



August 10, 2016

**Agenda**

**5:00 P.M. Public Hearing/Special Business Meeting**

Valencia County Commission Chambers  
444 Luna Ave.  
Los Lunas, NM 87031

Board of County Commissioners

Charles D. Eaton, Chair	District IV
Jhonathan Aragon, Vice-Chair	District V
Helen Y. Cole	District I
Alicia Aguilar	District II
David A. Hyder	District III

**Please Silence all Electronic Devices**

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

*Sponsorship does not indicate endorsement of a given topic*

**PUBLIC HEARING ITEM(S)**

- 4) Request for Preliminary and Final Plat Approval of Ranch de Los Chavez. Applicants: John Whisenant and Elias Barela (*This property is located in Los Chavez off of John Road and this property falls within District IV*) application #2015223 Presenter: **Jacobo Martinez**

**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 an opportunity to address the board in conjunction with the Public Participation Resolution, Resolution No. 2016-37 adopted by the board  
**Limited to three (3) minutes per person**

**EXECUTIVE SESSION**

Pursuant to Section 10-15 1 (H) (2) (7) & (8), the following matters may be discussed in closed session: a. personnel; b. pending or threatened litigation: ***Estate of Sanchez v. Valencia County, FOP v. BOCC*** administrative adjudicatory deliberations; c. real property; d. other specific limited topics that are allowed or authorized under the stated statute:

- Motion and roll call vote to go into Executive Session for the stated reasons
- Board meets in closed session
- Motion and vote to go back into regular session
- Summary of items discussed in closed session
- Motion and roll call vote that matters discussed in closed session were limited to those specified in motion for closure, and that no final action was taken, pursuant to the authority in §10-15-1 NMSA 1978.

*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, please contact the County Administration Building, Los Lunas, New Mexico, (505) 833-5660. Minutes and minutes, can be provided in various formats if needed.*

**B: 89 P: 560**



*County Administration including the agenda other type of accessible*

**ACTION ITEM(S)**

5) Consideration of MOU with FOP. Presenter: *Adren Nance*; Sponsor: *per the PEBA*

**NEXT COMMISSION MEETINGS**

**August 17, 2016-Business Meeting @ 5:00 P.M.**

**Valencia County Commission Chambers, 444 Luna Ave., Los Lunas, NM 87031**

**September 7, 2016-Business Meeting @ 5:00 P.M.**

**Valencia County Commission Chambers, 444 Luna Ave., Los Lunas, NM 87031**

**September 14, 2016-Public Hearing Meeting @ 5:00 P.M.**

**Valencia County Commission Chambers, 444 Luna Ave., Los Lunas, NM 87031**

**September 21, 2016-Business Meeting @ 5:00 P.M.**

**Valencia County Commission Chambers, 444 Luna Ave., Los Lunas, NM 87031**

**ADJOURN**

**B: 89 P: 561**



*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 Administration Building, 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 if a summary or other type of accessible format is needed.*

**VALENCIA COUNTY BOARD OF COMMISSIONERS  
PUBLIC HEARING / SPECIAL BUSINESS MEETING**

**AUGUST 10, 2016**

PRESENT	ABSENT
Charles D. Eaton, Chairman	
	Jhonathan Aragon, Vice-Chair
David A. Hyder, Member	
Alicia Aguilar, Member	
Helen Y. Cole, Member	
Danny Monette, 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 5:04 P.M.

2) Mr. Jacobo Martinez led the Pledge of Allegiance.

3) **Approval of Agenda**

Commissioner Aguilar moved for approval. Seconded by Commissioner Cole. Roll call vote. Commissioner Cole voted yes. Commissioner Hyder voted yes. Commissioner Aguilar voted yes. Chairman Eaton voted yes. Motion carried 4-0.

Chairman Eaton stated that Commissioner Aragon had contacted him and had informed him that he would not be present for the meeting.

**PUBLIC HEARING ITEM(S):**

4) **Request for Preliminary and Final Plat Approval of Rancho de Los Chavez. Applicant: John Whisenant and Elias Barela (*this property is located in Los Chavez off of John Road and this property falls within District IV*) Application #2015223 Presenter: Jacobo Martinez**

Mr. Martinez stated that tonight's public hearing is for preliminary/final plat approval for the Rancho de Los Chavez subdivision. The legal description of the property in question is T6N, R2E, Section 30, Map 90; Land Division of Franklin and Whisenant; Tract A and B; Consisting of 17.93 acres and 8.68 acres; Zoned RR-2, Land of Dale Jones, Tract C-2 Map 90, consisting of 9.06 acres, Zoned RR-2.

