

Regular Meeting

January 15, 2009

The Board of County Commissioners, in and for the County of Otero, State of New Mexico, met in a Regular Meeting at the Otero County Courthouse in Alamogordo, County and State aforesaid. Meeting called to order by the Chairman at 6:00 p.m., January 15, 2009; and he announced that reasonable notice for this meeting was given to the Alamogordo Daily News, and to Radio Stations, KPSSA, KINN and KYEE.

Present:

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| Ronny Rardin | Chairman |
| Doug Moore | Vice-Chairman |
| Clarissa McGinn | Member |
| Timothy Smith | County Manager |
| Ray Backstrom | Assistant County Manager |
| Dan Bryant | County Attorney |
| Pamela Heltner | Commission Liaison |
| Lynn Estrada | Deputy Clerk |

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Commissioner Moore gave the invocation. Commissioner McGinn led the Pledge of Allegiance and the Salute to the Flag of the State of New Mexico.

New Business:

Presentation: Bert Hanneman presented Safety Awards to the Otero County Administration, County Assessor, County Clerk, Detention, DWI, Health Care Services, Maintenance, Road Shop, Sheriff Office and County Treasurer.

Commissioner Moore made a motion to amend the agenda under Commission

Discussion/Correspondence, Doug Moore to include an item 2, which is time sensitive to appoint a voting alternate for the Insurance Authority for New Mexico Association of Counties. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously.

Commissioner Moore stated that it is customary in January to reorganize the County Commission. He has had the honor to serve as the Chairman of the Board for the last year.

Commissioner McGinn made a motion to appoint Commissioner Rardin as Chair of the Board of County Commissioners and also Commissioner Moore as the Vice-Chair. The motion was seconded by Commissioner Moore. A vote was taken and the motion passed unanimously.

Commissioner Rardin stated that it is an honor to serve his constituents that have put him back in office. It is an honor for his two colleagues to trust him with the position of Chairman. It's a privilege and a lot of work.

1. Consent Agenda:

a. Commissioner McGinn made a motion to approve consent agenda items to include A1 through D10 and item E12, excluding E11 and E13 for discussion. The motion was seconded by Commissioner Moore. A vote was taken and the motion passed unanimously.

b. Donna Brandon, Financial Director, presented the mid year Budget review. Ms. Brandon stated that it is customary in January or February to do an analysis of where our budget stands halfway through the fiscal year. We will receive the bulk of our PILT payment in June and our Gross Receipt Taxes are holding steady. Our revenues are holding very well. County wide we are expended at almost 33 percent of our total projected expenditures, halfway through the fiscal year.

The Board thanked Ms. Brandon for her presentation.

c. Consider appointing a County Representative to the Coalition of Arizona/New Mexico Counties.

Commissioner McGinn made a motion to appoint Timothy Smith as our county representative to the Coalition of Arizona/New Mexico Counties. The motion was seconded by Commissioner Moore. Commissioner Rardin stated that he didn't want the appointment. Mr. Smith works under our salary and he can come back with the information. The intent with the Commission when they hired him, was for him to attend these different meetings and come back with the information for the Board. Commissioner Rardin will attend the meetings that require a Commissioner to be present. A vote was taken and the motion passed unanimously.

2. Scheduled Citizen Communications:

a. Rudy Clarke-Discuss a letter of support to build low-income housing in the Otero County Area.

Commissioner Moore stated that as we discussed in the Work Session, before he can give a letter of support for an entity that doesn't yet exist, he needs some more information. Commissioner Moore stated that he is all for the philosophy, but until the company is formed and has a financial structure, it's hard for him to sign a blank piece of paper of a company that doesn't exist yet.

Mr. Clarke stated that he did present all the documents that Commissioner Moore was requesting to the County Attorney, including the income tax that he will be filing.

Commissioner Moore stated that he needs Mr. Clarke to develop the corporation, designate what it will be used for, so Commissioner Moore can look at those documents and pledge his support.

