

VALENCIA COUNTY BOARD OF COMMISSIONERS

BUSINESS MEETING

MARCH 6, 2019

PRESENT	ABSENT
	Jhonathan Aragon, Chairman
David Carlberg, Vice-Chair	
David A. Hyder, Member	
Charles D. Eaton, Member	
Gerard Saiz, 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 Vice-Chair Carlberg at 5:01 P.M.

2) Mr. Mraz led the Pledge of Allegiance.

3) Approval of Agenda

Commissioner Saiz moved for approval. Seconded by Commissioner Hyder. Roll call vote. Commissioner Eaton voted yes. Commissioner Hyder voted yes. Commissioner Saiz voted yes. Commissioner Carlberg voted yes. Motion carried 4-0.

4) Approval of Minutes: February 6, 2019- Business Meeting

Commissioner Hyder moved for approval. Seconded by Commissioner Eaton. Roll call vote. Commissioner Eaton voted yes. Commissioner Hyder voted yes. Commissioner Saiz voted yes. Commissioner Carlberg voted yes. Motion carried 4-0.

DISCUSSION (NON-ACTION) ITEM(S):

5) Commissioners, Committees and Reports.

Mr. Monette reported that he and county legal have been working with Gus Cordova from the Mercer Group on the contract for the retreat. The Mercer Group will meet with the department heads and elected officials on March 12th. On March 20th they will meet one on one with the commissioners, and on April 9th there will be a meeting with them to discuss logistics for the retreat and then the retreat will be held on April 10th from 8:30-5:00 pm. Mr. Monette also reported that Finance has been working with department heads and elected officials on the budget. The process is being started with a zero based budget. The preliminary budget will be ready by the April 3rd meeting and a workshop will need to be held for the elected officials and department heads to present their additional requests.

Commissioner Eaton asked for an update on the last VALEO meeting.

Mr. Monette stated that what was discussed at the meeting is the function of VALEO, if bylaws need to be changed and if people are happy with the way its set up. He mentioned that there was also the discussion about having a county wide clean up day. At the VALEO meeting questions were asked about the hospital but Mr. Monette and the commissioners present at the meeting stated that they were not in the position to discuss the hospital.

Commissioner Eaton stated that he believes there is a meeting in a few weeks in regard to the Jarales railroad crossing. Ms. Benavidez stated that BNSF and DOT have not scheduled the meeting yet. Commissioner Eaton stated that it is important that discussion does take place and that there is a public meeting with the residents of Jarales.

ACTION ITEM(S):

6) Approval of Accounts Payable and Payroll Disbursement. Presenter: *Loretta Trujillo*; Sponsor: *County Manager for Regular County Business*

Ms. Trujillo presented and asked for approval of accounts payable dated February 13th through February 22nd and payroll dated February 1st.

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Commissioner Eaton moved for approval. Seconded by Commissioner Hyder. Roll call vote. Commissioner Hyder voted yes. commissioner Eaton voted yes. Commissioner Saiz voted yes. Commissioner Carlberg voted yes. Motion carried 4-0. (See Exhibit A,B)

7) Approval of Resolution 2019-___: State Budget Adjustment Request. Presenter: *Loretta Trujillo*; Sponsor: *County Manager for Regular County Business*
Ms. Trujillo presented a state budget adjustment request and asked for approval.

Commissioner Saiz moved for approval. Seconded by Commissioner Hyder. Roll call vote. Commissioner Eaton voted yes. Commissioner Hyder voted yes. Commissioner Saiz voted yes. Commissioner Carlberg voted yes. Motion carried 4-0.

Chief Deputy Aurora Chavez announced Resolution 2019-15. (See Exhibit C)

8) Approval of Resolution 2019-___: Local Budget Adjustment Request. Presenter: *Loretta Trujillo*; Sponsor: *County Manager for Regular County Business*
Ms. Trujillo presented a local budget adjustment and asked for approval.

Commissioner Hyder moved for approval. Seconded by Commissioner Saiz. Roll call vote. Commissioner Eaton voted yes. Commissioner Hyder voted yes. Commissioner Saiz voted yes. Commissioner Carlberg voted yes. Motion carried 4-0.

