

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 Administration Building in Alamogordo, County and State aforesaid. Meeting called to order by the Chairman at 6:00 p.m., November 19, 2009; and he announced that reasonable notice for this meeting was given to the Alamogordo Daily News, and to Radio Stations, KPSA, KINN and KYEE.

**Present:**

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

**DRAFT**

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

**1. Scheduled Citizen Communications:**

a. Discuss a boundary issue involving land owned by Otero County on the La Luz Plaza and Mary Garcia.

Ms. Garcia and her attorney, Anne Kathryn Zee approached the Board. Ms. Zee stated that the issue in dispute has to do with the La Luz Plaza. Historically the Plaza has had defined boundaries. Due to

a dispute between neighbors, a survey was completed. It was discovered that multiple neighbors' front yards are actually owned by the County. Historically they have used that area for their front yards otherwise the lot line would directly abut the buildings. This approximate 27 feet is unusable frontage. We are hoping that the Commission can agree to stipulate a boundary and a lot line in order to resolve this issue. It's not property that can be utilized by the County on the Plaza.

Commissioner Rardin stated that when Klad Zimmerle, a local surveyor, brought this to us it was sited as an encroachment of about 12 to 15 feet. That isn't the issue that we are facing tonight. The neighbor on the very north east corner of the Plaza has not been allowed to get to his property because of this. Some one has been blocking them off and that's what Commissioner Rardin thought the dispute was about. Ms. Garcia stated that she has lived there for 63 years and Mr. Simmons has never been blocked from his front door. He has always used the front entrance that is way in the front. His driveway is in the rear and he always parks in the rear. For the last 8 months he has come and parked in the front because his wife can no longer walk long distances. This has never been blocked.

Commissioner McGinn stated that your request tonight and Mr. Jenkins request is that the County says it's OK to keep your fence where it is because it's on the County's easement. This corner that Commissioner Rardin is talking about, "Do those fences impact the access in that corner between Mr. Simmons and your property?" Ms. Garcia stated that no, it does not. Commissioner McGinn stated that your request tonight has nothing to do with that corner in the sense that everyone's access is still there. Ms. Garcia stated that she would like the County to set the boundary lines so we can keep our front yards. Commissioner McGinn asked Mr. Parker if the Road Department had any difficulty getting in there this whole time to take care of the road. Mr. Parker stated that no, we don't have any problems.

Commissioner Moore stated that this issue came up 6 years ago. He went and viewed the site.

There were some allegations that there were chained pit bulls and a variety of intimidating factors that would keep the neighbor from accessing his front door. In his opinion the fence is in violation, it's built on County property and needs to be removed. The chain link fence built in the Plaza is an encroachment on County property. If he ceases and desist on this, by all rights he would need to give the same liberties to the folks down the other side. If he were to give them the same width, there would be no road into the Plaza anymore. Commissioner Moore stated that if he gives Ms. Garcia the liberty to take over this County property he should give the same liberty to lots 7 and lots 13. If he does that, then there will be no more road. Commissioner Moore stated that here is what he suggests, your fence is on County property, withdraw. It is not a matter of how long the fences have been there, the total amount of time that they have been there they have been on County property. Now that we have a challenge on County property on both sides, his opinion is, everybody withdraw go back to the boundary lines and property lines that are platted for the community. If we all can't get along then everybody pull your fence back. That is not your front yard that is County property. If the neighbors can't sort this out amongst themselves and get along, then everybody withdraw from County property. What I am hearing tonight is, since my fence has been there for a certain amount of time, I have certain rights that are historic. To Commissioner Moore as a County Commissioner that's not true. Over the years folks have encroached on the County property line and as long as everybody was getting along the County didn't pay any attention. Now they aren't, so Commissioner Moore stated that here is his deal, pull your fence, cut your trees down and everybody withdraw from the County property line.

Commissioner McGinn stated that she hadn't heard anything about coming to the County and saying we have problems accessing this corner. What she had heard the request for is similar to ones that we have given before. When people have built on a County easement, they come to the Commission and ask for a

variance. She doesn't see a request tonight that has anything to do with that corner access. She sees a request asking to keep the fence where it is. It hasn't caused any difficulties with the road crews getting in and taking care of the road.

Ms. Garcia stated that she stays away from Mr. Simmons and she has never blocked his way into his property. All she wants to do is keep her front yard and Mr. Jenkins wants to keep his mother's front yard and this is all we are requesting.

