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Melanie Y. Rivera

Paul Maez
BOE Supervisor

Geraldine E. Gutierrez
Chief Deputy

Martha Sena
Deputy Clerk

Michelle Padilla
Deputy Clerk

Javier Lopez
Deputy Clerk

Ebeny Mondragon
Probate Deputy Clerk



SPECIAL MEETING
FEBRUARY 1, 2010
MINUTES

The Board of County Commissioners of San Miguel County will hold a Special Meeting on Monday, February 1, 2010 at 9:00 a.m. at the San Miguel County Commission Chambers, County Courthouse 2nd floor, 500 West National Ave., Suite 200, Las Vegas, New Mexico 87701. The agenda for the meeting is as follows:

The meeting was called to order by Chairman David Salazar at 9:00 a.m.

ROLL CALL

No roll call was taken. The following Commissions were present: Chairman David Salazar, Vice-Chair June Garcia, Commissioner Albert Padilla, Commissioner Marcellino A.Ortiz, and Commissioner Nicolas T. Leger.

The record will show a quorum is present.

PLEDGE OF ALLEGIANCE

SALUTATION TO THE NEW MEXICO STATE FLAG

APPROVAL OF AGENDA

NEW BUSINESS:

1. CONTINUATION ON PETITION TO DISCONTINUE ROAD AS PUBLIC ROAD (COUNTY ROAD B-41-E)

Chairman David Salazar advised Attorney Danelle Smith to proceed with her testimony.

Ms. Smith called Ernesto Salazar to the stand. Mr. Salazar stated that he has been a resident of Villanueva for fifteen (15) years. Mr. Salazar also stated he was a blade man for the San Miguel County and would blade the roads when they would call him to blade the roads.

Ms. Smith showed photographs of the road referred to as Exhibit "H", and asked Mr. Salazar recognized the roads shown in the photos. Mr. Salazar recognized most of the photos. Ms. Smith

asked Mr. Salazar if he was familiar with falling rocks that would block the South end of the road. Mr. Salazar answered that he would take them out with the grater.

Attorney Ron VanAmberg conducted his cross-examination. Mr. VanAmberg asked Mr. Salazar who would call him to blade the road. Mr. Salazar stated that the County would call him. Mr. VanAmberg asked if Mr. Salazar was aware that the road went up to a dam that is part of a ditch system. Mr. Salazar advised he did.

Commissioner Leger asked if that the gates had ever been closed. Mr. Salazar responded sometimes they were open and sometimes they were closed.

Attorney Danelle Smith called Irene Marcell to the stand. Ms. Marcell advised she lives north of the gate, and showed in Exhibit "I" what properties she has to go through to get to her property. Ms. Smith asked Ms. Marcell if she was concerned with the ability of the road grater to grate the road and Ms. Marcell responded definitely. Ms. Marcell was concerned that residents will not have easements and nobody will be able to access properties. She is concerned that if the road is not maintained, the road will be impassable. Ms. Smith asked Ms. Marcell if she was concerned with the trash. Ms. Marcell advised that there is not more trash in one place or the other, and she goes out to pick up trash. Ms. Marcell stated that in the last four years she has seen four wheeler tracks once.

Attorney VanAmberg conducted his cross-examination. Mr. VanAmberg asked Ms. Marcell if she had a key or a combination to access the road, would she feel safe. Ms. Marcell advised it would save her mileage and she would need two keys. Mr. VanAmberg asked Ms. Marcell what kind of easement she obtains. Ms. Marcell advised she has a private easement and she maintains her own road.

Attorney Danelle Smith called Alexander Tafoya to the stand. Mr. Tafoya is the Planning and Zoning Supervisor and Grants Administrator for San Miguel County. Danelle Smith showed Mr. Tafoya a list of roads that people were wanting vacated. Mr. Tafoya read the list and discussed the road viewings and the outcome of each road. Mr. Tafoya presented a County map, Ms. Smith asked Mr. Tafoya according to his map, how long has County Road B-41-E been on the County Road map. Mr. Tafoya advised since 1965.