In 2009 the zone change came before the commission to change from AP zoning to RR-2, the commission voted to approve the zone change. The decision was appealed and taken to district court. District Court adjudicated that the decision be remanded back to the county commission, who then chose to appoint a hearing officer. In 2014 John Myers served as the hearing officer, another public hearing was held to hear the case for the zone change and at that time the subdivision plat was presented. After the public hearing there was a decision made to approve the zone change from AP to RR-2 with 11 conditions.

Commissioner Aguilar asked if the public was notified about the public hearing.

Mr. Martinez replied that there was a public hearing held before a hearing officer and the public was notified of that meeting.

Commissioner Aguilar asked if the information was available to the public before tonight's meeting.

Mr. Martinez stated that that information was available for public viewing in his office but the decision has been available since 2014. The 11 conditions are as follows:

1. No lot within the property may be smaller than 2 acres.
2. No more than 15 lots may be created from the property; compliance with the conditions may result in yield of less than 15 lots.
3. At least 20 acres of the property shall be reserved for agricultural, farming, ranching, livestock management, open space, or related activities.
4. The agricultural property may be portions of the residential building lots.

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5. The agricultural property may be more than 1 area, but the length and width of the agricultural property areas shall be at least 300' x 300'.
6. No structures may be constructed on the agricultural property.
7. The agricultural property shall be served by irrigation easements.
8. Each agricultural property area shall be maintained and operated as a consolidated unit.
9. No more than 6% of the area of any a lot may be improved with impervious materials.
10. All lots must be provided with alternative liquid waste disposal systems acceptable by the New Mexico Environment Department.
11. These conditions shall encumber the property by land use easements or restrictive covenants benefiting and enforceable by the county and shall be referenced on the subdivision plat.

Mr. Martinez stated that after the decision was made for approval of the zone change and of the plat with the conditions the developers hired Anchor Engineering to complete the subdivision review process. Because the subdivision is more than 5 lots it did have to go through a major subdivision review process. The plat was sent out to multiple state agencies to give them an opportunity to reply. The plat was also taken before the Planning and Zoning board, they had no negative comments and decided not to make any recommendations to the county commission. After the plat was sent out for review responses were received from 6 agencies, letters were received from NM Soil and Water Conservancy District, Office of the State Engineer, Middle Rio Grande Conservancy District, Department of Cultural Affairs Historic Preservation District, and the NM Environment Department. All of the responses came with recommendations for changes. Cultural Affairs asked if an archaeological study be done, Soil and Water Conservation asked for more information regarding grading and drainage, the State Engineers Office had a request for information regarding the forms that were submitted for water and geohydrologic study.

Anchor Engineering responded to all the agencies and none wrote back except for the State Engineers office, they stated that they would like to see a geohydrological study done and some of the forms were not done correctly. In May 2016 Anchor Engineering responded to the adverse comment stating that they provided the information in the right format and the water assessment in the geohydrological report that was required would be costly so they requested to do a well log study. The State Engineers office responded that it would be acceptable as long as the county would accept it and Mr. Martinez told Anchor Engineering that it would be acceptable but they would need to come before the board to see if they find it acceptable as well.

Commissioner Aguilar stated that the water and the septic are 2 extremely important elements that need to be looked at.

Mr. Martinez stated that the Planning and Zoning department compared the conditions to the plat and they felt like the 11 conditions have been met.

Commissioner Aguilar stated that one of the conditions says that the county will enforce restrictive covenants but the county does not enforce restrictive covenants.

Mr. Nance stated that the language is directly from the subdivision ordinance but the county has continuously interpreted that the constitution prevails and that is a private covenant and the county does not enforce private rights.

Commissioner Aguilar stated that it needs to be clarified, even if it's in our subdivision regulations.

*County Clerk Carabajal administered the oath to those individuals wishing to speak on tonight's public hearing item.*

Martin Garcia with Anchor Engineering stated that he would like to inform the commission on how compliance was made regarding the 11 conditions.

1. The smallest lot is 2.06 acres the largest lot is 2.5 acres.
2. There are no more than 15 lots, restrictions and covenant do not allow for subdivision of the lots but it does allow for consolidation.
3. 35.9 acres is reserved for agricultural.
4. The agricultural portions be portions of the building lots and that is how 35.9 acres to accounted for.

