

VALENCIA COUNTY BOARD OF COMMISSIONERS

Emergency Meeting

April 3, 2007

PRESENT	ABSENT
Pedro G Rael, Chairman	
Georgia Otero-Kirkham, Vice-Chairman	
David R Medina, Member	
	Ron Gentry, Member
	Lynette Pinkston, Member
Francisco Apodaca, County Manager	
Cynthia R. Wimberly, County Attorney	
Sally Perea, County Clerk	
Press and Public	

The meeting was called to order by Chairman Pedro Rael at 1:31 PM.

Chairman Rael called the emergency meeting pursuant to the provisions of subsection (F) of the open meetings act which states that except in the case of an emergency, the agenda shall be available to the public at least twenty-four hours prior to the meeting. And except for emergency matters, a public body shall take action only on items appearing on the agenda. On an emergency, the act refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body. Chairman Rael stated it is under that section he deemed it necessary to call this emergency meeting. Chairman Rael said for the record we have a quorum, Commissioner Medina and Commissioner Kirkham are present as well as himself.

Commissioner Medina asked counsel if she had reviewed the legalities on calling this meeting. Ms. Wimberly said the section of the public records act regarding the agenda does discuss and talks about the emergency as Chairman Rael has read. Ms. Wimberly said the law also states emergency meeting will be called only under unforeseen circumstances that demand immediate action to help with the safety or property or financial loss. The Board of County Commission is to avoid emergency meetings when at all possible, but may be called by the Chairman or by the majority of the members upon a twenty-four hour notice.

Mr. Apodaca officially objected to calling this meeting and wants to go on record that this meeting does not meet the threshold as explained by counsel pursuant to 10-15-1 of the NMSA and pursuant to the open meetings act NMSA 1978, Chapter 10, Article 15 does not meet any of the criteria here. Mr. Apodaca wants to officially go on record objecting to this meeting and calling this an illegal meeting. Mr. Apodaca also stated for the record he had received comments from two commissioners, Commissioner Gentry and Commissioner Pinkston who did not have sufficient notice to attend this meeting and who in turn object to calling this meeting an emergency meeting under somewhat dubious or perceived or contrived circumstances.

Chairman Rael stated that Mr. Apodaca's comments are noted and since this meeting is dealing with one issue and that is whether or not our County Manager should be placed on administrative leave with pay. The law calls for an executive session but Mr. Apodaca has the right to demand a public session.

Mr. Apodaca demanded a public session.

Chairman Rael stated that in his view calling this meeting meets the threshold of an emergency meeting. He was on vacation last week and these are the reasons he has to call this meeting under the act that he cited earlier. On Thursday, March 29, 2007 his understanding is that the County Manager went to Commissioner Kirkham's office and told her he knew how to get back at people for things like this. Apparently, the County Manager was under the belief at that time that his position may be in jeopardy and his contract may not be renewed or may be terminated in some fashion or another. On that same date to his understanding, the County Manager went to Vangie Gabaldon's office, Administrative Services Director, and told her he will get her for this. Apparently, this was a threat, and thinking somehow that Ms. Gabaldon was making an effort to replace the County Manager when Chairman Rael said this was simply not true. The third thing (and this also was last Thursday) Mr. Apodaca threatened to sue the county and yesterday Mr. Apodaca made a phone call to him (Chairman Rael) that he had preconceived ideas of personnel and wanted to meet with him personally, face to face and man to man (which he stated in Spanish). And he would know where he was coming from. Chairman Rael said he refused to meet because it was not a personal matter. It was a county commission matter. This morning the issue got more serious, someone placed a picture of a rat under Ms. Gabaldon's door and her name plates on her door were removed. Also this morning, Chairman Rael said as he understands it, the County Manager told several persons including heads of departments that they would all be fired, upsetting several of them to the point of tears and they went home, some requested to go home, others are considering filing complaints about his conduct. Chairman Rael said in his opinion, this is an exposure to substantial public loss because we can be sued for the conduct of the County Manager that he has allegedly engaged in and we can lose because he still has the authority within the scope of his employment. Chairman

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Rael said this is clear to him and he saw the safety issue developing, with the threats and conduct, the tones were getting higher and higher and if anyone sees the series of facts here, it leads him to believe we have to do something to put an end to it.

