

June 12, 2013  
Agenda  
**5:00 P.M. Public Hearing**  
Valencia County Commission  
Chambers  
444 Luna Avenue  
Los Lunas, NM 87031

Board of County Commissioners  
Charles D. Eaton, Chair District IV  
Alicia Aguilar, Vice-Chair District II  
Mary Andersen District I  
Lawrence R. Romero District III  
Donald Holliday District V

*Please silence all electronic devices.*

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

Two handwritten signatures in black ink, likely of the County Commissioners.

**EMERGENCY PUBLIC HEARING ITEM(S)**

- 4) Emergency Ordinance 2013-\_\_\_\_\_ / Proclamation restricting the sale and use of Fireworks in the unincorporated areas of Valencia County. *Fire Chief Gonzales*

**EMERGENCY PUBLIC HEARING Action ITEM**

- 5) Consideration of Emergency Ordinance 2013-\_\_\_\_\_ and proclamation restricting the sale and use of Fireworks in the unincorporated areas of Valencia County. *Fire Chief Gonzales*

**PUBLIC HEARING ITEM(S)**

- 6) Consideration to hear an appeal of a decision made by the Planning and Zoning Board to approve a Conditional Use Home Occupation to allow for the storing of equipment and parking for employees.

**Legal Description:**

T5N, R2E, Section 8, NMPM, Tract 34-B-2-A, Zoned RR-2; Filed in Book 365, Page 12390, of the office of the Valencia County Clerk; Lands of Ignacio Baca; Also known as 1021 N. Gabaldon Rd., Belen, NM 87002.

**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:**

♦ June 13, 2013 – Special Meeting @ 1:30 P.M.  
Valencia County Commission Chambers 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.*

**B: 75 P: 597**



VALENCIA COUNTY BOARD OF COMMISSIONERS

PUBLIC HEARING MEETING

JUNE 12, 2013

<b>PRESENT</b>	
Charles Eaton, Chairman	
Alicia Aguilar, Vice-Chair	
Lawrence R. Romero, Member	
Donald E. Holliday, Member	
Mary J. Andersen, Member	
Bruce Swingle, County Manager	
Adren Nance & Dave Pato, County Attorneys	
Peggy Carabajal, County Clerk	
Press and Public	

1) The meeting was called to order by Chairman Eaton at 5:02 P.M.

2) County Manager Bruce Swingle led the Pledge of Allegiance.

3) Approval of Agenda

Commissioner Romero moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

**EMERGENCY PUBLIC HEARING ITEM(S):**

4) Emergency Ordinance 2013-04 Proclamation restricting the sale and use of Fireworks in the unincorporated areas of Valencia County. *Fire Chief Gonzales*

This ordinance would restrict the sale and use of certain types of ariel fireworks in the unincorporated areas of the County.

**EMERGENCY PUBLIC HEARING ACTION ITEM(S):**

5) Emergency Ordinance 2013-04 Proclamation restricting the sale and use of Fireworks in the unincorporated areas of Valencia County. *Fire Chief Gonzales*

Commissioner Andersen moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

County Clerk Peggy Carabajal announced Ordinance 2013-04. (See Exhibit A)

**SWEARING IN OF PARTICIPENTS**

County Clerk Peggy Carabajal administered the oath to those members of the public wishing to give testimony at tonight's meeting.

**PUBLIC HEARING ITEM(S)**

6) Consideration to hear an appeal of a decision made by the Planning and Zoning Board to approve a Conditional Use Home Occupation to allow for the storing of equipment and parking for employees.

**Legal Description:**

T5N, Section 8, NMPM, Tract 34-B-2-A, Zoned RR-2; Filed in Book 365, Page 12390, of the office of the Valencia County Clerk; Lands of Ignacio Baca; Also known as 1021 N. Gabaldon Rd. Belen, NM 87002.