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5. Each lot has more than 1 ½ acres of agricultural land.
6. The covenants and declaration statement say that there is a build envelope and only within that envelope can a structure be built. The restrictions also cover what type of structure and size is allowed on the property.
7. Irrigation easements are included in the subdivision plat to serve the southern and eastern lots which include lots 1, 2, 11-13 and 9-10.
8. The layout that was created for the building pad and the developable property is a consolidated unit, there is no space in between.
9. The subdivisions declaration statement clearly states that no more than 6% of impervious areas allowed. This was made clear so any potential buyer knows the requirements from the start.
10. Included in the declaration statements are the forms required by NM Environment Dept. and Anchor Engineering has contacted them and had discussion with them. When a homeowner goes to get a building permit and septic permit the requirements that NM Environment Dept. has at that time will need to be complied with.
11. The declaration statement mentions covenants. Mr. Garcia stated that he understands that covenants are private but they are tied to the application packet so they are somewhat enforceable. The declaration ties the covenants to it so it is a complete package for the subdivision, there is a list of requirements and rules for the HOA. The developer's intent is to make sure that the quality of the development continues.

Mr. Garcia stated that he would like to expand on the State Engineers comments, the State Engineer's original letter indicated that the proper format was not followed on the declaration statements, Mr. Garcia stated that the format that was followed was using the old county ordinance. Mr. Garcia stated that it was modified and a reply was sent back in April. Regarding the geohydrologic study, the new county ordinance mentions the use of a geohydrologic report the old ordinance allowed the use of well logs. The State Engineer mentioned that in other counties the use of well logs were allowed. About 50 wells logs were found that demonstrated the quality and quantity of the water is suitable to serve the subdivision, the use of the well logs was requested in lieu of a geohydrological report because the 2 firms that used to do the reports went in another direction and 1 firm was found that would possibly do the study but would take about 1 year to complete, so an alternate was sought which is use of the well logs. Mr. Garcia stated that they have somewhat exceeded the requirements of the decision that Mr. Myers issued, the goal of the developer is to make sure that the subdivision is of high quality. They have been getting the property prepared on the agricultural side to receive the roadway improvements. The roadway will be paved and there has been discussion about the possible extension of underground utilities such as power and telephone but at this point they are just awaiting approval of the subdivision from the board.

Commissioner Aguilar asked if the paved streets will be to federal standards and will it be a private or public road.

Mr. Garcia replied that the streets will be maintained by the HOA and it will be a gated community.

Commissioner Aguilar asked if the water rights have been severed, she also mentioned if there would have to be a refund on rebates from the Soil and Water Conservation regarding the concrete ditches.

Mr. Garcia replied that the water rights have not been severed, there are still surface irrigation rights for the property but he is not familiar with the history of the installation of the concrete ditches on the property.

Commissioner Aguilar asked about residents constructing a horse barn or arena on agricultural land.

Mr. Garcia replied that there is about ½ acre of land per lot that allows for buildings that support agricultural activity.

Commissioner Aguilar stated that originally agricultural in that area was 10 acres then reduced to 5 acres and now it's at 2 acres.

Mr. Martinez stated that he wasn't aware of the 10 acres but does remember the 5 acres, this property has been adjudicated for a zone change from AP to RR-2.

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Commissioner Aguilar asked if everything that is done is specific to the subdivision, it is not a blanket for someone else to come in and do the same thing.

Mr. Martinez replied yes, that is correct.

Chairman Eaton opened the floor for public comment.

William Dean stated that Dr. John Hudson the president of the Los Chavez Community Association had asked him to present an abstract regarding a letter that Mr. Myers had written. Mr. Dean mentioned that the letter stated that the maximum number of additional wells which would be permitted would be 7, during the meeting he didn't hear anything about that number of wells that will be drilled and Myers document specifies 7 wells. Also if the individual properties are resold the covenants follow the land not the sale so the conditions stay with the land, is that correct. (See Exhibit A)

Mr. Pato stated yes, that is correct, covenants that touch and affect the land run with the land.

Mr. Dean stated there are 3 main issues and they are sanitation, the number of wells and if the covenants stay with the land.

Lela Heineken stated that her property is near the access road to the subdivision and if the county is not going to police the covenants then who is.

Chairman Eaton replied that the county will enforce its own ordinances but the HOA would enforce its own covenants.