Chairman Rael said he had called Marilyn Silva this morning and asked her to give notice of an emergency meeting and he asked her if she had contacted Commissioners Gentry and Pinkston. Ms. Silva said she had called Commissioner Pinkston at 12:15 PM and she had objected to the meeting, because of short notice. Ms. Silva did try calling Chairman Rael back at his office and on his cell. Ms. Silva said she tried calling Commissioner Gentry, but because he was out of state, had asked Ms. Silva to note that he objected to the meeting.

Chairman Rael read the note from Commissioner Pinkston objecting to this meeting, it read "Dear Board Members, in regards to emergency meeting being called on April 3, 2007, she does not feel that proper notification was given and that it was not an emergency situation that requires immediate attention. This is in violation of our special meeting notification requirements and a violation of an open meetings act due to an emergency reason that this issue could be dealt with in executive session on April 4, 2007."

Ms. Wimberly reaffirmed that Commissioner Pinkston did ask her to write down the above statement to be read into the record.

Chairman Rael called for Vangie Gabaldon to give, in her words, what had happened on Thursday, March 29, 2007.

Commissioner Medina asked Ms. Wimberly if we are within our boundaries on listening to Ms. Gabaldon. Ms. Wimberly said Ms. Gabaldon's statements are the issues within what Chairman Rael has listed and what he constitutes as emergency.

Mr. Apodaca said again, for the record, and based on the commissioners statements this is hearsay information and with all due respect to the chair and to your perception of, that is neither personal or physical to the county, these do not meet that threshold clearly and could be dealt in executive session in a special meeting. This does not meet with the threshold of an emergency meeting and he strongly objects to this and he will file a complaint with the Attorney General's Office.

Ms. Gabaldon said she will reiterate in her words what transpired on Friday, March 30, 2007 and not Thursday as Chairman Rael has stipulated above. Ms. Gabaldon went to meet with Commissioner Kirkham, Ms. Gabaldon said they had a confidential private conversation behind closed doors. When they came out of the meeting, Mr. Apodaca was sitting outside the door, waiting to see Commissioner Kirkham. His words immediately were, "so this is where the chickens come to roost." Ms. Gabaldon said she walked out and came back to her county office. Mr. Apodaca came back from meeting with Commissioner Kirkham and stated to her, what an interesting conversation they, Commissioner Kirkham and Ms. Gabaldon were having and Ms. Gabaldon said to Mr. Apodaca, that she did not know that he was prone to eavesdropping, and he said that he knows everything that Ms. Gabaldon said. Ms. Gabaldon said she did not acknowledge his comments one way or another and what her and Commissioner Kirkham's conversation had been. Ms. Gabaldon said Mr. Apodaca said "you are not going to get away with this, you are a backstabber and conniving and he will make sure that she does not get away with it". This was the extent of their conversation, he walked out of her office and minutes later came back and mentioned something about the fortunate five with Mike Trujillo and said they were not talking about him, they were talking about her (Ms. Gabaldon). Ms. Gabaldon said this morning she walked into her office and she had not noticed that her name plates were missing, the employees across the hall alerted her to that, Freddie Villanueva was behind her and he picked up a picture of a rat that had been slipped under her door. Ms. Gabaldon said she hated to think that any member of the staff that she had known for a year would have put a picture of a rat under her door. Ms. Gabaldon said she has not had any further communication with Mr. Apodaca.

Chairman Rael asked Ms. Gabaldon if she had heard him talking to other staff members about their jobs. Ms. Gabaldon said she had not directly, but had gotten a call from one of the staff members today, she was in tears and afraid of losing her job because that is what Mr. Apodaca told her. Chairman Rael asked Ms. Gabaldon to identify the person and Ms. Gabaldon said it was in confidence and would not divulge that information.

Ms. Gabaldon said she had spoke with the Human Resources Director and she has it on record.

Mr. Apodaca asked Ms. Gabaldon if she had any evidence that he placed that picture under her door and Ms. Gabaldon said no. Mr. Apodaca asked Ms. Gabaldon if she was trained in phycology and she stated she is not a trained phycologist. Chairman Rael asked counsel if she had any questions and Ms. Wimberly stated that she did not.