Planning and Zoning Director Jacobo Martinez stated that the applicants request was for a home occupation in a RR-2 district. The Planning and Zoning Board held a meeting on April 24<sup>th</sup> and at that meeting they approved the conditional use home occupation 4-0. An appeal to that decision was made on May 10<sup>th</sup>.

Attorney David Chavez represented the applicants John and Tracy Hawks, the owners of Hawks Dirty Work LLC. The Hawks business has equipment that is used for the farming and commercial aspect of the business, they farm over 100 acres of land. The equipment is used for dual purpose in the farming and dispatch business. Mr. Chavez made it clear that the equipment is not used onsite nor do employees work onsite, they are dispatched on a daily basis to their job locations. From 2005-2011 the Hawks' business was operated from 121 El Cerro Loop in Los Lunas but in 2011 they purchased the property at 1021 Gabaldon Rd in Belen, and in 2012 the business was moved to the Belen location. Mr. Chavez commented that Andrew and Kathleen Ulibarri had several objections regarding the home occupation including the storage of vehicles. To that Mr. Chavez stated that there are no regulations that would prohibit the parking of the vehicles on the property.

**B: 75 P: 598**



Another objection was to the number of employees, Mr. Chavez said that the business employs 10 people who are residents of Valencia County, and they work and live in Valencia County. Other objections included the conditional use criteria and requirements and the response to the home occupation permit. Mr. Hawks stated that he has been a business owner for 10 years. When the business was first started it was just him and his wife, now they've grown to 10 employees and have been at that number for 5-6 years. Some of the same employees have been with the business for 6-9 years. The Hawks decided to move to the Gabaldon Rd. property to have more room and to start farming. Mr. Hawks commented that they are just hard working people just trying to make a living. He said that the employees arrive at 7:30; they start the company trucks and are dispatched to various job locations in the surrounding area. Mr. Hawks said that they also farm 100 acres of land so a majority of the equipment used for the business is also used on the farm, they also custom farm around other areas. There is no trash hauling, demolition, excavation, or hauling of construction debris from the site. All work is performed off site, basically just storage and dispatch is done onsite. The business has their Valencia County and Los Lunas business license, they also have their state license and hauler registration license and their building permit. About 75% of material that the trucks haul is recycled. On Gabaldon Rd. there are 7 other licensed business not including those being operated on the residential streets. The Hawks' business does not operate on a residential street but on an urban collector road. Mr. Chavez commented that there has been tremendous support from the surrounding neighbors, including support letters and a signed petition. Besides the Ulibarri's there were 3 other people that were objected to the home occupation permit. Those individuals were Mela Esquibel, Joe Tafoya and Ms. Vaughn. Ms. Esquibel and Mr. Tafoya have since withdrawn their opposition. Ms. Hawks clarified that their business was not an industrial company. Most of the equipment is dual purpose for the farming. The business is also trying to convert all vehicles to run on alternative fuel. Ms. Hawks stated that she would like to address some of the factual errors in the Ulibarri's appeal. She said that it was brought up that the business has grown since they've been at the Gabaldon location, some of the equipment has been replaced but they have not grown. And occasionally the trucks will return at the end of the day with a load but it is covered and disposed of the next day. A privacy fence was put up on the north side of the property and they are willing to put up any privacy fence but the Ulibarri's did not want it. And the storing of the equipment and the parking of the employees vehicles is in no way affecting the surrounding land use. Mr. Chavez then went over the comprehensive plan as applied to the Hawks business.

