others present when road viewed: Christina Card  
Lina Benavidez, Engineer Aide  
Jacobo Martinez, County Planner

Date Road Viewed: Wednesday September 14, 2011

Description of Road Location:  
\_\_\_\_\_  
\_\_\_\_\_  
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# CLOSE THE EASEMENT ON PALOMAR PLACE

Print Name	Signature
Kenneth Cordova	<i>[Signature]</i>
Melissa Cordova	<i>[Signature]</i>
JOACHIM GRAY	<i>[Signature]</i>
Melissa Cordova	<i>[Signature]</i>
Harry Rodriguez	<i>[Signature]</i>
Concepcion	<i>[Signature]</i>
Leetha Swihart	<i>[Signature]</i>
Walter Swihart	<i>[Signature]</i>
Russell J. Sanchez	<i>[Signature]</i>
Abel Robinson	<i>[Signature]</i>
Ingelburg Grant	<i>[Signature]</i>
Allen Robinson	<i>[Signature]</i>
Eustacio Rubio	<i>[Signature]</i>
Maria Vasquez	<i>[Signature]</i>
<i>[Signature]</i>	

Date: 6/18/11

# PETITION

We the undersigned own property on the Street called Palomar Place in Sausalito Estates, a subdivision in Valencia County, hereby petition the Valencia County Commission to re-open Palomar Place. Kenneth and Melissa Cordova established the easement between Palomar Place and James Street over 15 years ago when they placed a pipe fence next to the stop sign. Valencia County Road Department has been maintaining the road on a weekly basis for all these years. We use this road to access to our property. The mail is delivered to us. UPS, Fed Ex and Belen School District all uses this road. This road has improperly been closed. Since the county has been maintaing the road all of these 15 years we respectfully ask the County Commission to order that this road be reopened.

NAME	ADDRESS	PHONE NUMBER
011. <del>Asquiel Jimenez</del>	22 Palomar PL	259 9894
012. <del>Juan M. ARTEAGA</del>	22 PALOMAR PL	410-7585
013. <del>Er. De Osteren</del>	16 Palomar	864 0836
014. <del>Frank Padilla</del>	16 Palomar	450-6419
015. <del>Smitha Smith</del>	17 Palomar Dr.	861 2165
016. <del>Smitha Smith</del>	17 Palomar Dr.	861 2165
017. <del>Smitha Smith</del>	17 Palomar Dr.	452-7339
018. Roy L MAY	77 PALOMAR DR	505 341-4542
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34.	BOOK 72	PAGE 149
35.		

RECEIVED  
5-20-11  
J. Beranin