



April 8, 2015

Agenda

5:00 P.M. Public Hearing
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

PUBLIC HEARING ITEM(S)

- 4) Request for a Zone Change from C-1 to RR-2 (Laura Sanchez) Application #ZC2015035
Legal Description: T57N, R2E, Section 26, Map 72, N.M.P.M.; Tract 74-A2-B-2-A-1
Address: 9 El Cerro Rd., Los Lunas, NM 87031
- 5) Request for a Zone Change from Outland District (OD) to Community Commercial (C-2) (Rudy Marquez) Application #ZC2014333
Legal Description: T7N, R1E, Section 21, N.M.P.M.; Land of Peggy Huber; Tract A
Address: Approximately 0.45 miles NE of Dalies Rd. off Hwy 6, Los Lunas, NM 87031

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

April 9, 2015-Workshop 10:00 A.M. – 4:00 P.M.

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

April 15, 2015-Business Meeting @ 5:00 P.M.

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

ADJOURN

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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

APRIL 8, 2015

PRESENT	
Charles D. Eaton, Chairman	
Jhonathan Aragon, Vice-Chair	
David A. Hyder, Member	
Alicia Aguilar, Member	
Helen Y. Cole, Member	
Jeff Condrey, 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 5:01 P.M.

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

Commissioner Aguilar asked for a moment of silence to be held for former commissioner Helen Baca and Valencia County resident Clifford Chavez who both recently passed away.

3) Approval of Agenda

Commissioner Aragon moved for approval. Seconded by Commissioner Cole. Motion carried unanimously.

PUBLIC HEARING ITEM(S)

4) Request for a Zone Change from C-1 to RR-2 (Laura Sanchez) Application #ZC2015035

Legal Description: T57N, R2E, Section 26, Map 72, NMPM; Tract 74-A2-B-2-A-1

Address: 9 El Cerro Rd., Los Lunas, NM 87031

County Clerk Peggy Carabajal administered the oath to those members of the audience wishing to speak on this matter.

Mr. Martinez stated that the applicant is asking for a change of zoning back to a RR-2 zone. The individual wishing to purchase the property needs to show proof that the property is a residential zone in order to obtain a loan. At their meeting last month the Planning and Zoning board voted 5-0 to recommend approval of the zone change. There has been no opposition regarding the zone change. He went on to say that on March 17th the Assessor's updated their records to reflect the correct property address of 9 El Cerro Rd. for the subject property.

Laura Sanchez stated that the potential buyer is really interested in the property and the zone change is needed in order to close the transaction.

Chairman Eaton stated that a decision will be made on the zone change at next Wednesday's commission meeting.

5) Request for a Zone Change from Outland District (OD) to Community Commercial (C-2) (Rudy Marquez) Application #ZC2014333

Legal Description: T7N, R1E, Section 21, NMPM.; Land of Peggy Huber; Tract A

Address; Approximately 0.45 miles NE of Dalies Rd. off Hwy 6, Los Lunas, NM 87031

County Clerk Peggy Carabajal administered the oath to those members of the audience wishing to speak on this matter.

Mr. Martinez stated the subject property is located on the north side of Hwy 6, just west of the sales barn off of Dalies Rd. most of the properties surrounding it are zoned OD while the sales barn is zoned I-1. In his zone change request the applicant stated that he would like the zone change in order to transfer a liquor license to the property and potentially be annexed into the Village of Los Lunas where the license can then be moved into the municipality. The village does have a shoestring annex off of Hwy 6 that does touch the subject property. At their December 18, 2014 meeting the Planning and Zoning board

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voted 4-0 to recommend denial of the zone change. At that meeting there were several people that spoke in opposition of the zone change.

Commissioner Aguilar stated that it seems like the applicant wants to take the liquor license on paper only to this lot, but once they do that they would still need to go through all of the steps with the Village of Los Lunas for annexation, so there are several steps that need to be done before they can achieve their goal but it doesn't sound like there is going to be a liquor store there.

Mr. Martinez stated that he believes that at the planning and zoning meeting Mr. Marquez said that he would not put a business at the site.

Commissioner Cole asked if this issue has gone before the Village of Los Lunas, after speaking to someone at the village it is her understanding that they have no interest in going that far to annex.

Chairman Eaton asked the applicant to speak.