Commissioner Moore stated that the truth of the matter is he represents Ms. Garcia, Mr. Simmons and Ms. Jenkins. Everybody has built a front fence out in County property as an encroachment. Commissioner Moore stated that whether Ms. Garcia believes Mr. Simmons has a problem accessing lot 7 or not, he does. He has been represented in front of this Commission by professionals that represent his interests and he does have a challenge with that. The reason Commissioner Moore is dealing with this issue is because of encroachment on County property. The easy deal for him, everybody get your stuff off County property no matter how long it's been there.

Commissioner McGinn stated that this matter needs to have a public hearing so all interested parties can come to hear the request to vacate or grant a variance.

Ms. Zee stated that the issue we are presenting tonight is the issue of the fence and that it be allowed to stay. Commissioner Rardin stated that a few weeks back we were approached by professionals who came to us with a dispute problem and the access was being blocked. This is none of our business, this is a civil matter. Commissioner Rardin went out and looked at the fence that is on County property. Commissioner Rardin does not have a problem putting a variance for the fence. Commissioner Rardin would like to see all parties involved work out their differences and come back to the Commission with a proposal. This would also keep it out of the courts.

Commissioner McGinn stated that if there are any other issues than moving the fence and granting a variance, that obviously we can't make that decision tonight. We first need to publish a request for a public hearing and all property owners that could be affected, be notified. Commissioner Moore stated that any variance that he considers for the Plaza, being fair about it, he would have to consider the variance for all the property owners.

Commissioner McGinn made a motion that we place an item on the next agenda to request permission to publish a public hearing and hear a request for a variance in La Luz Plaza. The motion was seconded by Commissioner Rardin.

Commissioner Moore stated that the request for a variance goes through our Planning Board. This is a mechanism that is outside the Commission's control. The Planning Board will review the request and send their recommendations to the Commission. Commissioner McGinn stated that she had requested that the property owners contact the Assessor's Office regarding this issue and she doesn't know where that went. Commissioner McGinn withdrew her motion until that process is complete.

**2. Consent Agenda:**

a. Commissioner McGinn made a motion that we accept consent agenda items 5 thru 11, 13, 14, 15 and 17, pulling items 12 and 16 for discussion. Commissioner McGinn amended her motion to include consent agenda items 5 thru 10, 13, 14, 15, 17 and pull items 11, 12, and 16 for discussion. The motion was seconded by Commissioner Moore. Commissioner Moore stated that we skipped over items 3 and 4 and wants to make sure that we go back to them. A vote was taken and the motion passed unanimously.

See pages

b. Consider implementation of a County Employee Agreement regarding cell phone use while driving/operating county equipment/vehicles.

Commissioner Moore stated that one of his duties is that he represents Otero County as the Chairman of the Workers Compensation Board for the New Mexico Association of Counties. It was brought to his attention as a representative of this group that pending and threatening litigation under use of cell phones has become an issue within the state at the County level. The New Mexico Association of Counties has proposed a draft document which would consider County policy on driving and operating a County vehicle and or equipment while interfacing with a cell phone. There have been some legal challenges across the state on County employees in a County vehicle talking on a County cell phone being distracted. There were physical property losses and damage to vehicles, as well as injuries to those employees. NMAC has recommended that each of the 33 Counties in the State of New Mexico review a draft policy for cell phone usage within their Counties.

Commissioner Moore made a motion to consider adoption of the draft cell phone use policy as proposed by NMAC. The motion was seconded by Commission Rardin for discussion.

Roberta Hanneman, Safety Officer for Otero County stated that she took the draft policy copy and incorporated it into our Standard Operating Policies. Commissioner Rardin stated that the SOP addresses drinking and driving and then cell phones. Why didn't we mention lap tops, shavers, game boys, hairbrushes etc. If we don't mention them in here and we focus only on cell phones, is this a risk?

Dan Bryant stated that the current careless driving statute in New Mexico says that you will not drive an automobile without giving your full time and attention to the act of driving. It covers all distractions, whether it's a cell phone, a beer bottle or a computer. Like other areas of the law, this issue has begun to develop into a rampant problem. Risk Managers are trying to highlight those things by making a policy that specifically addresses it to make sure everybody knows this is something you should not be doing. Mr. Bryant believes that within six months the Multi-line Pool Board and the Worker's

Comp Pool Board will alter the coverage agreements that they have with the County's to require the adoption of this kind of policy in order to have automobile coverage through the system. Just because there are so many accidents that are happening involving cell phone use. At that point in time we can make a re-consideration of the policy.

Commissioner Moore stated that he brings this as a draft. NMAC has this draft policy on their agenda for December 10<sup>th</sup>. Based on discussion over the months they will more than likely adopt this policy. Commissioner Moore is giving it to the other Commissioners for their consideration and maybe change some language that will make it unique for Otero County. Ms. Hanneman's version of the policy is hands free be omitted and Commissioner Moore isn't sure that he agrees with that. Commissioner Moore believes that we won't have an option here in about 45 days.