Attorney VanAmberg cross-examined Mr. Tafoya. Mr. VanAmberg asked Mr. Tafoya if there was any policy pursuant to any procedure to make the road a County Road. Mr. Tafoya answered no.

Attorney Smith called Harold Garcia to the stand. Mr. Garcia was the Public Works Division Supervisor and is currently Public Services Foreman. Mr. Garcia advised Ms. Smith that he remembered travelling this road to visit his mothers' family when he was a child. Ms. Smith presented photos to Mr. Garcia to identify. Ms. Smith asked Mr. Garcia if the County would vacate the portion of the road, would Mr. Garcia know that no further maintenance would be conducted by the County. Mr. Garcia advised yes. Mr. Garcia advised the public that State Road 3 gets flooded when it rains.

Attorney VanAmberg cross-examines Mr. Garcia. Mr. VanAmberg asked Mr. Garcia if he was aware of the problems Mr. Daniel Garcia is experiencing and Mr. Harold Garcia answered yes. Mr. VanAmberg asked Mr. Garcia if fencing would prevent accidents from boulders, and Mr. Garcia advised Mr. Amberg that the County does not have the resources or budget to put such fencing.

Ms. Smith speaks asked Mr. Garcia if he sees a liability to the County under emergency circumstances. County Attorney Jesus Lopez advised for the record that Ms. Smith is asking for a legal conclusion and Harold Garcia could not answer that question.

Chairman David Salazar asked Mr. Garcia if County road B-41-E was on the logs when he took over. Mr. Garcia answered yes.

Chairman David Salazar asked Mr. Garcia how many other roads in the County have problems due to the weather. Mr. Garcia answered all over the County.

Chairman David Salazar calls for a recess at this time. The record will show the time is 10:42 a.m.

Chairman David Salazar reconvenes at this time. The record will show the time is 10:58 a.m.

Attorney Smith called Daniel Cressman to the stand. Ms. Smith showed a map of the County which she labeled exhibit "K". Mr. Cressman feels safer using County Road B-41-E because he wants to avoid drunk drivers.

Ms. Smith asked Mr. Cressman what experiences he has had with boulders falling on the road. Mr. Cressman advised he experienced boulders and he would use a sledgehammer and broken them up. Mr. Cressman feels that this road should stay opened because it is shorter and it is good to have an alternative route.

Attorney VanAmberg coss-examines Mr. Cressman. Mr. VanAmberg asked Mr. Cressman if he has ever experienced people fighting in his drive way and if he knew the people fighting. Mr. Cressman answered yes people were fighting in his drive way and he did not know the people but he called State Police and they took care of the problem.

Mr. VanAmberg asked Mr. Cressman if he had a combination or a key to the road, would he have a problem with that. Mr. Cressman feels it would hurt the community to close the road.

Attorney Smith asked if Mr. Cressman if he felt the road would deteriorate if the road was not maintained. Mr. Cressman answered yes.

Attorney Smith called Lorraine Ortiz to the stand. Ms. Ortiz showed on exhibit "K" that she has to go through Daniels Garcia to get property that she owns next to Mr. Daniel Garcia. Ms. Smith showed Ms. Ortiz a map of the state, labeled exhibit "L". Ms. Smith asked if hunters hunt on the

state land, Ms. Ortiz answered yes. Ms. Ortiz showed Ms. Smith exhibit "1" the location of her sons' property.

County Attorney advised for the record that Ms. Ortiz and Ms. Smith have been referring to lines that are colored red and green running north and south. Ms. Ortiz states that property belongs to her son and her brother, and they utilize that road.

Ms. Ortiz advised the Commission that her father received an easement from Mr. Garcia's parents' and every time Mr. Garcia would close the gates, Ms. Ortiz' parents would visit Mr. Garcia's parents and they would make Daniel Garcia open the road and Ms. Ortiz' parents would have access again.

Ms. Ortiz spoke of a situation of Mr. Garcia-Attorney VanAmberg objects on hearsay and that it is irrelevant. County Attorney Jesus Lopez sustains the objection.

Ms. Smith asked Ms. Ortiz if she feels comfortable having to depend on Mr. Garcia to allow access to her property, Ms. Ortiz answered no. Ms. Ortiz stated that she has never had an issue of anyone stealing from her.