Mr. Apodaca said based on those issues, we have perceived threat, on the implication that he has taken name plates and placed whatever picture she had under her door, again hearsay, very weak there. Mr. Apodaca said that he did hear the conversation that took place between Commissioner Kirkham and Ms. Gabaldon who were behind closed doors. He sat across the lobby in Commissioner Kirkham's office, very thin walls apparently and very loud persons, he made no machinations to listen in and made no effort to eavesdrop, it was all there for his hearing. For the record, he said Commissioner Kirkham indicated that you three had spoken, again in violation of the open meetings act, there was even a job offer tendered that day, there were positions that were

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spoken of that day, there were stated allegations that were discussed that day, there were projects to be done that day, there were people that would be moved into the county that day, all in direct violation of the open meetings act. Mr. Apodaca said he heard all of this without further machinations. Commissioner Kirkham's secretary was there that day and can testify to where he sat, and that it was easily heard. Mr. Apodaca said in Commissioner Kirkham's conversation conversing with Ms. Gabaldon that they had engaged in a rolling quorum because Commissioner Kirkham said she had spoken with Chairman Rael while he was on vacation. This is when Mr. Apodaca said this was going to affect him personally and he hears grounds for a suit and not against the commission but against individuals. Mr. Apodaca said he notified the Attorney General's Office on another violation of the open meetings act and he will be filing a second complaint and he puts the commission on notice, it is obvious during that overheard conversation there was a rolling quorum. We will have testimony to these facts and we will come to the truth either by his investigations or the Attorney General's Office and he puts this commission on notice. Mr. Apodaca said when he spoke with Chairman Rael, this was in Spanish and perhaps Chairman Rael does not understand the language, he meant, put this together and discuss this as men, and discuss our differences and issues and he said no. This leads him to believe there was a preconceived notion and he goes with the fact there was a rolling quorum and this had been discussed some time ago. This is all hearsay evidence and if you are going to base this on hearsay, then he says this is in violation of the open meeting acts under the emergency provisions section. This is not cause for an emergency meeting.

Commissioner Kirkham stated that Mr. Apodaca had come to her office uninvited. She did have a meeting with Ms. Gabaldon but would not go into the details of the meeting. She did not indicate to Mr. Apodaca that she had spoke to Chairman Rael and had tried to reach him. Commissioner Kirkham said she had no contact with Chairman Rael or Commissioner Medina and as far as having preconceived that is all in Mr. Apodaca's head. Commissioner Kirkham said she did plead with Mr. Apodaca to get this sorted out correctly and never indicated to him that the three commissioners had spoken. As far as having her secretary testify, she will, and she will indicate that the commissioners had not spoken until this morning when she got a call from an employee from the courthouse. She was very upset that Mr. Apodaca had indicated that everyone was going to get fired and that the commissioners were after them.

Mr. Apodaca said he had gone to inform Commissioner Kirkham of a personnel issue because of the severity and complexity of this particular issue. Commissioner Kirkham's secretary indicated to him that she was in a closed meeting and he stated that he would wait. He was there on county business. He had tried to call her, and decided to go to her office. This was a matter of public interest and business.

Chairman Rael asked Mr. Apodaca if he would voluntarily go on administrative leave with pay until Friday afternoon at 3:00 PM when a special meeting had been scheduled to further end gossip or innuendo's and that we may resolve this matter in a proper hearing.

Mr. Apodaca said this meeting is called in violation of the open meetings act. For him to accept this would be him accepting this meeting and he would say no and his reference to innuendo, Chairman Rael is basing this totally on hearsay which is in direct conflict of the emergency section that is described in the open meetings act.

Chairman Rael asked him, as a commissioner from Valencia County, to accept the offer presented to him. Commissioner Kirkham said the emergency which she feels has come about is that the people in the courthouse are unable to get their job done. Mr. Apodaca has intimidated, has clearly lied to some employees, are fearful of him and as their immediate supervisor, he is still the county manager and they believe what he says, they believe when he says the commission are after them, and believe they are going to get fired, they are fearful of what is going to happen. These people are there everyday and to be threatened, she believes is an emergency, these people are under a great deal of stress, they need to get their job done. Commissioner Kirkham said she received an email from an employee, she said everyone in the courthouse is under a great deal of stress, how can the county business continue with that kind of stress and fear that Mr. Apodaca is spreading. Commissioner Kirkham said she is fearful, she does not believe this is conducive in conducting county business. This is an emergency and employees need to come and feel that they can work in a good environment. She asked Mr. Apodaca to consider taking this time, give them the opportunity and the county to again address this issue in a formal matter and to please step down and take leave with pay so that these issues can be sorted out for his benefit and the benefit of the entire county and its employees.