Mr. Garcia stated that the document that mentions the conditions does say 7 wells will be permitted but it is not a condition of approval. The State Engineers office did say they would permit 1 well per lot, 15 wells are proposed for the subdivision which is 1 well per lot because there is a water budget of 0.323 acre feet per well per year,  $0.323 \times 15$  is 4.845 acre feet and it doesn't matter if you draw it out of one point or 15 different points it's still the same budget.

Commissioner Aguilar asked what if someone wants to have a garden or grass, they are not allowed any additional wells.

Mr. Garcia replied that in the original submittal made in December they said they would have 0.3 acre feet of domestic use, the State Engineers office came back and said that no outdoor use of well water was accounted for so when Anchor responded back to them they included 13,175 gallons per year for the house and 7,474 gallons per year for outdoor use.

Commissioner Aguilar asked if the wells being metered.

Mr. Garcia stated that the State Engineers current standard is to get wells logs and they monitor them.

Commissioner Aguilar stated that the area is in a flood plain so do the homes need to be raised.

Mr. Garcia replied that the building pad will be raised 3 feet from the existing ground and the roadways will be above the flood plain as well.

Mr. Martinez stated that 15(C)4.B of the Findings of Fact does state that the maximum number of wells for permitting would be 7, but that is not under the conditions just under the Findings of Fact and he has no reasoning why the hearing officer would have put that under the Findings of Fact.

Chairman Eaton asked Mr. Martinez if he was willing to take a position on the disclosure that Anchor just made on the wells.

Mr. Martinez stated that his position on the wells is that if it's zoned RR-2 then each of the 15 lots should have a well on the lot.

Commissioner Aguilar asked if the subdivision will be using John Road.

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Mr. Martinez replied that the traffic will come off of Edmundo Road.

Commissioner Aguilar stated that Edmundo is a county maintained road and she would like to see it addressed that if there is damage to the county roads during construction that the sub-divider repair the road somehow.

Mr. Nance stated that there probably needs to be discussion regarding that issue in executive session prior to the decision but right now there needs to be focus on the conditions set forth by the hearing officer.

Mr. Dean stated that most of the 75 foot deep wells in the Los Chavez area have already failed. Also in talking with the State Engineers office 10 years ago he was made aware that some states have made it law that a new well can't be put in unless an old one was first removed. He asked that the commission please look carefully at the water issue.

Chairman Eaton stated that the commission will defer a decision on this matter until the next meeting.

**PUBLIC COMMENT:**

Joaquin Graham- Mr. Graham commented that AMR has been operating in Valencia County for 3 years and employs 68 people with 44 of them being full time employees. AMR has an average of 25 responses per day. Mr. Graham introduced Tanner Adams who is a new supervisor in Valencia County. Mr. Graham commented that on Tuesday, August 16<sup>th</sup> in Santa Fe the Supreme Court Justices will hear the appeal between Living Cross and the NM Public Regulatory Commission.

**EXECUTIVE SESSION:**

Pursuant to Section 10-15-1 (H) (2) (7) & (8) the following matters may be discussed in closed session: a) Personnel; b) Pending or threatened litigation: Estate of Sanchez v. Valencia County, FOP v. BOCC administrative adjudicatory deliberations; c) real property; d) other specific limited topics that are allowed or authorized under the stated statute.

Mr. Nance stated that what was to be discussed is limited to what was presented on the agenda the executive session.

Commissioner Hyder moved to go into executive session. Seconded by Commissioner Cole. Roll call vote. Commissioner Cole voted yes. Commissioner Hyder voted yes. Chairman Eaton voted yes. Commissioner Aguilar was not present for the vote. Motion carried 4-0.

Commissioner Aguilar moved to return to regular session. Seconded by Commissioner Hyder. Roll call vote. Commissioner Cole voted yes. Commissioner Hyder voted yes. Commissioner Aguilar voted yes. Chairman Eaton voted yes. Motion carried 4-0.

Mr. Nance states that the matters discussed in executive session we limited to those in the motion for closure and no final action was taken.

Commissioner Hyder moved for approval of the summary as stated by Mr. Nance. Seconded by Commissioner Aguilar. Roll call vote. Commissioner Cole voted yes. Commissioner Hyder voted yes. Commissioner Aguilar voted yes. Chairman Eaton voted yes. Motion carried 4-0.

