



August 8, 2012
Agenda
5:00 p.m. Public Hearing Meeting
Valencia County Commission Chambers
444 Luna Avenue
Los Lunas, NM 87031

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

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

A handwritten signature in black ink, reading "Donald E. Holliday".

SWEARING IN OF PARTICIPANTS

PUBLIC HEARING ITEM(S):

- 4) Consideration to amend the Zoning Map from C-1 to C-2 on the subject property defined as T6N, R2E, Section 15; NMPM; Tract 16-B1-A; Zoned C-1; Also known as 2975 Highway 47, Los Lunas, NM. Filed in book 365, Page 2930 of the office of the Valencia County 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:

- ♦ August 15, 2012- 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

AUGUST 8, 2012

PRESENT	
Donald E. Holliday, Chairman	
	Georgia Otero-Kirkham, Vice Chair
Lawrence R. Romero, Member	
Ron Gentry, Member	
Mary J. Andersen, 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 Holliday at 5:30 P.M.

2) Chairman Holliday led the Pledge of Allegiance.

3) Approval of Agenda

Commissioner Romero moved for approval of the agenda. Commissioner Andersen seconded the motion. Motion carried unanimously.

SWEARING IN OF PARTICIPANTS

County Clerk Sally Perea administered the oath to those members of the public wishing to give testimony at today's Public Hearing Meeting.

PUBLIC HEARING ITEM(S)

4) Consideration to Amend the Zoning Map from C-1 to C-2 on the Subject Property Defined as T6N, R2E, Section 15 NMPM, Tract 16-B1-A, Zoned C-1, also known as 2975 Highway 47, Los Lunas, NM. Filed in Book 365 Page 2930 of the Office of the Valencia County Clerk.

Valencia County Planner Jacobo Martinez stated Mr. Garcia is requesting a zone change from a C-1 to a C-2 in order establish a business that sells landscaping material. Currently the land is zoned C-1. A landscaping business is defined as a permissive use under the C-2 zoning ordinance. The areas surrounding the subject properties include C-1, Rural Residential-2 (RR-2) and Agricultural Preservation (AP). Mr. Garcia had come before the Planning and Zoning Board in December of 2011 to request a Conditional Use for an automotive repair garage on the subject property. Mr. Garcia was denied that request.

Attorney Anthony Williams representing Mr. and Mrs. Garcia presented a draft contract that would define the use of the land to a landscaping and supply business only.

The Planning and Zoning Board heard the request in a public meeting on June 25, 2012 and voted 3-0 to recommend approval of the zone change with the following conditions: that the county enters into a contract with the owners for a landscape business, only, within the C-2 zone and that there is a six foot blind fence between the business and the residential lots surrounding the subject property.

The Planning and Zoning Commission found that the proposed change is consistent with the goals, policies and any other applicable provisions of the comprehensive plan and is appropriate considering the surrounding land uses, the density and pattern of development in the area.

Attorney Anthony Williams said the idea of why they are proposing a contract as part of this is that Mr. Garcia previously came before the county to attempt a Conditional Use that would allow them to operate as a paint & body shop in this location. This met with a lot of opposition from the neighbors and was unsuccessful in acquiring a Conditional Use. Mr. and Mrs. Garcia want to have a viable business in the community and this is a location they've chosen where they can live on site. After listening to the comments of the neighbors they narrowed it down to a landscaping business. The location is the old El Cid Greenhouse property which was zoned C-1. They consulted with Mr. Jacobo Martinez on the zoning and a landscaping business is a permissive use within C-2. So Mr. Martinez suggested that the application should be for a C-2 Zone change.

The C-2 Zone with all of its permissive and conditional uses is very broad. He recommended to the Garcia's and to Scott Edeal, who is selling this property to the Garcia's on contract, the idea that they enter into a contract, a recorded covenant that not only the Garcia's would sign but also Mr. Edeal. With this covenant the Garcia's and Mr. Edeal agree that they will limit their C-2 usage to the permissive use that defines the landscaping operation. If there is any effort or desire by any party or if any successors or later buyers wanted to make changes, there is a covenant in place that is part of the county public record that states this usage is limited to C-2 usage and that they will continue through with the process and not try to tack on to the C-2 any other type of broader industrial or larger scale commercial effort. The Garcia's are offering a covenant that they are making a promise and if the commission sees any glitches in this they will work with them if the zone change is granted, they will get something that has exactly that effect, in the public records for ever that limits their use to the C-2 Zone.

Commissioner Andersen asked, in the event something happens that would be considered as a breach of that contract, what legal steps could the county take at that point?