Attorney Anthony Williams represented Mr. and Ms. Ulibarri. Mr. Williams commented that obviously the Hawks family has a lot of friends and supporters and in no way can he think to dispute that they run a good business and that the existence of their business in Valencia County is good for their employees and good for the people of the county. Mr. Williams went on to say however; that does not create a situation where the commission or anybody can avoid the basic law or ordinance that exists for home occupation. If the Hawks meet the criteria for home occupation then it's up to the discretion of the board if it's in the counties best interest, but if they don't meet the criteria then it really doesn't matter how good of citizens they are or how important their business is. Mr. Williams believes that if it doesn't meet the criteria, the commission cannot grant this request. Mr. Ulibarri showed a video and some photos, dated on the Friday before the Planning and Zoning meeting, that depicted the traffic and what takes place at the business. Ms. Ulibarri stated that she lives at 1037 Gabaldon Rd and has lived there for 19 years. She commented that she really doesn't know the Hawks family. She doesn't like the view and all the noise that the business creates, she just wants to be comfortable and at peace in her own home. She believes that the business belongs in Valencia County but in a commercial location, not where it is now. Mr. Williams stated that he understands that the trucking work does not occur on site and the bigger part of the employees day is spent off site but a home occupation is a business that a home owner does at home, not one that has 10-12 employees. Mr. Williams read from the home occupation ordinance. He then said that there is a significant amount of work taking place outside. Mr. Williams went on to state that this business is a corporate entity with a mobilization yard, storage of equipment, mobilizing crews, and they have employees working part time outdoors on the premises doing activity that generates noise, dust and fumes and it is not permitted as a home occupation. He believes that right thing to do is to not allow this in a rural residential area. Mr. Williams asked Ms. Hawks if the business was registered as a limited liability company. Ms. Hawks replied yes it was. Mr. Williams asked if the employees clock in when they arrive on site. Ms. Hawks replied yes they do. Mr. Williams asked so if we were to look at their time slips you would see part of the day is spent on the premises and much more away from the premises. Ms. Hawks said yes. Mr. Williams asked if they had restrooms for the employees on the premises. Ms. Hawks said they can come into her



Minutes of June 12, 2013 Public Hearing Meeting

home. Mr. Williams asked if they had an environmental review of whether that extra usage of the septic system is appropriate for 12 employees on site. Ms. Hawks said no. Mr. Williams asked of the activity that takes place onsite how much outdoors and how much inside. Ms. Hawks replied that its 100% outside, occasionally repair work is done onsite; most of the mechanic work is done inside the shop unless what is being repaired cannot fit inside the shop.

**PUBLIC COMMENT:**

The following people spoke in favor of the conditional use home occupation for the Hawks.

Robert Serna, Vaughn Hendron, Jimmy Thompson, Dick Bursum, Marvin McDonald, Terry Fox, Robert Campbell, Helen, Cort, Leanna Salceda, Shawn Gallogly, Donald Auge, and Meghan Gallogly. Those in favor all had similar testimonies including saying that the Hawks are great neighbors; they are always going out of their way to help someone out. They are wonderful supporters of the community, they take care of their property and the residents quality of life has not been effected by the having the business there. They see nothing wrong with having the Hawks' business there because it is providing jobs for the community and is also bringing in revenue for the county. Also, we need progress, we can't hold businesses back especially in the economy that we now live in. Another point that was made was that the Hawks business is a family owned and operated business, it is not a corporation.

Maria Nieto spoke against the home occupation. She stated that she likes the rural area in which she lives but the Hawks' business brings a lot of noise and fumes. She mentioned that she thinks their property looks like one of the places in the South Valley selling used car parts. Ms. Nieto is afraid that the Hawks' will keep expanding their business.

Commissioner Aguilar said that she is familiar with the comprehensive plan and the zoning plan so her decision will be based on the facts and what is written. The comprehensive plan is a legal basis for the zoning authority. She believes that they look at the comprehensive plan for guidance but it's the zoning ordinance that they really look at for the rules and decision making. Chairman Eaton asked if the shop structure that was erected on the site had a building permit. Mr. Martinez replied that the Hawks had started building without a permit, but that we had tagged them to stop building until they could obtain a permit and they have since obtained that permit. Chairman Eaton asked how many home occupations in Valencia County have similar circumstances that may be applied to this situation where home occupation has been granted and the employees work offsite. Mr. Martinez said that for the last 3 ½ to 4 years he has only known of a person that owned a semi-trailer and has parked the semi on their parcel of land, neighbors complained about it. Since then that individual was taken through the home occupation process and has passed a home occupation for that. Mr. Martinez said that that seems similar to him.