Dan Bryant stated that he may have misunderstood the task that he was given on Wednesday when we discussed this in Executive Session. Mr. Bryant has the materials that Mr. Clarke had given him. They include the corporate filing, the articles, and the minutes of the organizational meeting. They include information regarding the CHDO Program. Mr. Bryant has gotten in touch with the (MFA) Mortgage Finance Authority office in Albuquerque and Mr. Holguin. He has discussed the program at length. The

concerns that we had on Wednesday, he thought were, if the County issues a letter of support are we obligating ourselves in future fiscal years to then pledge general fund revenues to the program. Mr. Bryant has satisfied him self that under the federal program and under the state sponsorship, that has been set up here in New Mexico. The only two local government entities in the state that will be providing funding to this program in their area are the City of Albuquerque and the City of Las Cruces. All other areas of the state are under the MFA, CHDO Program. They will be contracting directly as the local governmental entity that is sponsoring the program in New Mexico. The way the funding stream works, the Federal government will provide 85 percent of the cost. The State Mortgage Finance Authority and the individual non-profit corporations that participate in the CHDO Program have to match that with 15 percent for a 100 percent of the cost. It applies to new construction, remodeling, and refurbishing. The contractual relationship is direct between the non-profit organization and the MFA. Mr. Bryant apologized to Commissioner Moore, he has had these documents since Wednesday and he didn't realize that he needed to get him copies of the actual organizational documents and the articles of incorporation. Mr. Bryant does have all of the materials.

Commissioner Rardin made a motion to send a letter. The letter would simply say that we are in support of your idea and the idea is to go get developed and get built. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed 2-1 with Commissioner Moore voting against.

3. Public Hearing:

Commissioner Rardin called the Public Hearing to discuss and consider amendments to the Otero County Subdivision Ordinance 07-02 and attached appendices to order.

Commissioner Moore stated that for the public that is here tonight we worked in conjunction with Homebuilders Association of Otero County as well as the Planning Board. We worked for about 18 months

to try to take our subdivision ordinance and bring it up to modern time standards. We approved it about a year ago. In the attempted application of the new ordinance we found some glitches within the ordinance itself that need to be cleaned up. In the appendices, some need to fine tune the appendices that concern water, as well as the appendices that concern roads and the application of roads in light of the subdivision ordinance. The black language as it exists is existing language, blue is proposed additions by the Planning Commission and red is proposed deletions by the Planning Commission. All of those within the water part of the ordinance have been discussed in meetings with the Homebuilders and everyone is in agreement on those proposed changes. These two entities have not had any discussion over the road section, so any language within that is open for debate.

Klad Zimmerle stated that we had a Planning Commission meeting on Wednesday. There were some changes that came about from that meeting and Mr. Zimmerle didn't see them reflected. Commissioner Moore stated that we had a proposed set of language changes. We sat down with the Planning Commission and the Homebuilders to discuss the proposed changes in the water appendices. The meeting was informal so we didn't incorporate those changes on the website until we conclude this public hearing. Those will be taken as draft input and included in the proposed language change to the water appendices after the public hearing.

Commissioner McGinn stated that she thinks the main concern after the last change was passed was about the hydrology study. Mr. Zimmerle stated that there were questions about the water and roads. We addressed pretty much all of those, from the ordinance itself through the appendices. We worked with the Planners and with the Commission itself. Commissioner McGinn stated that what she has read up until tonight, was addressing the geo-hydrology study requirement based on particular lot size in the subdivision. Mr. Zimmerle stated that it requires the geo-hydrology study on the larger subdivisions. The subdivisions

that are in areas where the water supply is documented, it's allowing for use of that documentation. In other areas and the mountain areas, it's still requiring the geo-hydrology reports for smaller subdivisions because there is no data. Commissioner McGinn stated that this was one of the main focal points of revising the water portion. Mr. Zimmerle stated, that is correct. Commissioner McGinn asked is there anything else we need to address between the Planners and Homebuilders. Mr. Zimmerle stated that in the road portion we had some areas that had to be specifically paved within a subdivision or private roads. There are still some subdivisions that are requesting private roads. They will be protected by covenants, road maintenance agreements and also everything that is written into the appendices of the ordinance.

