

firm of Daniel A. Bryant. This is the 2nd year of a 4 year contract. The amount requested for approval is \$12,633 a month, plus all applicable taxes.

Commissioner McGinn made a motion to extend the contract for 30 days to negotiate the terms of the contract before approving the 2nd year term of that contract. The motion was seconded by Commissioner Nivison. Commissioner McGinn stated that we had some discussion at the Work Session about the terms of the contract including the fee structure. These are things that need to be discussed further before the 2nd year renewal. A vote was taken and the motion passed unanimously. See pages

b. Request approval of Resolution #04-17-08/96-56, banning burning in Otero County in order to protect the health, safety and welfare of the citizens of Otero County from increased fire danger.

Commissioner McGinn made a motion to approve Resolution #04-17-08/96-56, banning burning in Otero County. The motion was seconded by Commissioner Nivison.

Paul Quairoli, Emergency Services Coordinator, stated that a couple of additional fire restrictions from both the United States Forest Service and the State Forester also adopted additional restrictions for burning. The Forest Service on Federal lands and the State for lands that are non-municipal, but also include public lands.

The State Forester, by statute, has restricted burning throughout Otero County and 12 other counties.

Commissioner McGinn would like to know the proposed areas for the fire restrictions for this burn ban.

Mr. Quairoli stated that it would be County wide to comply with the state statute. The State Forester can ban on grazing lands and other lands. There are certain provisions that he has allowed for crop burning, range land debris burning when certain conditions are met. Burning is done with adequate planning, adequate personnel present, and the area to be burned is controlled. There is a new resolution that was given to the Board before the meeting. The original document identifies the State Forest restrictions and the second bullet is the State's restrictions. Commissioner Moore stated that the State has made a declaration

in certain counties that they are going to impose some State regulations. The Forest Service has already gone to phase 2, which says there is no smoking or open flames in the forest. Our language as proposed originally would expand to any private land or subdivision that directly abutted or is adjacent to the Forest Service property. In the new document, within that given area, smoking except within a vehicle or buildings, this would be subject to only private lands adjacent to the forest. Mr. Quairolì stated that in our original one it was, but in the State's version it is everywhere. The State has said there is no outdoor smoking except on barren land or paved area. In the State's version it is non-municipal, non-federal and non-tribal lands. Commissioner McGinn stated that she didn't see anything in the State's resolution that addresses the crop lands, adequate planning for burning and the monitoring and controlling. Dan Bryant stated rather than retype all that language we incorporated it by reference. Commissioner Moore asked how long this resolution would stay in place. Mr. Quairolì stated that it would stay in place until the National Weather Service says that we are no longer in a drought, the State Forester lifts his restrictions or the Forest Service lifts their restrictions. In the document it allows Mr. Quairolì to do it once we have the information, or you as a Commission can rescind it at a Regular Commission Meeting. Commissioner McGinn asked what is considered adequate or inadequate about our red flag warning that is currently in place when it comes to burning anywhere besides the mountain areas and canyons? Mr. Quairolì stated that the red flag warnings only pertain to the humidity and winds. Commissioner McGinn stated that the difference with this resolution is that if someone down here wanted to conduct a burn, they can still conduct it according to this resolution. Mr. Quairolì stated that according to this resolution no they could not burn, because we referenced the State's statutory authority in our new resolution. Mr. Bryant stated that yes they could, providing that the conditions complied with the open burning conditions on page 2 of the April 7th resolution by the State. It would be permitted when those 5 conditions are in place. Commissioner

McGinn stated that the language of the 5 conditions are the same of what we have in place now without this resolution. Commissioner Nivison stated that if we do or don't put it in our resolution it doesn't matter because it's a statute. Mr. Bryant stated that the way he reads it, they have banned and these rules apply in all unincorporated areas of Otero County. This will make our resolution consistent with theirs and will adopt their requirements by reference. Commissioner Moore stated that he has a big problem with the State Fire Marshall telling him that he can't smoke in his own backyard. The State Fire Marshall can say whatever he wants to and I don't think this County Commission should say that. Commissioner McGinn agrees as does the Sheriff. Mr. Bryant stated that the State Fire Marshall, or the Energy, Minerals and Natural Resources Department are not telling you that you can't smoke in your backyard. The provision regarding smoking says that it is prohibited except in enclosed buildings, within vehicles equipped with ashtrays, on paved or surfaced roads, developed recreation sites, which would include part of your backyard, or barren land. Commissioner Moore stated that I have 2 resolutions with the same number on them. The first one that was in the book and discussed at the Work Session, does not incorporate the language under the second bullet, which talks about the State of New Mexico, Energy, Mineral, Natural Resource Department restriction for fire works, smoking and campfires. Commissioner Moore stated that he is going to ignore this one from the State, because it isn't in the book. He is more than pleased if the proponent of the motion would like to expand it to grant our Emergency Service Coordinator to cite with the support of the Sheriff. Mr. Bryant stated that without an ordinance passed by the County Commission, after publication and public hearing that grants authority to Mr. Quairoli to cite and some law enforcement training and certification, he can't cite. The people that enforce ordinances are the Sheriff's Office. The level of priority that he gives to any matter that he chooses to enforce is within his discretion. He is the person that the law empowers to enforce these laws. Commissioner Nivison stated that the State has