Chief Deputy Aurora Chavez announced Resolution 2019-16. (See Exhibit D)

9) Consideration for Zone Change #2019-001, Lawrence and Katherine Jaramillo request a Zone Change from Rural Residential 2 (RR-2) to Rural Residential 1 (RR-1) to be able to split into one acre lots. The property at Tract D, Land of Marlin C Frettem; Section 20, Township 6 North, range 2 East; also known as 6 Guinea Ln, Belen, New Mexico 87002; Zoned Rural Residential 2 (RR-2); 2.45 ac, Map 87, Filed in Cabinet L, Page 560 in the Office of the Valencia County Clerk. Presenter: *Gabriel Luna*; Sponsor: *County Manager for Regular County Business*

Mr. Luna stated that the Planning and Zoning commission held a meeting on January 22nd and voted 4-0 to recommend approval of the zone change and on February 20th the BOCC held a public hearing on the matter.

Commissioner Eaton moved for approval to affirm the Planning and Zoning board's decision in favor of the zone change. Seconded by Commissioner Hyder. Roll call vote. Commissioner Eaton voted yes. Commissioner Hyder voted yes. Commissioner Saiz voted yes. Commissioner Carlberg voted yes. Motion carried 4-0. (See Exhibit E)

10) Direction to Publish Notice of Public Hearing Pursuant to NMSA 1978, Section 3-21-14 to Amend Section 154.154 (E) of the Historic Overlay Zoning District Ordinance. Presenter: *Geri Rhodes*; Sponsor: *Commissioner Eaton*

Commissioner Eaton stated that this request is to address a specific amendment to the zoning ordinance, when he sponsored this issue it was on the basis of discussion that came up in his commission district where concern was expressed at the percentage. He is not looking at the area but at the percentage. Residents have expressed interest in preserving the historical area near the war hero memorial in Jarales and the Los Chavez church area. People have asked the commission to consider amending the percentage for the future use by any specific group that wants to consider preserving a historic area in the county.

Ms. Rhodes asked for permission to have 2 other presenters join in the presentation. Manessa Padilla stated that county zoning ordinance 154.154E states that the procedure to establish or amend a historic overlay district may be initiated by at least 75% of the landowners in the proposed district. Section E requirement prevents them from applying for a historic overlay status. In 2013 after the approval of a dollar store in northern Tome concerned residents were encouraged by a former commissioner to create a special district. A 6-month moratorium on development was put in place by the county commission. For several years Tome/Adelino residents have worked hard to create a historic Tome overlay plan but then learned from the then P&Z Director Jacobo Martinez that first a procedure would need to be developed that would apply to any district wanting to apply for an overlay zone. P&Z ordinance 154.154 is the procedure that was developed and the commission approved with an amendment on April 16, 2016. Ms. Padilla stated that the amendment was the 75% requirement and that 75% is without precedence in New Mexico. Tome residents were not advised that they could appeal and the 30-day timeframe for the appeal expired. She stated that they would have definitely appealed the

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decision if they had been aware and they are here today to ask that ordinance 154.154 be amended and to rescind section E, the 75% requirement.

Ms. Rhodes stated that this year a good faith effort was made to get support from 75% of landowners within the proposed boundaries of the plan. Despite shrinking the boundaries, despite the expense of sending questionnaires' to landowners, and going door to door, despite a front page article in the News-Bulletin, despite holding a public meeting and despite time consuming efforts to reduce the plan to the essentials they have been unable to get 75% response. Ms. Rhodes stated that not only is the 75% requirement unprecedented and arbitrary but also impossible to meet so their group is excluded from the application process that 154.154 sets forth. The Tome residents supporting an overlay district have compromised, supported, adjusted listened revised and streamlined the plan. She asked that the commission hear their request to amend 154.154 to rescind the 75% so they can apply. The eventual required hearing on the application would be sufficient to show whether there is sufficient support from the Tome community for the overlay plan.

Kevin Knight stated that they have been unable to find any precedent regarding the 75% response rate when applying for a special district status. The 75% rule appears to be arbitrary and capricious. They have been led to believe that this requirement was based on input from a small unrepresented minority and does not represent the majority view of stakeholders impacted. They would like the opportunity to proceed with the public hearing that would follow the presentation to the P&Z. The 75% has placed an undue and unfair burden on a community that simply wants to preserve and protect itself. 154.154 applies to all communities in the county so they are doing a service to any other potential applicant for a special overlay status by trying to make the application process fair and equitable. Senior Planner Leslie Naji from the City of Albuquerque informed them that requiring 75% of property owners is quite high, the city does not have a required percentage of property owners but approval is determined through public hearings. Mr. Knight requested that the board amend 154.154 and rescind section E and allow them to present their plan to P&Z.