Mr. Chavez said that spirit of the home occupation is that you don't want to have more than 2 people working onsite, that is the intent of the home occupation permit. You don't have to have 10 people working onsite, they come on the site, pick up the equipment and leave and are gone for the day. They are not onsite working, that would be contrary to a home occupation permit and the Hawks meet the criteria of no more than 2 people on the site.

Mr. Williams stated that the evidence that was heard today was that the Hawks have more than 2 part-time employees working outside creating dust and noise. And that does not legally fit. He went on to say that he believes that the commission can legally move outside of its ordinance and give somebody something just because they are good people and have large community support. The law must be obeyed.

Commissioners will make their decision at the Wednesday, July 3, 2013 Regular Business Meeting.

Additional information packets from both parties on file in the Clerk's Office.

**NEXT COMMISSION MEETING:**

The next Regular Meeting of the Valencia County Board of County Commission will be held on June 17, 2013 at 1:30 P.M. Meeting in the County Commission Room at the Valencia County Courthouse.

**7) Adjournment**

Commissioner Aguilar moved for adjournment. Seconded by Commissioner Romero. Motion carried unanimously. TIME: 7:42 P.M.

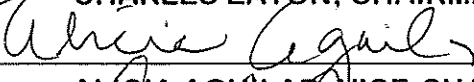
**B: 75 P: 600**



**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the June 12, 2013 Public Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.


VALENCIA COUNTY BOARD OF COMMISSIONERS

  
CHARLES EATON, CHAIRMAN


  
ALICIA AGUILAR, VICE-CHAIR

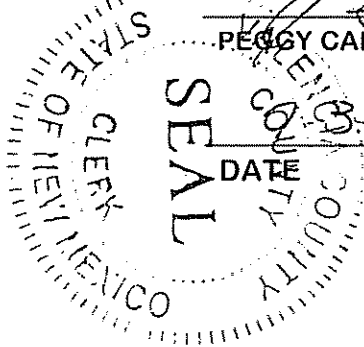
  
LAWRENCE R. ROMERO, MEMBER

  
DONALD E. HOLLIDAY, MEMBER

  
MARY J. ANDERSEN, MEMBER

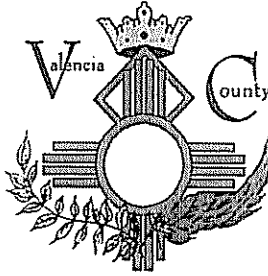
ATTEST:

  
PEGGY CARABAJAL, COUNTY CLERK



B: 75 P: 601





**EXHIBIT A**

**VALENCIA COUNTY  
EMERGENCY ORDINANCE 2013- 04 AND PROCLAMATION  
RESTRICTING THE SALE AND USE OF FIREWORKS  
IN THE UNINCORPORATED AREAS OF VALENCIA COUNTY**

**WHEREAS**, pursuant to NMSA 1978, Section 60-2c-8.1 (E) (1999) the Board of County Commissioners held a public hearing on Wednesday, June 12 , 2013 at 5:00 p.m. at the Valencia County Administration Building located at 444 Luna Ave. Los Lunas, New Mexico 87031, to consider imposing restrictions on the sale and use of fireworks; and,

**WHEREAS**, NMSA 1978, Section 3-18-1 (1972) provides that municipalities, and also counties pursuant to NMSA 1978, Section 4-37-1 (1995), have the power to "protect generally the property of its municipality and its inhabitants" and to "preserve peace and order"; and,

**WHEREAS**, NMSA 1978, Section 4-37-1 *et seq.* provides that counties may adopt ordinances, not inconsistent with statutory or constitutional limitations placed on counties, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the county and its inhabitants; and,