Rudy Marquez stated that he is the owner of the property which is 1.15 acres of land. Mr. Marquez then showed a map where it shows Upper Levee road, the road is annexed into the city, the road crosses over his property. Mr. Marquez stated that in regards to the liquor license when it was purchased it had been in voluntary suspension for 10 years. My property is currently zoned Outland district, which is a district not a zone. Several people protested against the zone change at the planning and zoning meeting saying that this place would be detrimental to public health and safety, while there is nothing around my property so I don't know how you could get hurt there. I know that I must go through the annexation process; Mr. Marquez referenced county commission law 3-7-13 stating that there are 3 ways of annexation. The state statute also reads that if a property is contiguous to the city limits they are required to bring out utilities and to supply the property with services. I'm not going to force them to but my main intent is to move my liquor license out there, which I don't need utilities for, and then annex into the city. What I'm here for tonight is for a zone change, after the zone change I would need to come back to get approval for transfer of the liquor license so I presume at that time if you wanted to place restrictions on it that could be possible.

Commissioner Cole asked Mr. Marquez what he was exactly planning to do with the property.

Mr. Marquez stated that to be perfectly clear what he wants to do is move the license to the property, he wants to annex into the Village of Los Lunas and open and establish a business in the village. The Department of Transportation and the village are already working on expanding Hwy 6 so by me moving out there this does enhance the county, if someone sees a C-2 property out there somebody else is going to want to get out there as well. I'm going to move my license there and the day that I get approved I'm going to put in an application to have it annexed into the Village of Los Lunas.

Commissioner Cole asked why Mr. Marquez can't move his liquor license directly into the village instead of going through the zone change.

Mr. Pato asked Mr. Marquez if he had applied to move the license into the unincorporated part of the county into the village.

Mr. Marquez replied that he hasn't because it's not permissible with the state liquor law because it does not allow inter-county transfers; each entity has their own quota of licenses. You can move a license from outside to the county but you can't move a county, because it's under quota, license out.

Mr. Pato stated that so what you're proposing is a workaround to the state prohibition against moving a license from an incorporated part of the county to the city, so you put it adjacent and get it phased in to the village through annexation so now you have it even though the regulations and the law prohibit it.

Mr. Marquez replied that in long run yes, that's right, but at this point I'm only moving it from one part of the county on Hwy 314 to Hwy 6, and that's the extent of this hearing. In regards to the annexation he already meets the criteria that is required by the New Mexico Boundary Commission. The Boundary Commission has the power to go over the

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village and annex the property. He has personal experience in dealing with this in another county.

Commissioner Aguilar stated that more red flags keep popping up and it is very concerning to her. As it is right now there are more steps and processes that need to take place. It seems like Mr. Marquez should go to the village first and take care of all the other matters, which can be contingent on county approval. It's very concerning that we may put ourselves in a situation for litigation where we've gone through a process or approval but it's really up to another municipality or entity that will have to annex, provide utilities and transfer the liquor license. We're not saying that you don't have the facts regarding the laws but as a commission we have to look at the zone change, and to ask questions to make sure that our ordinances are being adhered to.

Mr. Pato stated that from what he's heard today Mr. Marquez is proposing to use the county as an instrumentality to frustrate the purpose and design of the liquor laws. It appears that the intent is to move onto the adjacent property and have the city annex it, where otherwise he wouldn't have been able to obtain the approval from the Alcohol and Gaming division. There is nothing that would preclude the applicant from going to the village and getting conditional approval based on obtaining commission approval, where we can be assured that we are not going to get stuck having rezoned this property as a commercial property.

Commissioner Aguilar stated that she doesn't want to set precedence for anyone else, which would be very concerning to her.

Chairman Eaton stated that everyone is required to go through the process; no one can deviate from the established process.

Mr. Marquez stated that today's meeting is about the zone change not a liquor license. Today I am here to apply for a C-2 zone change to the property and that is all that is at issue now. Before I can even go to the village or the state I have to have C-1 or C-2 zoning, nothing else can get done before the zone change.

Mr. Pato stated that this board is to consider the zone change and in considering the zone change the board must review three things

1. Whether the change is consistent with the goals, and provisions of the comprehensive plan
2. If it's appropriate considering surrounding land uses, density, and patterned land development in the area, and availability of utilities and services likely to be needed by the anticipated uses.
3. If the proposed change enhances the county's protection of public health safety and welfare.

I have difficulty seeing where consideration of the attempt to utilize the county as instrumentality to work around the Alcohol and Gaming divisions regulations doesn't impact the health safety and welfare of the county but it is up to the commission to make that determination, in regards to the surrounding land uses Mr. Martinez had stated that they are predominantly zoned OD with exception of a few. The applicant has said that there are no utilities at the property but would likely be needed if the property was used for the intended purpose, and the density and pattern of development in the area has remained OD and has not been developed but it is up to the board to make the determination whether or not the proposed change is consistent with the goals, policies and other applicable provisions and whether it advances the protection of public health, safety and welfare.