Commissioner Moore stated that there is a lot of confusion on the roads, especially with the older subdivisions. The current lot owner has expectations for their road. Many bring them to the county because they were given assurances from the realtor or subdivider, that at some point their road would be paved. In an effort to square that away, that is one of the reasons we started overhauling the ordinance three years ago. We felt the subdivider would profit from the development itself and the burden should rest with him and he could share that over the cost of the lots that he intended to sell. Expectations of paving and other services were implemented into the ordinance. If you developed a subdivision that abuts or is accessed its main artery via a hard surface road, it is a requirement that the main artery be hard surfaced. The developer could incorporate those costs into the sell price of the lots and the expectations of the lot owner is not that after five years the county will pave the roads. There has been a lot of confusion in this area. Mr. Zimmerle stated that is the purpose of the disclosure statement to make the public aware that the county is not responsible. What Commissioner Moore didn't consider, were the industry standards. If you chip seal a road and nobody drives up and down the road, the chip seal won't stay. It takes the traffic to make it adhere. The way it's done in other communities, is there is a twenty-four month window so that

you can finish your subdivision and start selling the lots. Then within the twenty-four months, you will execute the hard surface. The hope is you can sell enough lots and there will be traffic, otherwise that hard surface won't stick. This is an industry standard. Mr. Zimmerle brought with him a proposed contract and a bonding mechanism that guarantees within twenty-four months the subdivider will provide that requirement for hard surface. This is a true concern and an oversight on our part when we initially redid it. That's the reason for revising this section. The Homebuilders requested that there be another type road recognized. What is required now is that all roads be 24 ft. wide and they meet the minimum county standards. Mr. Zimmerle has proposed within that, that there be a private road that can be narrower and it doesn't have the same requirements for base course, if it's to be designated as a private road. This is up for discussion tonight.

Commissioner Moore stated that the lesser standards for private roads is about all that is left of the road section.

Bill Parker, Public Works Director, stated that he recommends the road width be changed from 24 ft. to 26 ft. The 24ft. was based on years back when the chip spreaders were 24ft. wide. If we had that extra shoulder of 1 foot on each side, our roads would last a lot longer.

Mr. Zimmerle stated that we have had subdivisions approved through the Planning Commission and County Commission, with proposed roads at 24 ft. and 1 ft. shoulders, giving a total of 26 ft. As the Planners say, a lot of times those roads don't get built that way. That's where the subdividers contract is going to come into play. There are specs within the contract that you have to build your road to.

Commissioner Moore stated that we will take comment on section C, the water section.

Paul Quairoli, Emergency Services Director, stated that under C, section 8 on page C9, the Otero County Fire Services Coordinator. This office has changed names and he proposed it be changed to Otero County

Office of Emergency Services.

Commissioner Moore stated that the name will be changed through out the ordinance.

Commissioner Moore made a motion to have another public hearing at our February meeting because of the many typographical errors to be corrected and the input from tonight. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously.

Commissioner Rardin asked if we needed another work session for this ordinance before the next public hearing. Mr. Zimmerle stated that he didn't think so, they can get all the information to Pam to incorporate into the ordinance. Commissioner Rardin stated that he thought Diane Romo was the Planning Coordinator, and wondered why Pam was handling the language corrections in this ordinance. Commissioner Moore stated that in the past Pam has been the hub for the subdividers and all the entities involved, but it can be handled however you want it.

Dan Bryant stated that when we did the working group on Monday, one of the issues that was raised with Mr. Bryant, was having the document reviewed by a Technical Writer for internal consistency. His question to the Board, do we want to have that accomplished prior to the February meeting. The Board said no.

The Chairman closed the Public Hearing and returned to Regular Session.