Commissioner Moore amended his motion to incorporate the proposed language from staff into our proposed language for consideration. The motion was seconded by Commissioner Rardin. Commissioner McGinn asked the County Attorney if there is any difference if an accident occurs in a County vehicle between use of a cell phone or any other distraction. Is there any difference in the outcome of passing a cell phone policy? The answer was no, the outcome is the same, it's the County's liability. A vote was taken and the motion didn't pass with Commissioner Rardin and Commissioner McGinn voting against. Commissioner Rardin stated that the reason he is opposed is he hasn't read the policy yet and what he has read is not correct. He would like to have it on the next meetings agenda.

c. Update on the Otero County Convenience Center by Bill Parker.

Bill Parker, Public Works Director, gave a report on the Convenience Center. Since Otero County took over the site on September 27<sup>th</sup> we had to re-register all the sites through the New Mexico Solid Waste Environmental Department. Anytime there is a change at the Convenience Center the Environmental

Department has to be notified. Mr. Parker has changed the scheduling some with the workers. Some are on eight hour days and some are on ten hour days to make sure we have enough people there to get the work done. There have been 12 roll offs purchased and 2 back hoes. Our contract for the Lavelle Site is up this month. The City Attorney has the contract and Mr. Parker will bring it to the Commission when he receives it to make any changes.

Commissioner Moore asked Mr. Parker, "If operationally at this stand point do we have enough money budgeted for the Center?" Mr. Parker stated that there are things that we need and he will be bringing the requests at the next budget cycle. Mr. Parker believes we will get by this year with the money that we have budgeted.

Commissioner Moore stated that the reason we had chose to go with an independent contractor in the past because at our remote sights we were continuously being cited from the New Mexico Environment Department. Commissioner Moore asked Mr. Parker, "Is he comfortable with our remote sights, do we have enough staff to keep those to the minimum standard so we don't get any citations?" Mr. Parker stated that the site that gets the most dumping is Chaparral and Cloudcroft. We have compactors at these sites and they make a big difference.

Commissioner Rardin thanked Mr. Parker for his report and his hard work at the Convenience Center.

### **3. Resolutions, Contracts & Agreements:**

a. Consider approval of Resolution #11-19-09/98-19 authorizing the County's purchase of excess sick leave hours from eligible employees at ½ the value of said sick leave.

Commissioner McGinn made a motion to approve Resolution #11-19-09/98-19 authorizing the County's purchase of excess sick leave hours from eligible employees at ½ the value of said sick leave

which amounts to \$23, 030.00. The motion was seconded by Commissioner Moore for discussion.

Commissioner Moore stated that his understanding of what motivates us to do this is that we have several long term employees that have accumulated so much sick leave, they can't use it all. Ms Brandon, Financial Director, stated not necessarily. This has been done in years past and it was incorporated in our previous Personnel Policy. During the budget process this year, Mr. Parker suggested this as an incentive to get people to be a little more thrifty with their leave. Currently there are 36 employees out of 205 who meet the 280 hour threshold. Commissioner Moore stated that when the County is audited, sick leave and annual leave is considered an amount of money that you may have to pay. This is a good program and we are only buying sick leave from those who have acquired more than 280 hours. A vote was taken and the motion passed unanimously. See pages

b. Consider approval of Resolution #11-19-09/98-20, establishing temporary parking spaces for the use of persons desiring to conduct business within the Courthouse.

Commissioner Moore made a motion that we consider approval of Resolution #11-19-09/98-20 for discussion. The motion was seconded by Commissioner McGinn.

Commissioner Rardin stated that he has been watching this very carefully and the 3 designated spots for the public are rarely being used. We talked about designating 5 spaces and he believes that will be too many, 3 is sufficient.

Commissioner Moore stated that if there is Grand Jury or a function going on, it is extremely difficult to find a parking space near the Courthouse. The spots may be under utilized, he feels confident that on any given day, there are at least five people in the Courthouse who are there to conduct business. What Commissioner Moore wants acknowledged here, it doesn't need to be just taxpayers during tax season. It needs to be for the public. Commissioner McGinn stated that we inform staff and the courts that

these 3 parking spaces are for public use for any of the offices. Commissioner McGinn doesn't understand why we are doing a resolution for these parking spaces. Ray Backstrom stated that the resolution does open it up for any business inside the Courthouse. It does not restrict it to just County offices.

Dale Palkki, County Assessor, stated that by restricting the parking to 30 minutes and violators will be towed, this is probably scaring people away from parking in these spots.

Commissioner McGinn stated that the idea is to provide the spaces, we can't police it all the time. We don't need a resolution. We have provided the space and the public has the opportunity to use it and let staff know that they are not to use these spaces.