Commissioner Eaton stated that the item that is being requested is to allow staff to publish allowing a public hearing and after input from the public the commission can keep the current language or amend the language. The residents of the county deserve a public hearing for their input and to express their position on the matter.

Commissioner Eaton moved for approval to allow staff to publish the amendment to the ordinance to allow for public hearing. Seconded by Commissioner Hyder.

Commissioner Saiz stated that since he wasn't a commissioner when this took place he went back and read the minutes and he believes that this was originally done in public hearings and if the minutes are read correctly the 75% was a compromise, as it varied from 51% to 100%. He is concerned about rescinding this without having some sort of definite direction of what they are looking at, as he has heard 10%-12%. He stated that it is vague the way that they are being asked to vote on this tonight. Is there a specific percentage needed for the motion?

Mr. Pato stated that he understands the agenda item to be to amend section 154.154E of the historic overlay zoning district, it does not say to increase or decrease so the board would have the authority to either increase or decrease, there is no actual proposed amendment before the board for consideration this evening. He stated that he understands that the request from the presenters is to rescind the requirement in its entirety. Maybe the chairman can request clarification from the applicant as to what they are proposing to change.

Commissioner Carlberg stated that there is no specific request for change other than rescinding the entire 75%.

Ms. Rhodes replied that is true, a hearing would solve the problem once it goes to P&Z.

Mr. Nance stated that his understanding of the proposal is that there would be no percentage required, it would just be a public hearing process.

Ms. Padilla stated that because of the 75% amendment they are not able to apply and move forward with the application, that is why they are asking that the 75% be rescinded in order for them to move forward with the application.

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Ms. Rhodes stated that she tried to contact 5 entities, Rio Rancho, Corrales, Los Ranchos, Albuquerque and Dona Ana and not one of them that replied had a percentage. She does not know anywhere where there is such a requirement, it seemed to come out of a hat somewhere and they never felt that it was justified. A hearing could be held and everyone could have their say on the matter.

Commissioner Eaton stated that his motion is to allow staff to publish a considered amendment to ordinance 154.154 and at that time a public hearing would be held to consider the language pertaining to the percentage. His interpretation of the motion is that until the commission changes or votes to change the ordinance stands as is. At the conclusion of the second hearing and consideration for final action the commission can leave it at 75% or change it.

Mr. Pato stated that the commission has the discretion as to whether or not to direct the publication, if they are inclined to reconsider the percentage required or to rescind it.

Commissioner Eaton stated that whatever the wishes are of these particular folks that is not what his motion is.

Commissioner Hyder stated that this is just for publication for the historic overlay amending section 154.154. Directing a publication of an amendment is the first step. He stated that he understands Commissioner Eaton's motion to have a public hearing to hear everyone's input whether for or against and then a final decision will be made. He would be interested in seeing the population of areas that would be affected. He stated that he has told Ms. Padilla that he is willing to renegotiate the 75% but he would like to see numbers first.

Ms. Rhodes stated that they have the names and addresses for those property owners in the radius of the overlay that were sent a survey.

Mr. Luna stated that he can get the initial numbers that were obtained.

Commissioner Carlberg stated that the board needs to get back in topic and to the motion that was presented.

Mr. Pato stated that the source of confusion is between the motion and what is being presented. The action item is clear, which is to direct publication of a notice of a public hearing to amend 154.154E and that was reflected in Commissioner Eaton's motion however, the agenda request form that was submitted by Ms. Rhodes requests to rescind 154.154E procedure. The action set forth by Commissioner Eaton's motion is to move this forward into a public hearing and have the 2 public hearings to reconsider the percentages. He stated that the folks from Tome felt that they missed the opportunity to appeal and he would anticipate that if their dissatisfied with the results this time around then they will not miss that opportunity again and the county will find themselves in an action challenging the decision made by the board.

Commissioner Eaton restated his motion which is to allow for staff to publish a considered amendment to 154.154 to allow for public hearing for a considered change to the percentage. The language will continue to read 75% until the commission desires to change it or leave it as is.

Mr. Pato stated that his understanding is that the proponents of the change if they are aggrieved in connection of the decision that is ultimately reached by the board as a result of the public hearing whether it be keeping it at 75% or reducing it to 60% or 40% they promise to appeal so that is something that the board needs to be aware of.

Commissioner Saiz stated that everything seemed to have been announced and published correctly so there was no violation of any public hearing is that correct.

Mr. Pato replied, that is correct.

Commissioner Saiz asked if legal felt the 75% was arbitrarily reached or was there some process of negotiation that allowed it to be debated and compromised.