4. Scheduled Citizen Communications:

a. Dr. Martin Moore-Timberon Water and Sanitation District requests a resolution in support of its requests to state agencies and the legislature for financial assistance to address the failure of its water distribution system, its water storage and supply system and its continued operations.

Mr. Moore stated that any type of support that the county is willing to give along with the resolution would be greatly appreciated. Mr. Moore gave a report on the status of where they are at on the water system and

their financial status.

Commissioner Moore made a motion to have staff develop a resolution in support of Timberon Water and Sanitation District for review and approval at our next meeting. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously.

5. Commission Discussions/Correspondence:

a. Doug Moore-Nominations for District 56 Representative to fill vacancy.

Commissioner Rardin stated that Representative Dub Williams has resigned for health reasons and we are taking nominations for his vacancy.

Dan Bryant stated that his understanding is that there were three nominees in Lincoln County. They were John Billingsly, Carolyn Provencher, and Zachary Cook. Mr. Bilingsly withdrew and the Lincoln County Commission nominated Zack Cook unanimously.

Ellen Wedum nominated Carolyn Dawn Provencher for District 56. Ms. Provencher is a counselor at the Cloudcroft High School and also teaches a class at New Mexico State University. She ran for District 56 in 2006.

Russell Shear nominated Zachary Cook.

Stephanie Dubois nominated Mariano Torrez.

Carolyn Dawn Provencher thanked Mr. Williams for his service to our community and the state. Ms. Provencher lives in La Luz which is in District 56. Her intent to serve this state and the community still exists.

Commissioner Moore had a few questions for the nominee. He would like to know what party Ms. Provencher is affiliated with, if any. Ms. Provencher stated that she is a Democrat. Commissioner Moore asked if Ms. Provencher has ever served the public in any other capacity. Ms. Provencher stated as an

elected official, no she hasn't. Commissioner Moore asked Ms. Provencher how long she has been a resident at her current address. Ms. Provencher stated that she has lived at her current address for nine years. Commissioner Moore stated that if Ms. Provencher were to be appointed by the Governor, she would be expected to show up in Santa Fe in about 10 days and ready to work. Ms. Provencher stated that when she went through this process 2 years ago, she approached her superintendent and school board and they agreed that New Mexico has a proud tradition of citizen legislatures and was given the go ahead.

Zachary Cook approached the Board and presented the Board with a resume. Mr. Cook is deeply honored and humbled by Dub Williams recommendation of him. He is trained as a lawyer and he is a conservative person. Mr. Cook also has an MBA. His training and education in business lends itself to the possibility of him being a good legislator. He has worked in Mexico and Spain and knows the language well.

Commissioner Moore asked Mr. Cook what party he was affiliated with. Mr. Cook stated that he is a Republican. Commissioner Moore asked Mr. Cook if he lives in District 56 and has he ever been convicted of a felony. Mr. Cook lives in District 56 and has never been convicted of a felony. Commissioner Moore asked Mr. Cook if he knows the needs of District 56 and its diverse group of communities and individuals. Mr. Cook stated that yes he does, he has spent the last six years in Ruidoso. He is more familiar with Lincoln County than Otero County, but he is ready, willing and able to take on this commitment. Mr. Cook is prepared to go to Santa Fe within the next couple of days.

Mariano Torrez approached the Board and thanked them for the opportunity to speak. Mr. Torrez has been a legislator before in District 51. When the re-districting took place he was changed to District 56. He was a member of a number of committees in the legislative branch. His family knows the trials and tribulations of being a legislator. He has always tried to serve the people in his community. They are

diverse in culture and also diverse in the idea of income. Mr. Torrez stated that he is a Democrat and he sees people not party. He sees their plights in regard to housing and health. Most of all in this state we need to think about water. Mr. Torrez thanked the Commission.