At Chairman Eaton's request Mr. Pato identified the permitted uses of a C-2 property zone.

Mr. Marquez went through a slideshow of pictures showing that his property stands alone and there is no way it could be detrimental to public health and safety. There were also pictures of some of the surrounding properties and what they were being used for.

There was brief discussion regarding the easement going through the applicant's property. After looking at a plat map provided by Mr. Marquez, the plat being filed in the Clerk's office in cabinet L page 314, Chairman Eaton stated that it looks like there is a 40 ft. permitted easement off of Hwy 6 that leads to a 20 ft. easement that leads to the applicant's property.

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Commissioner Aguilar stated that in looking at our ordinance it does indicate that the minimum requirement would be 68 ft. and the requirement for pavement would be 48 ft.

Commissioner Aguilar left the meeting at 6:27 p.m.

Mr. Marquez continued with his slideshow of pictures of the surrounding area. He stated that he has court cases and testimony that apply to the annexation and zone change. The board should be looking at reasons to allow the zone change rather than looking for reasons not too. He meets the criteria; he has the land and the easements. Just looking at the zone change would be the proper thing to do, if you try to get everything else involved it clouds everything else up. It's one step at a time, get the zone change then apply for the liquor license transfer. Which at that time I'll come before the board again and if there are any issues or conditions that you want to impose in regards to the transfer that will be a different story. I would be happy with even a C-1 or conditional use, there is no spot zoning because I am contiguous to the city limits.

Commissioner Hyder stated that after hearing everything it seems like we are going on a lot probabilities.

Mr. Marquez stated that this issue is not about a liquor license, it is about a zone change. In regards to the annexation he is going straight to the Boundary Commission in Santa Fe.

Chairman Eaton stated that the reason that there is discussion about the liquor license is because on his zone change proposal letter Mr. Marquez indicated that he is requesting a zone change from OD to C-1 in order to transfer a liquor license and annex into the village and move the license into a more stable location.

Mr. Marquez stated that he mentioned the liquor license because he wants to be truthful in what he plans to do. There is no one that would get harmed with this.

Mr. Pato stated when considering what the purpose is in the situation of a liquor license being there the courts have detailed three things that must be considered in spot zoning

1. Disharmony with the surrounding area
2. Size of the area zone
3. Intent of the rezoning

And if the intent here is to use it as a sham place for a liquor license then that is part of the consideration.

Mr. Donald Garley who is Mr. Marquez's brother in law spoke briefly on Mr. Marquez's background, he also stated that this property is a legitimate investment to Mr. Marquez; this is not a workaround or a sham. And state statute says that whatever the business may be the commission must look only at the zone change.

Mr. Marquez stated that in regard to this being called a workaround or a sham there are several court cases that show that this is acceptable and legal.

Mr. Pato stated the for the record he would like to stand behind his characterization that this is a workaround, he has looked at the statutes and there are limitations on the number of licenses based on the number of people in a municipality and the department of Alcohol and Gaming will not issue licenses in excess of one license per 2,000 people. This does constitute a workaround because it is trying to be brought in under the radar and it does not conform to the requirements in respect to one license per 2,000 people.

Commissioner Aragon stated that in a zone change the commission does have to consider all the facts that have been given, and since the request is for commercial zoning the commission also has to look at it as if it's going to be a business. It is dependent on the liquor license moving to Los Lunas solely on if they were to annex, if it were to move then great but if not it would be a business on county property. The commission also has to see if there is proper access on the property to be commercial zoned.

Chairman Eaton stated that a decision will be made at next Wednesday's commission meeting.

NEXT COMMISSION MEETING:

April 9, 2015-Workshop 10:00 A.M. – 4:00 P.M.

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

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April 15, 2015-Business Meeting @ 5:00 P.M.

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

6) Adjournment

Commissioner Hyder moved for adjournment. Seconded by Commissioner Aragon. Motion carried unanimously. TIME: 7:05 P.M.

NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the April 8, 2015 Public Hearing (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

VALENCIA COUNTY BOARD OF COMMISSIONERS



CHARLES D. EATON, CHAIRMAN

JHONATHAN ARAGON, VICE-CHAIR

Abstained

DAVID A. HYDER, MEMBER

Abstained

ALICIA AGUILAR, MEMBER



HELEN Y. COLE, MEMBER



ATTEST:



SEAL

PEGGY CARABAJAL, COUNTY CLERK

DATE

4-6-2015