Mr. Pato stated that at the March 6, 2016 meeting the P&Z coordinator recommended 100% requirement feeling that that percentage was needed if the board was going to be asked to encumber private property rights. At that time, Commissioner Aragon made a

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motion to not proceed with the publication which was seconded by Commissioner Hyder that motion failed on a 3-2 vote. Commissioner Eaton then made a motion to move forward with 51% which was then seconded by Commissioner Aguilar with the roll call vote Commissioner Aguilar voted yes, Commissioner Hyder, Commissioner Aragon and Commissioner Cole voted no, so it was a hard fought percentage to arrive at, it did not happen arbitrarily or capriciously it was a negotiation between the members of the board at that time and that was after hearing public comments from the individuals that were present. He views it as the operation of government, which was transparent it was done after many public hearings where the public was heard.

Commissioner Eaton stated that the percentage at that time was attached to an issue and tonight it is not being attached to any particular issue that is being debated. It is an issue that has been requested from other folks throughout the county.

After an outcry from members of the audience Mr. Pato requested that the chairman remind the public of the rules of public participation, there should not be outbursts from the public.

Vice-Chair Carlberg requested that the audience control their comments.

Commissioner Eaton stated that he knows this is a passionate issue in a particular area of the county and he is not out to destroy or take away rights of property owners. As a commissioner he is trying to preserve the historic value because he does not want to squander those rights from years and years ago with a bad decision that is made by the governing body. He stated that the Family Dollar store in Tome was a bad, bad decision and something happened administratively in county government that allowed that to happen. He is concerned about other areas in the county where things like that could occur, things change so issues need to be revisited as its ever evolving.

Commissioner Saiz stated the he agrees with the preservation of historic areas, he commends the Tome group with what they are trying to do, he has no issue with that but his concern is that the process of having 2 public hearings has already been done and he believes that the ordinance was not tied to a specific group, it was an ordinance in general of a historic overlay district. By reopening up the process the board is setting precedence if someone does not meet the appeal what will the board be doing for future decisions. Will they be subject to petition to change the decision that has already been made? He stated that based on what he has heard or read he does not believe that anything was arbitrary or intentional to harm anyone in the process.

Commissioner Eaton stated that if a decision is made after thorough review, public comment and through documentation from planning and zoning and the decision he is not afraid of possible litigation or appeal. He would be hesitant about not allowing public input because of potential litigation from a group of people.

Commissioner Hyder stated that he doesn't want someone telling someone else what they can and cannot do with land, but things are always changing. The last time this issue was discussed the board didn't ask for some information such as the breakdown of numbers of population. There are things that are outdated that need to be brought back over time.

Commissioner Carlberg asked when the historic overlay officially comes into creation, is it based strictly on the number that is set or is there another aspect that would allow it to be put in place. What are the rules for establishing a historic overlay?

Mr. Pato stated that this motion is the first step in addressing the percentage that is required for someone wishing to submit an application for a historic overlay district. Section 154.154 sets forth the procedure for establishing an historic overlay district.

Vice-Chair Carlberg asked for a roll call vote on Commissioner Eaton's motion. Commissioner Eaton voted yes. Commissioner Hyder voted yes. Commissioner Saiz voted no. Commissioner Carlberg voted no. Motion tied 2-2. Motion dies.

Commissioner Eaton thanked Commissioner Hyder for backing his motion, it's unfortunate that the issue dies this evening. He stated that it's some of us that run for office and aren't appointed to office that are responsive to the citizens.

Commissioner Hyder stated that he understands the frustration one way or the other, he doesn't want anyone infringing on individual property rights. 4-5 months ago he was

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contacted and asked if he would be willing to renegotiate the 75% and he said that everything is open for negotiating. He stated that he seconded the motion because he didn't have the numbers and he was curious to see the numbers of what the 75% would be, he was willing to listen and to try to compromise.

11) Older Americans Program NSIP Contract FY 18-19. Presenter: *Nancy Gonzales*; Sponsor: *County Manager for Regular County Business*

Ms. Gonzales stated that the OAP was recently awarded an additional \$57,413 in NSIP money, bringing the annual total to \$114,000 which is substantially more than the \$89,00 that was originally budgeted for. Due to staff turnover and not rehiring as well as making very conservative budget choices the program will end the year in the black. Commissioner Carlberg stated that this is good news and Ms. Gonzales has done a wonderful job.