Commissioner Moore stated that we are fortunate in Otero County to have a stellar group of folks to come forward to fill the shoes of Dub Williams. Mr. Williams has been a representative of our legislature since 1994 and has done an admirable job. With family health concerns, chose the right thing to do to step aside so he could tend to his wife and family and their needs. It's short notice, but still enough time for Lincoln and Otero County to provide the Governor with some names. Everyone who was nominated tonight is a worthy candidate. Commissioner Moore stated that he is going to nominate Zachary Cook and follow the wishes of the duly elected official and his desires.

Commissioner Moore made a motion that Otero County nominate Zachary Cook for the position to fill the vacated seat of District 56. The motion was seconded by Commissioner McGinn. Commissioner Rardin stated that he has known Mario Torrez for quite awhile and he did serve us well. If Dub had passed away then we would have had to make a decision at what our desires would be. But since he is living and well, his desire, if you came to me with the same request whether Democrat or Republican, he would replace the seat of the person who is requesting it. Commissioner Rardin wants Mr. Torrez to understand, he did listen and thinks it good that Mr. Torrez get back involved. He looks to see him in the next election. That seat will have an incumbent, but one that was appointed and not elected. It makes a difference.

A vote was taken and the motion passed unanimously.

b. Commissioner Rardin stated that item 2 was added under Commissioner Moore at the beginning of the meeting to appoint a voting member of the Insurance Authority Board.

Commissioner Rardin made a motion to put the County Manager or his designee as our alternate

representative on the Insurance Authority Board. The motion was seconded by Commissioner Moore. A vote was taken and the motion passed unanimously.

c. Commissioner McGinn stated that we have been working on the Riata Road culvert project for a couple of years now for flood mitigation. We are proceeding with the bid process and that's been awarded. We are working with BLM and an easement to be given. Ray Backstrom stated that BLM is processing our paperwork. It will be discussed in a BLM meeting next week and have an answer back to us after that.

d. Commissioner Rardin would like to clarify the hiring freeze. He would like to have the chart of how the county is structured. He would like to understand it before we hire anymore positions. If somebody quits, his intent is not to restrict hiring a replacement. Commissioner Rardin asked Virginia Blansett, Detention Supervisor, if the position that is being advertised for her, is it a dire position. Ms. Blansett stated that she thought that position was coming in, so she has already done some restructuring. The interviews have taken place and we have made a selection, but haven't let that person know yet. Commissioner Rardin stated that the past Commission has designed it, so you are welcome to fill that position. He is just not comfortable with the structure right now and he is not pleased with it at all.

Tim Smith, County Manager, with respect to the hiring freeze, that's fine. If Commissioner Rardin wants Mr. Smith to analyze the different departments, that's a separate issue. If the Commission thinks the County is too large, we can go by department and analyze the department and explain to you why we have this many people.

e. Commissioner Rardin stated that when he was running for office the Courthouse Security became an issue for him. He hasn't made it a secret of where he stands on the security. Commissioner Rardin would like the blessing of the Commission to work with staff to design a wall so the public can access the South end of the building.

Commissioner McGinn stated that judging from some of the public comment that we've had about the convenience of it, she doesn't object to having the South entrance open.

Commissioner Rardin stated that he did speak with Judge Counts and he is willing to work with him.

Commissioner Moore stated that he is willing to look at this. Based on some of the hindsight that got us over the handicapped parking spots, where we took it upon ourselves to re-designate some spots and didn't follow all the rules. The City came to us and told us that we couldn't do this unless we went through the proper procedures. Mr. Smith stated that the issue really isn't the parking, it's the signs. Commissioner Moore stated that before we draw a design up by ourselves, let's get one of our architects that we have on staff to help us design the wall. This way we will comply with ADA, occupancy load for restrooms as well as emergency fire egress.