**WHEREAS**, NMSA 1978, Section 4-37-7 (1975) eliminates the general ordinance publication requirement for ordinances "dealing with an emergency declared by the board of county commissioners to be an immediate danger to the public health, safety and welfare of the county,"

**WHEREAS**, the danger of brush fires, grass fires, forest fires and structure fires is extremely high in the State of New Mexico and especially Valencia County and the surrounding jurisdictions; and,

**WHEREAS**, current fire conditions such as relative humidity, weather and fuel content and conditions are extremely high in Valencia County; and,

**WHEREAS**, the probability of ignition of material and fire spread is extremely high in Valencia County; and,

**WHEREAS**, the Board of County Commissioners finds, based upon current drought indices published by the national weather service and other information supplied by the United States forest service and the New Mexico State Forestry – that severe drought conditions affect the unincorporated areas of Valencia County; and,

**WHEREAS**, on Tuesday, June 11, 2013 Governor Suzanna Martinez issued as drought declaration for the entire state and urged municipalities and counties to hold emergency meetings throughout the next week to vote on a local ban on the use of fireworks; and,

**WHEREAS**, the Board of County Commissioners finds that fireworks restrictions should be imposed within the unincorporated areas of Valencia County; and,

**WHEREAS**, the possibility of extreme fire situations will severely tax current local, state and federal resources; and,

**WHEREAS**, the Board of County Commissioners finds that there exists an immediate danger to the public health, safety, and welfare of Valencia County.

**NOW THEREFORE, BE IT ORDERED AND PROCLAIMED BY THE BOARD OF COUNTY COMMISSIONERS, THAT:**

- Section 1. The Board of County Commissioners hereby declares that Valencia County is suffering from extremely or serious drought conditions and high fire hazards represent a significant immediately threat to the peace, safety, health and welfare of Valencia County.
- Section 2. For purposes of this Ordinance, the word “fireworks” means any device intended to produce a visible or audible effect by combustion, deflagration or detonation. The term fireworks is used in this Ordinance includes but is not limited to the definition of the “fireworks” provided in NMSA 1978, Section 60-2c-2 (2007)
- Section 3. Pursuant to NMSA 1978, Section 60-2C-8.1 (F)(2)(a)(1999), the Board of County Commissioners does hereby allow the sale but limits the use of cone fountains, crackling devices, cylindrical fountains, flitter sparklers, ground spinners, illuminating torches, toy smoke devices, wheels and mines fireworks within the unincorporated areas of Valencia County to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public.
- Section 4. Pursuant to NMSA 1978, Section 60-2c-8.1 (F)(1) (1999) the following types of fireworks are banned from sale and use within the unincorporated areas of Valencia County: stick-type rockets, helicopters and aerial



spinners, missile-type rockets, ground audible devices, firecrackers and display fireworks.

- Section 5. Pursuant to NMSA 1978, Section 60-2C-8.1 (F)(2)(b)(1999), the Board of County Commissioners gives itself the power to and does hereby ban the use of all fireworks within wildlands in its jurisdiction. ("Wildlands" means any lands covered wholly or in part by timber, brush or native grass).
- Section 6. Pursuant to NMSA 1978, Section 60-2C-8.1 (F)(2)(c)(1999), the Board of County Commissioners gives itself the power to and does hereby ban the sale or use of display fireworks. ("Display Fireworks" means devices primarily intended for commercial displays designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than one hundred thirty milligrams of explosive composition; aerial shells containing more than forty grams of chemical composition exclusive of lift charge; and other exhibition display items that exceed the limits for permissible fireworks.)
- Section 7. Except as permitted by this Ordinance, the use of all other fireworks of any kind or description are banned within the unincorporated areas of Valencia County.
- Section 8. **EFFECTIVE DATE AND DURATION**  
Pursuant to NMSA 1978, Section 4-37-9 (C) (1997), the Board of County Commissioners hereby declares it is necessary for the public peace, health, safety and welfare that this Ordinance/Proclamation take effect immediately after passage. This Ordinance/Proclamation shall be in effect for a 30 day period after the date of adoption. However, the Board of County Commissioners shall review the existing drought and fire conditions monthly. If improving conditions warrant action, the Board of County Commissioners may terminate the Ordinance/Proclamation by resolution.
- Section 9. **ENFORCEMENT**  
The Sheriff's Department of Valencia County, the Valencia County Fire Chief, Valencia County Code Enforcement and any of their agents, shall have the authority to enforce this Ordinance.
- Section 10. **PENALTIES**  
Any violation of this Ordinance shall be deemed a misdemeanor and punishable by a fine of not more than three hundred dollars (\$300) and/or up to 90 days in jail.
- Section 11. **SEVERABILITY**