Commissioner Eaton moved for approval. Seconded by Commissioner Hyder. Roll call vote. Commissioner Eaton voted yes. Commissioner Hyder voted yes. Commissioner Saiz voted yes. Commissioner Carlberg voted yes. Motion carried 4-0. (See Exhibit F)

12) Consideration of Resolution for FY 19 CAP, SB & CO-OP (SP) Road Projects. Presenter: *Lina Benavidez*, Sponsor: *County Manager for Regular County Business*

Ms. Benavidez asked for approval of the FY 19 CAP, SB and CO-OP for the amount of \$1,083,692.00. The roads to be improved include Carrejo Road, Bonito Loop, AT&T, Marigold and Laughlin.

Commissioner Hyder voted yes. Seconded by Commissioner Eaton. Roll call vote. Commissioner Eaton voted yes. Commissioner Hyder voted yes. Commissioner Saiz voted yes. Commissioner Carlberg voted yes. Motion carried 4-0.

Chief Deputy Aurora Chavez announced Resolution 2019-17. (See Exhibit G)

13) Execution of Amendment to Litter Control & Beautiful Grant Agreement No. 19-418-6002-0039. Presenter: *Lina Benavidez*, Sponsor: *County Manager for Regular County Business*

Ms. Benavidez stated that the NM Department of Tourism has requested an amendment to the keep America Beautiful grant agreement to allow more flexibility for reimbursement requests and to allow more grant funding to be used towards single pieces of equipment. There is no change to the actual grant amount.

Commissioner Hyder moved for approval. Seconded by Commissioner Eaton. Roll call vote. Commissioner Eaton voted yes. Commissioner Hyder voted yes. Commissioner Saiz voted yes. Commissioner Carlberg voted yes. Motion carried 4-0. (See Exhibit H)

PUBLIC COMMENT:

Evelyn Braman commented that not everyone received a survey and would like clarification on what the Tome group is trying to accomplish.

Regina Chavez commented that she is against the Tome plan, growth and change are inevitable but historic landmarks can still be preserved. There needs to be clarification on who exactly gets to vote.

Tom Mraz commented that the approval needed should be right around 51%, there is a golf tournament on June 1st to benefit a youth center in the county and background checks are necessary for gun purchases.

Diana Mireles commented that the Family Dollar in Tome is a great thing for some residents, she believes in preservation of historic places but economic development is a good thing.

Rita Padilla-Gutierrez commented that the overlay plan was a concerted effort by a grass roots organization that cares about its community and wants to preserve it, is about people trying to protect a historic area, the dollar store has brought in awfulness and they don't want that for Tome.

Amanda Sanchez commented that the country should be preserved because once it's gone you can never get it back. There are many people in Tome area that are unaware of the situation that is being discussed.

David Sanchez commented that he does not want a strip mall being built in Tome. Tome is a rural community.

Cynthia Romero asked what strip mall is being built in Tome as she hasn't heard of one.

EXECUTIVE SESSION:

Pursuant to Section 10-15-1 (H) (2) (5) 10-7-E-17 (8) the following matters may be discussed in closed session: a) Personnel; b) Pending or threatened litigation/administrative adjudicatory deliberation; c) real property; d) other specific limited topics that are allowed or authorized under the stated statute.

Mr. Pato stated that there is no need for executive session.

Commissioner Eaton stated that he attended a commission meeting in Sandoval County and for their public comment process they have a countdown timer projected on a screen so the public can see how much time they have left; he would like something like that for the commission meetings.

NEXT COMMISSION MEETING:

March 20, 2019- Public Hearing/Business Meeting @ 5:00 P.M.
Valencia County Commission Chambers, 444 Luna Ave., Los Lunas, NM 87031

April 3, 2019- Business Meeting @ 5:00 P.M.
Valencia County Commissioner Chambers, 444 Luna Ave., Los Lunas, NM 87031

14) Adjournment

Commissioner Hyder moved for adjournment. Seconded by Commissioner Saiz. Roll call vote. Commissioner Hyder voted yes. Commissioner Eaton voted yes. Commissioner Saiz voted yes. Commissioner Carlberg voted yes. Motion carried 4-0. TIME 6:47: P.M.

NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the March 6, 2019 Business Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

VALENCIA COUNTY BOARD OF COMMISSIONERS



JONATHAN ARAGON, CHAIRMAN



DAVID CARLBERG, VICE-CHAIR



DAVID A. HYDER, MEMBER



CHARLES D. EATON, MEMBER



GERARD SAIZ, MEMBER

ATTEST:



PEGGY CARABAJAL, COUNTY CLERK

3-20-2019
DATE