passed a resolution and whether we adopt it or not doesn't really matter. It still has the force of the law in the state. Whether this body passes it or not is a moot point. We have professionals that have made decisions and he doesn't like the idea of ignoring what they say. Our ordinance will suffice, but we have all taken an oath to uphold the State law or pay a penalty. Commissioner Moore feels sorry for Paul, because every year he tries to do this, he grabs everything that everyone else has done and tries to encapsulate everything. Commissioner Moore appreciates the late arrival of this additional information from the Natural Resource, but I as a Chairman choose to ignore it. The one that we are going to vote on and proceed with is the one that we have in our books, for better or worse. Commissioner Nivison stated that in the fire business, it becomes much more clouded. You are a professional in your business and when you give us your professional opinion we abide by that. We are getting a professional opinion by fire people, but because it has something in it that we don't particularly like we don't have to pay attention to it. It's a double standard in his opinion. We either pay attention to the state law or don't pay attention to the state law. Commissioner Nivison is a little more sensitive about fires than the other 2 Commissioners, because he lives in an area that burns up. He has to go out and tell people, sorry that you lost your house. He doesn't know a professional way to do that. Commissioner Moore stated that pursuant to the Open Meetings Act and the legal requirement for me to publish and advertise documents for review by the public in a public meeting, the actionable item that we have tonight is a resolution that we have in the book, not the amended version, that is what we are considering the motion on. He has a motion to approve and a second and we are in a discussion. Commissioner Nivison would like to have a determination by the attorney. Dan Bryant stated that first of all for the members of the public that are here and the media, please come and get a copy of the Energy's, Minerals and Natural Resources Department resolution. That resolution bans all of the things it bans, including the smoking language on all non-municipal, non-federal

and non-tribal lands in a number of counties, one of which is Otero County. For the Commission, your Open Meetings Act and your requirements for publicizing your agenda, permit you to take action on the resolution that was in your book or the amended resolution. The Open Meetings Act does not require that every single word and every single jot be published. It requires that a reasonable discussion or description of the items that are going to be considered on your agenda be published. You can take action on the original resolution in your book, or you can take action on the amended resolution in your book, and you will not violate the Open Meetings Act in doing so. Whether you pass both resolutions or pass neither of them or pass one or the other, the ban is in place by the action of the Energy, Minerals and Natural Resource's Department in all unincorporated areas of Otero County, except for federal, municipal and tribal lands. The State does not have power in those areas. On the subject of burning, we have been granted by statute, limited co-extensive jurisdiction with respect to burning issues with the State agencies. We don't get to supplant them, but they do have power and jurisdiction in the same areas of the county jurisdiction that we have power. Commissioner Moore stated that this is kind of like the power that the Chairman has on this agenda. What the Chairman clearly stated, unless motion to do otherwise by this Commission, the resolution for consideration at the moment that we have a motion for approval and we have a second is the resolution that is in the book. If the will of the Commission is to consider another motion, we need to get past this one first. Commissioner McGinn stated that she would like to clarify her motion, it was meant for the original resolution in our County Commission Book. It states that the areas within Lincoln National Forest as determined by the U.S. Forest Service Stage II Fire Restrictions dated March 29, 2008 and effective March 31, 2008. It also includes the private lands and subdivisions located within, adjacent to, or within close proximity of the outer boundaries of the Lincoln National Forest as designated by the Otero County office of Emergency Services and shown on the published map titled Burn Ban Phase II. That is the

original motion that Commissioner McGinn made to approve this evening. Commissioner Moore asked Commissioner Nivison if he wants to leave his second or withdraw. Commissioner Nivison stated that he will leave his second in place and probably vote for this under a mild protest. A vote was taken and the motion passed unanimously. See pages

c. item #23, Consider the easement vacation for Dusty Land Road.

Ray Backstrom, Assistant County Manager, stated that June of last year, the Commission was asked to vacate an easement located on a piece of property called Dusty Lane. Changes in the law brought a recommendation to use a process called viewing to address this issue. We found 3 individuals who were willing to perform those duties for the County. Those individuals went out and looked at the easement and provided their recommendation to the Commission to not vacate. The Commission has a choice to vacate or not to vacate.

Commissioner McGinn made a motion that we take the submittance of the viewing committee and do not vacate the easement for Dusty Lane Road. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

d. item 24, Consider formally authorizing the Commission Chairman to sign any and all documents relating to the Immigration & Customs Enforcement (ICE) proposals and agreements.