**ACTION ITEM(S):**

5) Consideration of MOU with FOP. Presenter: *Adren Nance*; Sponsor: *per the PEBA*  
Commissioner Aguilar stated that this item was discussed and the attorneys filled the board in on what needs to be done, it's a ratification of an MOU.

Commissioner Aguilar moved for approval. Seconded by Commissioner Hyder. Roll call vote. Commissioner Cole voted yes. Commissioner Hyder voted yes. Commissioner Aguilar voted yes. Chairman Eaton voted yes. Motion carried 4-0.

**NEXT COMMISSION MEETING:**

August 17, 2016- Business Meeting @ 5:00 P.M.

Valencia County Commission Chambers, 444 Luna Ave., Los Lunas, NM 87031

September 7, 2016- Business Meeting @ 5:00 P.M.

Valencia County Commission Chambers, 444 Luna Ave., Los Lunas, NM 87031

**B : 89 P : 566**





Minutes of August 10, 2016 Public Hearing/Special Business Meeting

September 14, 2016- Public Hearing Meeting @ 5:00 P.M.  
Valencia County Commission Chambers, 444 Luna Ave., Los Lunas, NM 87031

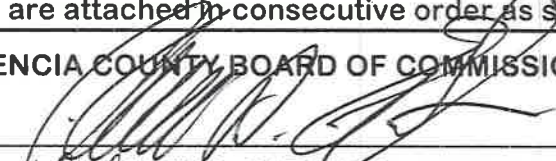
September 21, 2016- Business Meeting @ 5:00 P.M.  
Valencia County Commission Chambers, 444 Luna Ave., Los Lunas, NM 87031

14) Adjournment

Commissioner Hyder moved for adjournment. Seconded by Commissioner Aguilar. Roll call vote. Commissioner Cole voted yes. Commissioner Hyder voted yes. Commissioner Aguilar voted yes. Chairman Eaton voted yes. Motion carried 4-0. TIME: 6:44 P.M.

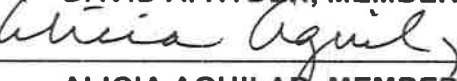
NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the August 10, 2016 Public Hearing/Special Business Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

VALENCIA COUNTY BOARD OF COMMISSIONERS

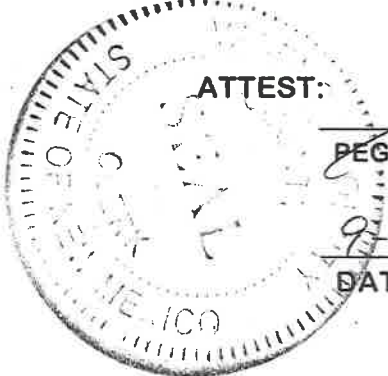
  
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CHARLES D. EATON, CHAIRMAN


  
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JHONATHAN ARAGON, VICE-CHAIR

  
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DAVID A. HYDER, MEMBER

  
\_\_\_\_\_  
ALICIA AGUILAR, MEMBER

  
\_\_\_\_\_  
HELEN Y. COLE, MEMBER



ATTEST:  
  
\_\_\_\_\_  
PEGGY CARABAJAL, COUNTY CLERK

9-7-2016  
DATE







Talking paper for Bill Dean for presentation at the County Commission Meeting, 10 Aug 2016

Subj: I The Matter of Amending the Zone Map from AP to RR-2. Valencia County, New Mexico, Application by John Whisenannt & Elias Barela—Consensus Planning, Agent, dated 23 May 2014

FINDING OF FACT, CONCLUSIONS OF LAW AND DECISION—IMPORTANT POINTS:

1. Para, 15(4)(b) The maximum number of additional wells which would be permitted by the rezoning would be seven (7).
2. Para, 15.(D). The conditions imposed upon the rezoning requiring 20 acres of agricultural/open space will provide an opportunity for small scale farm activities compatible with low density residential areas.

DECISION

CONDITIONS:

1. No Lot within the property may be smaller than two (2) acres.
2. No more than 15 lots may be created from the property; compliance with the conditions may result in a yield of less than 15 lots.
5. The agricultural property may be more than one area but the length and width of the agricultural property areas shall be at least 300' x 300'.
6. No structures may be constructed on the agricultural property.
7. The agricultural property shall be served by irrigation easements.
10. All lots must be provided with alternative liquid waste disposal systems acceptable to the New Mexico Environment Department.
11. These conditions shall encumber the property by land use easements or restrictive covenants benefitting, and enforceable by the County and shall be referenced on the subdivision plat.