A vote was taken and the motion passed 2-1 with Commissioner McGinn voting against. See pages

c. Consider approval of a Cooperative Service Agreement and associated Work and Financial Plan between Otero County and the United States Department of Agriculture Animal and Plant health Inspection Service-Wildlife Service for FY 09/10 in the amount of \$32,000.

Commissioner Moore made a motion to approve the Cooperative Service Agreement between the USDA and the County in the amount of \$32,000. The motion was seconded by Commissioner McGinn for discussion.

Commissioner Rardin asked what would happen if we don't approve this agreement and why did it go up \$5,000 from the budget. Ray Backstrom stated that the discrepancy is that the wool growing association withdrew \$5,000 in funding. USDA has increased the \$27,000 that they had asked for originally to cover that cost. If we don't do this tonight, we continue on without a contract with USDA.

Commissioner Moore stated a lot of the wool growers and cattle growers in the County have over the last few years seen an increase in predation on their stock. Especially calves during calving season and lambs in the spring when they are born.

The Grazing Advisory Board came to the Commission as did some of the wool growers a year ago and said they had a huge predator problem and it wasn't being addressed. Custom and culture has changed to the point that folks don't hunt coyotes like they used to. It has become a challenge to them to remain viable as a commercial operation. Our trapper that we have had for 30 years is a USDA guy and he has tried to address those needs. The pressure has outgrown the abilities of one trapper to successfully complete the mission. When we looked at this during budget, we said let's double up and hire two trappers. We asked the Grazing Advisory Board how they wanted to handle this. There has been debate whether we hire a second trapper from USDA. The pros and cons on that are, because they are federal employees they are required to be certified, they are in their own vehicles and they have the authority to use certain chemicals and poisons that are not available to the private sector. The Grazing Board would prefer rather than engage the second USDA trapper, to attempt to go out and have a private sector person fulfill those obligations. Commissioner Moore's concern is that we budgeted \$27,000 for USDA and the Wool Growers have withdrawn their \$5,000, so if we don't pass this tonight we won't have any trappers.

A vote was taken and the motion passed unanimously. See pages

**4. Commission Discussion/Action Items:**

a. Commissioner Rardin stated that the New Mexico Environment Department, Liquid Waste Program, we have already formed a committee. The committee met and came up with three tasks to start off with. A mission statement, a mission plan and a cost plan will be presented to the Commission. Commissioner Rardin would like to have the other Commissioner's permission to formally have the power to form this committee.

Commissioner McGinn stated that we expressed an interest on the part of the Commission to pursue this and get the information back from the committee. Commissioner Moore stated that he encourages

Commissioner Rardin to continue his activities along with the Environment Department at a local level forming a committee to evaluate Liquid Waste Programs that could affect citizens of this County. To come up with alternatives to the Bureaucratic red tape that New Mexico Environment Department currently bestows us with.

b. Commissioner Moore stated that he recently attended the New Mexico Association of Counties Workmen's Comp Board Meeting. There will be some changes in the future and we can look for our rate to stabilize next year.

The County continues to work with the U.S. Forest Service as well as U.S. Fish and Wildlife on the recovery of the poppy. New evaluations show that the poppy exists and it continues to survive in 8 of the 10 known canyons.

#### **5. County Manager's Report:**

a. Ray Backstrom stated that in the last couple of weeks we have had 2 break ins, one at our Rifle Range and one at the Convenience Center. The items removed from these facilities are under our deductibles on our insurance.

We have completed the purchase of the Pepsi Building. The two parking lots have been completed and that project is closed. We have come to an agreement with the owner of the Firestone Building and this project is now moving forward. Commissioner Moore stated that now that we have consummated the purchase of the two parking lots, do we have a plan to pull the fence, level the unimproved lot, and level and pave that so that we can expeditiously provide additional parking in the area. Mr. Backstrom stated that we do not have a plan at this point of time to do that. That will be part of the ongoing process. We just completed the agreement on the building last Friday.

Commissioner Moore directed staff to implement the removal of the fence as well as security gates on the

one developed parking lot and provide estimates on paving that will be conducive with the blue print that we have on the new building and bring those forward no later than our January meeting.

Commissioner Rardin would like the fence saved to put it in the County Auction.

Janet White stated that if the County could provide any kind of trees for the parking areas. It's just a suggestion, but they are very premium parking places in the summer.

There being no further business before the Board, the Chairman adjourned the meeting at 8:05 p.m.

ATTEST:

---

Ronny Rardin, Chairman

APPROVED:

---

Robyn Holmes, County Clerk

Regular Meeting  
November 19, 2009