Ray Backstrom stated that he received a request from the Management & Training Corporation Organization (MTC) who is currently in the process of working on our RFP for the ICE facility to provide them with either a resolution or a consent agenda item that specifically states that the Chairman of the Commission has the support of the rest of the Commission in signing any and all proposal documents that they provide. We did notify them that indeed the Chairman has that authorization already, however they want something that is formally acted on.

Commissioner Nivison made a motion to authorize the Commission Chairman to sign any and all documents relating to the ICE proposals and agreements. The motion was seconded by Commissioner McGinn for discussion. The only discussion that Commissioner McGinn has is that it is clarified in the motion at the end of the sentence that says “which are approved by the majority of the County Commission.” Mr. Bryant stated that in order to get this correct in the records, what Commissioner McGinn has done is suggested an amendment to the motion. Commissioner Nivison, you need to express your consent or objection to the amendment. Commissioner Nivison stated that it seems like you are asking for a full Commission as opposed to the Chairman. Commissioner McGinn stated that this is correct and she will read what she is saying. Mr. Backstrom stated under tab 24 the agenda item under research it does state that it is something that comes before the entire Commission and approved by the entire Commission. Commissioner McGinn agrees, but it doesn’t say that in the motion. Commissioner McGinn stated that since there is no document that says, which are approved by the majority of the County Commission, which is the fact, that we add that semantically to the motion in the amendment. Commissioner Nivison amended his motion to add which are approved by the majority of the County Commission. Commissioner McGinn seconded the amendment. A vote was taken and the amended motion passed unanimously.

2. Citizen Communications:

a. Request for Otero County to take over the liability insurance for the Timberon Airport.

Commissioner McGinn stated that Mr. Putney was at the Work Session. Commissioner Nivison made a motion to approve subject to discussion. The motion was seconded by Commissioner McGinn. Commissioner Moore stated he didn’t think we could do this. Commissioner Nivison stated that we were looking to see what kind of impact it would make. Ray Backstrom stated that he had contacted our insurance carrier. They indicated that the cost of the insurance last year was \$23,000 for the year. They

recommend budgeting an additional \$3,000 with the feeling that it would come in at \$25,000 for the coming year. The property belongs to the County and is not covered under our normal insurance policy. It has to be picked up under a separate policy. If the current management does not pay the insurance, the County is still liable for paying the insurance. Mr. Bryant stated that the lease agreement requires them to cover the insurance payment. We can't agree to change that agreement without putting an amendment to that agreement on the agenda and discussing it. This is one of those contracts like the Flickinger Center and the Red Brick School House, where in order to get the lease approved we have to demonstrate to DFA and the Attorney General's Office that we have got a fair market rental agreement with the entity.

Commissioner Nivison withdrew his motion to postpone until a further date. This item died for a lack of a second.

3. Commission Discussions/Correspondence:

a. Commissioner Moore stated that we have concluded the interviews with the candidates for the County Administrator position. We had quite an array of candidates and he has entered into negotiations with our number one selection.

b. Commissioner McGinn gave an update on the Nogal and Riata Road flood projects. The drainage study and the resident interviews are complete in the Nogal Canyon to move forward with the flood project to help during our heavy rain season. We are working with the Reservation in a survey to work with them to help do some projects up above Nogal Canyon that may help litigate some of the flooding problems. On Riata Road, surveying was done last week and they are looking at some back flow water situations right now. We will be going out to bid this fall to put the first culvert in.

c. Paul Quairoli reported on the Pepper Fire burning in Weed, New Mexico. There are 2 airtankers flying on it and Mescalero Apache Indian Reservation has brought down their helicopter. Total personnel

on the fire is now about 100 to 120.

4. Executive Session:

Commissioner McGinn made a motion to go into Executive Session to discuss items A. collective bargaining, B. pending threatening litigation within the Sheriff's Department, D. land, the hospital lot, and F. Detention Center, for juveniles. The motion was seconded by Commissioner Nivison. Roll call was taken as follows:

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| Commissioner McGinn | yes |
| Commissioner Nivison | yes |
| Commissioner Moore | yes |

Commissioner Moore made a motion to come out of Executive Session having discussed items listed on the agenda under A. B. D. and F. having made no decisions. The motion was seconded by Commissioner McGinn. Roll call was taken as follows:

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| Commissioner McGinn | yes |
| Commissioner Nivison | yes |
| Commissioner Moore | yes |

Commissioner Moore made a motion that we decline both offers currently before us for the proposed acquisition of the hospital property, as we do not deem it to be surplus at this time. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously.

There being no further business before the Board, the Chairman adjourned the meeting at 7:55 p.m.

APPROVED:

Doug Moore, Chairman

ATTEST:

Robyn Holmes, County Clerk

Regular Meeting April 17, 2008