Commissioner Moore made a motion to direct staff in conjunction with Commissioner Rardin to develop a plan for the construction of a potential wall on the ground floor that would be compliant with all state regulations and Commissioner Rardin present that at a future time for consideration of all stakeholders. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously.

f. Commissioner Rardin stated that Bio/alternative fuels is a hot topic with him. As a citizen of America he has learned to live in this world by being very diverse. If we were ever to no longer have gasoline, or electricity we would be in dire straight. The big push in the future will be to learn to be self sufficient and self surviving. As a leader in the community, he doesn't want to be caught on his watch saying that he didn't try to do this. Commissioner Rardin would like to go out for an RFP of who is out there doing the alternative fuel and what does it cost. A study would need to be done first of what can be grown here and what would work. Commissioner Rardin is looking at the cattails and if they can be grown

here.

Commissioner Moore stated that when the lady came to give us the presentation, when we discussed it at that time, he couldn't see a place where we could apply it. We don't have a sewer treatment plant or any water rights other than a well at the Road Shop. The cost to break even on it, we would need about 16 hundred acres. Commissioner Rardin stated that this was incorrect. He has spoken with the City and asked them about their sludge pit on the bottom side of the sewer plant. Tularosa also has a water storage facility, but he hasn't spoken with them yet. This is what a study would do, show us how much, where and how big. He believes 10 to 20 acres is all we would need.

Commissioner McGinn made a motion to go out for an RFP and give Commissioner Rardin the Commissions blessing to work with the County Manager to get the language put in there. The RFP is strictly for informational purposes to bring back to a meeting at a later date. The motion was seconded by Commissioner Moore. A vote was taken and the motion passed unanimously.

6. Executive Session:

Commissioner McGinn made a motion to go into executive session to discuss items listed under B. pending/threatened litigation-NMED, D. land-Consideration of offer on surplus land, C. personnel issues, G. Contracts-PSAP and H. Otero County Health Care Services Board-Appeal of Claim. The motion was seconded by Commissioner Moore. Roll call was taken as follows:

Commissioner McGinn	yes
Commissioner Moore	yes
Commissioner Rardin	yes

Commissioner Moore made a motion to come out of executive session having discussed items listed in the agenda and having made no decisions. The motion was seconded by Commissioner McGinn. Roll

call was taken as follows:

Commissioner McGinn	yes
Commissioner Moore	yes
Commissioner Rardin	yes

Commissioner Moore made a motion that we direct staff to respond to a proposal for the purchase of surplus land for compliance with state law. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously.

Commissioner Moore made a motion that we convene ourselves as listed on the agenda under the Otero County Health Care Services Board to consider an appeal to deny claim. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously.

As the Health Board we have one issue, appeal of claim to discuss. Commissioner Moore stated that he will be representing the appellate, she is one of his constituents in his district. Several years ago we changed the Indigent Ordinance. The language that we used was to no longer allow consideration of deductibles. Unbeknownst to the Commission at that time, Medicare, Medicaid uses that term deductible for a one time only annual charge. One of my constituents in District 1 was subject to that \$950.00 charge. The then seated Commission went back and changed the language to allow that. When the lady went to try to appeal the denial, she was told by hospital staff that the time frame had closed, which was inaccurate. Several months transpired, she brought the same appeal to our Health Services Director, who told her verbally that too much time had elapsed. There isn't a time frame on appeals. Commissioner Moore instructed her to bring the appeals request directly to him, as the then Chairman of the Commission. She did so, and we went back and changed the ordinance once we realized our error. This puts this individual, who's on a fixed income and has extreme health care needs as well as her husband, in a financial situation

that is unsuitable for her.

Commissioner Moore made a motion that we approve her claim and offset those fees with the hospital in the amount of \$950.00 and some change. The motion was seconded by Commissioner McGinn. Commissioner Moore stated that if someone else brings that same concern forward, as the Appeals Board we should consider it. A vote was taken and the motion passed unanimously.

The Chairman closed the Health Board and returned to regular session.

There being no further business before the Board, the Chairman adjourned the meeting at 9:35 p.m.

APPROVED:

Ronny Rardin, Chairman

ATTEST:

Robyn Holmes, County Clerk

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