Ms. Smith asked Ms. Ortiz to go over the petition of signatures and tell her who actually lives on that road. Ms .Ortiz advised that only Frank Romero owned property on that road.

Ms. Ortiz contacted Highlands University to conduct a study, and when the public ask for access to her property, she advises them to contact Highlands University.

Attorney VanAmberg cross-examines Ms. Ortiz. Ms. Ortiz stated that her gates are open for the hunters and are never closed.

Commissioner Leger asked Ms. Ortiz if she has ever been threatened. Ms. Ortiz stated that Mr. Garcia mentioned to her children that he had video tape that her family leaves the gates opened and she talked to her children to close the gates when they go through.

Chairman David Salazar who maintains the northern part of the north gate. Ms. Ortiz advised that nobody maintains that road.

Ms. Smith advised she has no other witnesses.

County Attorney Jesus Lopez asked Mr. VanAmberg if he has any rebuttal witnesses. Mr. VanAmberg would call Mr. Joe Sena.

Mr. Lopez advised the Commission of the schedule for the remainder of the day. Mr. Salazar suggested to break for lunch and return at 1:15p.m., Mr. Vanamberg will call Mr. Joe Sena. Following the testimony, Chairman Salazar will call on the public for any comments. The Council will make a closing argument and travel to County Road B-41-E. Mr. Lopez advises that

the public is invited to attend. After the viewing, the Commission will return to the court and deliberate. The Commission will make a decision out of public.

Chairman David Salazar calls the hearing to order. The time is now 1:29 p.m.

Chairman Salazar opens the hearing for public comment at this time.

Jesus Lopez advised the public to get sworn in before testifying.

Peter Lopez to the stand. Mr. Lopez lives on County road B-41-E and would like to see the community come together along with the Commission to compromise to retain the road.

Robert Destoff speaks on behalf of the firefighters and emergency medical services to keep the road open because it complicates their job to access residents in emergencies.

Sarah Moore spoke in opposition of the road closure. She speaks briefly on combinations being forgotten and the inconvenience.

Martin Garcia-Daniel Garcias' nephew spoke. Martin advised the Commission that in the last year Martin has fixed the gate about six times.

Catherine Montano speaks about public roads. Ms. Montano submits a map as an exhibit.

County Attorney Jesus Lopez asked if anyone else would like to speak on the closing of the road or not. Mr. Lopez notes for the record nobody stood up to speak. At this time the Commission concludes the public participation of the hearing.

Closing arguments conducted at this time.

Attorney VanAmberg advised in his closing argument that Mr. Daniel Garcia was in court to vacate County Road B-41-E. Mr. Garcia has about six to eight miles of dirt road which intersects State Road 3 at one end and the intersects State Road 3 at the other end. The road has numerous issues that are problematic anyway you look at it. This road was never dedicated as a public road and nobody knows how it appeared on the map as a public road. The County has a responsibility for maintenance and the financial responsibility that of maintenance is not properly carried out accidents may occur resulting in lawsuits. Money will be needed to bring road up to standards and the County has a lack of funds. Restrict the use of this road to the area residents and their invitees and emergency service, to reduce the risk of liability. Mr. Daniel Garcia is not adverse to residents utilizing the road. Mr. VanAmberg suggested County should place certain controls to reduce the risk that would be presented by the use of the road. That the road should be locked with either locks or combination and freely give out the keys or combinations to eliminate illegal issues from happening. Should County decide not to vacate the road, Mr. VanAmberg suggested the Commission order to keep the gates locked.

Attorney Danelle Smith conducts her closing statement. Ms. Smith states that according to the statues, there are only two reasons that County roads can be vacated: 1. The road is no longer needed and 2. That if the repairs have become burdensome. If the County Commission recommend a discontinuance, the Board of County Commission may order the road vacated. Ms. Smith advised two out of three of the viewers report did not recommend to vacate the road and it would not be appropriate to vacate this road. Ms. Smith advised that according to the synopsis that she went over with Alex Tafoya the County Commission has not closed any County roads in the past. Mr. VanAmberg and Mr. Daniel Garcia did not bring any evidence to prove that there is no need for this road. The hunters would be affected by the closure. The residents' need an alternate route should on end or the other be flooded or snowed in. She advised that there is a need for this road. Ms. Smith advised the County Commission that Mr. Garcia is asking the Commission to inconvenience the people and have the County continue to maintain the road.