Mr. Apodaca said for the purposes of the agenda requirements, an emergency is a matter with unforeseen circumstances that , if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body. That clearly does not meet that threshold and by that note by this commissioner is based on hearsay and innuendo and does not constitute an imminent threat to this public body.

Chairman Rael said given the information that he has heard here today that involves at least one employee feeling like they have been harassed and they believe by Mr. Apodaca, that exposes the county to a lawsuit by that employee unless we take action immediately. Chairman Rael said he would rather face a violation investigation in the open meetings act then to permit an employee who is strongly, in her belief, harassed by Mr. Apodaca, then to give that employee grounds to sue us as a result of conduct as she alleges has been made by the course and scope of his employment and that is an emergency that has been ongoing since Thursday thru today. We have to take action

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today to try and stop this and ask again for Mr. Apodaca to step down until Friday so that we can consider this in a more detailed meeting. Chairman Rael said he was compelled to take action under that statute and he begs to differ with Mr. Apodaca, he knows he is a trained attorney and so is he and he thinks that they have easily met the threshold requirements in more than one respect. Chairman Rael asked again if Mr. Apodaca would agree voluntarily to take administrative leave with pay until Friday at 3:00 PM.

Mr. Apodaca said he is not an attorney, he has had training but he is not an attorney, there is a big threshold there and he told Chairman Rael that he knows this, on that point he will not voluntarily step down and acquiesce in a legal public meeting and he is asking the commission to take official legal action and if this commission is going to use that veiled threat or unveiled threat of some litigious action being taken against this body that would result in financial loss.. By taking legal action today, leaves him with no choice then to seek that same action.

Chairman Rael stated then that he assumes that Mr. Apodaca will sue. Mr. Apodaca said based on the action of this commission to continue with this illegally called emergency meeting. Commissioner Medina questioned Mr. Apodaca's contract. Ms. Wimberly gave her legal opinion on this matter with the basis that Mr. Apodaca is her immediate supervisor and this has been a very difficult situation, she has advised Mr. Apodaca in the event of a conflict of interest between him and the county, the county is her client and she is required to represent her client, Valencia County and Mr. Apodaca has indicated that he understands this. Ms. Wimberly said this falls between Mr. Apodaca's opinion and Chairman Rael's opinion, there is some exposure on the open meetings act regarding the emergency meeting, by having a special meeting called on Friday, it limits some of that exposure. Ms. Wimberly said she is confident the Attorney General will investigate this matter, whether they will see this meeting as something they will seek prosecution on and whether they view that and are successful and she falls somewhere in the middle. This is a personnel issue, this is a tough call and the county does have exposure under the open meetings act.

Chairman Rael asked that his fellow commissioners join him and declare this a formal meeting and he would move that Mr. Apodaca be placed immediately on administrative leave with pay until Friday at which time we present both sides and declare a decision as to what if anything is to be done regarding Mr. Apodaca's employment. Seconded by Commissioner Kirkham. Discussion. Mr. Apodaca formally denied the allegations brought forth by Ms. Gabaldon. At this point without evidence of threat he did not act in a matter to make Ms. Gabaldon uncomfortable. This would be perceptible to him after overhearing a conversation attempting to an illegal violation of the open meeting act conducted by these three commissioners. Mr. Apodaca said he is putting this commission on notice with three violations and a possible fourth. Mr. Apodaca said he was in the office when Ms. Silva called Chairman Rael and she asked if she should call the media and he said no. Mr. Apodaca said this is yet another violation. Motion carried unanimously.

Chairman Rael instructed Mr. Apodaca not to come to work and would be paid his full salary until Friday at 3:00 PM when further action will be taken on the administrative leave and his contract. Chairman Rael asked Mr. Apodaca to gather his things and to not stay in the office until further notice. Mr. Apodaca said he will be represented by counsel on Friday.

Adjournment

Chairman Rael adjourned the meeting at 2:24 PM.

VALENCIA COUNTY BOARD OF COMMISSIONERS

**ss/
PEDRO G. RAEL, CHAIRMAN**

**ss/
GEORGIA OTERO-KIRKHAM, VICE-CHAIRMAN**

**ss/
DAVID R. MEDINA, MEMBER**

RON GENTRY, MEMBER

LYNETTE PINKSTON, MEMBER

ATTEST: ss/

SALLY PEREA, COUNTY CLERK

DATE: April 18, 2007