The covenant states that Mr. Garcia further conveys and agrees that any violation of this covenant may be enforced by Valencia County as a zoning violation or any other manner in which restrictive real estate covenants or zoning violations may be enforced in law or equity. The intention in doing this is to give the county broader authority than it has under the zoning ordinance. This makes it binding on all heirs and successors and the whole idea of recording documents in county clerk's office is that it becomes public notice and it's binding on anyone. While this covenant is in place, it would be enforceable by the county, which is their intention. It would also be enforceable against a new owner and could be enforceable as either any other zoning violation or in addition you would have the common law enforcement rights that anyone who is the victim of a violation of covenant can enforce.

Mr. Bernardo Garcia said this is a request for consideration of a permit to operate as a nursery/landscaping material company to be called the Yard House. They plan on purchasing their goods or all they can from the community area as well as employ people from the area. Their previous request was for a body shop, not knowing that the people would be against it and they do want to be in compliance with all the entities involved, the people as well as the government.

A Power Point presentation was given showing the architectural site plan of what the property would look like as a nursery/landscaping supply company.

Attorney Amavallise Jaramillo informed the commission that his client Chris Crespín actually paid \$28,000.00 as a down payment for this property. The people before the commission are not the sole owners and there is another interest as well which is Mr. Edeal. Mr. Jaramillo doesn't feel they can make any promises because that property is in litigation. There is a pre-filing mediation scheduled for August 15th. So there are other parties that do have an interest that may affect whatever decisions are made today. Chairman Holliday said that's not what we're here for, that's for a higher court to decide.

Valencia County resident Bob Gostischa stated, if you make it a C-2, it will never be a C-1 again. It needs to be understood that it can only be used for the purpose they want to use it for, that way if they decide this is not what they want to do it's still a C-1. It needs to be a C-2 with conditions. Changing the zone, even with a covenant which can't be enforced opens it up to who knows what and we all know what can operate under a C-2.

Attorney Pedro Rael representing the interest of Patricia Sanchez and Rita Padilla Gutierrez on this issue had two points to make; 1) the ordinance, subsection N under re-application, states if an application under type C process is denied and upon an exhaustion of remedies, no new application for the same or substantial similar action shall be filed for at least one year from the effective date of decision. The prior time that this commission was asked to alter the allowable use of this property, was the same people, the same location and exactly the same description was in December 2011. Now it's August 2012, less than a year and asking for another change of use of exactly the same property by at least one of the very same owners. The point is that Mr. Rael believes that the application is premature and that the commission should consider not exercising this jurisdiction or its authority at all and simply dismissing the matter because it's not before it appropriately. 2) He believes the commission has received the list of signatures that were acquired by Ms. Padilla Gutierrez and Ms. Sanchez which says the undersign oppose the zoning change from C-1 to C-2 to allow for the operation of a greenhouse at the proposed site in Tome. Mr. Rael submitted, for the record, five sheets of signatures with names, addresses and some telephone

numbers and twelve affidavits of protest by property owners which specifically state that these people live within one hundred feet of the property that is proposed to be re- zoned from C-1 to C-2 and specifies under oath that they are owners and they protest the change from C-1 to C-2 and they also state how many acres of land they own.

There is a statutory issue that talks about the commission vote and when they get to vote on this matter. What they are presenting represents 20% or more of the area of lots and the land included in the area which is going to be changed by this zoning if the commission considers granting it within a hundred feet. If they protest in writing and have original signatures in affidavit form, then it would require four votes by the commission, it's a super majority requirement under the statute, 3-21-6 Subsection C. This is a point that should be on the record that you do have more than 20% of the landowners within a hundred feet protesting and it's going to require a super majority vote.

Those individuals speaking against the zone change request were Valencia County residents Patricia Sanchez, Rita Padilla Gutierrez, James Fischer, Lawrence Sanchez, Frank Crespín, Patsy Crespín and Amavalise Jaramillo.

PUBLIC COMMENTS:

Those members of the audience making comments at today's Public Hearing Meeting were Valencia County residents Bob Gostischa and Robert Waldron.

NEXT COMMISSION MEETING:

The next Business Meeting of the Valencia County Board of County Commission will be held on August 15, 2012 at 9:30 A.M. in the County Commission Room at the Valencia County Courthouse located at 444 Luna Ave., Los Lunas, NM 87031

Adjournment:

Commissioner Gentry moved for adjournment. Seconded by Chairman Holliday. Motion carried unanimously. TIME: 6:11 P.M.

NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the August 8, 2012 Public Hearing Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

VALENCIA COUNTY BOARD OF COMMISSIONERS

DONALD E. HOLLIDAY, CHAIRMAN

GEORGIA OTERO-KIRKHAM, VICE-CHAIR

LAWRENCE R. ROMERO, MEMBER

RON GENTRY, MEMBER

MARY J. ANDERSEN, MEMBER

ATTEST:

SALLY PEREA, COUNTY CLERK

DATE