County Attorney Jesus Lopez and the Commission discuss to recess the hearing and advised the public to meet at Coruco and reconvene at this location to discuss any issues and return to the courtroom after the road viewing.

Chairman Salazar asked no comments will be entertained at this viewing from anybody except the attorneys.

Ms. Smith advised the Commission that she will be turning all the photographs to the Commission and will be part of the record. Mr. Lopez asked Mr. VanAmberg if there were any objections for receiving the photos as part of the record. Mr. VanAmberg replied no objections. Mr. Lopez noted for the record that there were no objections.

Mr. Lopez also asked Mr. VanAmberg if he had any evidence for the record. Mr. VanAmberg presented the map for evidence as well as the packet that was received at the first hearing. Mr. Lopez asked if there were any objections. Both Mr. VanAmberg and Ms. Smith stated no objections. Mr. Lopez noted that for the record that what the Council says in their argument is not evidence.

Mr. David Salazar calls a recess at this time. The time is now 2:27 p.m.

Mr. Salazar calls the meeting to order. The time is 4:45 p.m.

County Manager Les Montoya advised to adjourn into executive session to discuss matters pertaining to deliberations by the County Commission in connection with the adjudicatory proceeding held concerning the Petition to abandon a portion of County Road B-41-E, as permitted by Section 10-15-1(H)(3) of the Open Meetings Act, NMSA 1978.

Motion made by Commissioner Nicolas T. Leger to adjourn into executive session. Second by Commissioner June Garcia. Motion carried.

Chairman David Salazar calls hearing back to order. The time is 5:29 p.m. Chairman asked the Commission for a motion to either abandon the road or to keep the road public.

Commissioner Nicolas T. Leger advised the public and the Commission that the Commission took into consideration the evidence and testimony that was presented. Mr. Nicolas advised Mr. Garcia that the Commission empathizes with him and his family, but there is a need for the road. Mr. Leger advised all the neighbors to look out for one another and help each other and respect each others' property. Mr. Nicolas T. Leger suggested to the Commission to revisit the issue in about a year to see if all residents are cooperating with each other. Mr. Leger asked the Commission that the petition be denied and revisit the issue in a year.

Motion made by Commissioner Nicolas T. Leger to deny petition to abandon County road B-41-E. Second by Commissioner by Commissioner June Garcia. Motion made.

Motion made by Commissioner Marcellino A. Ortiz to adjourn. Second made by Commissioner Albert Padilla. Motion carried. The time shown was 5:35 p.m.

Executive/Closed Session

- A. Personnel Matters, as permitted by Section 10-15-1(H)(2) of the New Mexico Open Meetings Act, NMSA 1978.**
- B. Matters subject to the attorney client privilege pertaining to threatened or pending litigation in which SMC is or may become a participant, as permitted by Section 10-15-1(H)(7) of the New Mexico Open Meetings Act, NMSA 1978.**
- C. Matters pertaining to the discussion of the acquisition of real property, as permitted by Section 10-15-1(H)(8) of the Open Meetings Act, NMSA 1978.**
- D. Matters pertaining to deliberations by the County Commission in connection with the adjudicatory proceeding held concerning the Petition to abandon a portion of County Road B-41-E, as permitted by Section 10-15-1(H)(3) of the Open Meetings Act, NMSA 1978.**

ADJOURNMENT

Approved this _____ day of _____, 2010 as the official minutes of the Board of County Commissioners of San Miguel County, New Mexico, of its special hearing held February 1, 2010.

David R. Salazar, Chairman

June J. Garcia, Vice-Chair

Albert J. Padilla, Commissioner

Marcellino A. Ortiz, Commissioner

Nicolas T. Leger, Commissioner

ATTEST

Melanie Y. Rivera, County Clerk

Minutes Submitted by: Michelle J. Padilla