**B: 75 P: 604**

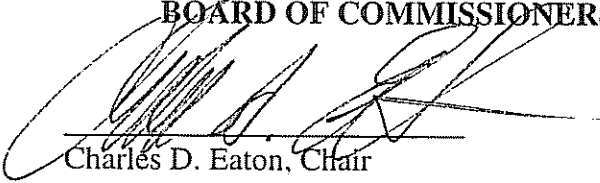


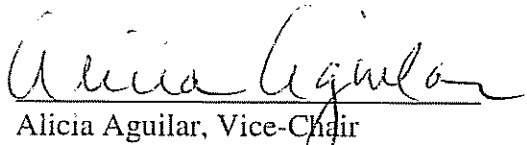


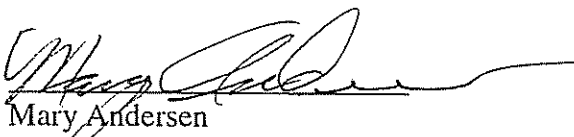
If any article, section, subsection, paragraph, sentence, clause, phrase, provision or portion of any article, section, subsection, paragraph, sentence, clause, phrase or provision in this Ordinance/Proclamation is, for any reason, held to be unconstitutional, invalid or void, the remaining portion shall not be affected since it is the express intention of the Valencia County Board of County Commissioners to pass such article, section, subsection, paragraph, sentence, clause, phrase or provision and every part thereof separately and independently from every other part.

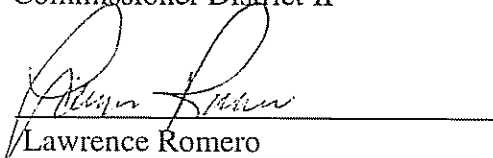
**PROCLAIMED, ORDERED, AND ADOPTED THIS 12<sup>th</sup> DAY OF JUNE, 2013.**

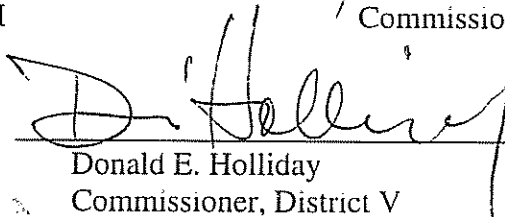
**BOARD OF COMMISSIONERS OF VALENCIA COUNTY**

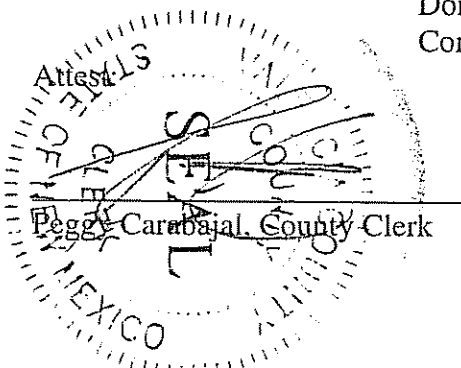
  
Charles D. Eaton, Chair  
Commissioner, District IV

  
Alicia Aguilar, Vice-Chair  
Commissioner District II

  
Mary Andersen  
Commissioner, District I

  
Lawrence Romero  
Commissioner, District III

  
Donald E. Holliday  
Commissioner, District V



**B: 75 P: 605**

