

**Regular Meeting**

**January 31, 2006**

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 31, 2006; 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:

Doug Moore	Chairman
Clarissa McGinn	Vice-Chair person
Michael Nivison	Member
Dr. Martin Moore	County Manager
Dan Bryant	County Attorney
Ray Backstrom	Assistant County Manager
Bill Lee Parker	Road Shop Superintendent
Bobbie Reyes	Department Assistant
Lynn Estrada	Deputy Clerk

**DRAFT**

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

Commissioner Moore stated that we have an emergency resolution, declaring drought emergency that needs to be added to the agenda.

Commissioner McGinn made a motion to except item 16, adding it to the agenda, Resolution No.01-31-06/94-53, declaring a drought situation in Otero County. The motion was seconded by Commissioner

Nivison. A vote was taken and the motion passed unanimously.

**Presentation:**

A safety award was presented to the Detention Center for completing six months of accident free operations.

**1. Consent Agenda:**

Commissioner Nivison made a motion to approve items A. Minutes, B. Bills List #29, #30, #31, C. Health Care Services for January 2006, D. Personnel, new hires and transfers and E5, Sealed bid #06-016 Sports Utility Vehicle for the Assessor's Office. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

a. Request approval for Sole Source to purchase a used 1982 Pierce/Tele-Squirt pumper truck from Artesia Fire Equipment Inc. in the amount of \$43,160.00.

Commissioner McGinn made a motion to approve the sole source purchase of a used 1982 Pierce/Tele-Squirt pumper truck. The motion was seconded by Commissioner Nivison. Terry Mueller, Fire Chief for Oro Vista, stated there is a correction on the price of the pumper. The total cost will be \$48,013.00. Commissioner McGinn amended the motion to approve the sole source purchase of a used 1982 Pierce/Tele/Squirt pumper truck from Artesia Fire Equipment Inc. in the amount of \$48,013.00. The amended motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

**2. Resolutions, Contracts & Agreements:**

a. Request approval of Resolution No.01-31-06/94-45 regarding a budget adjustment for the Tire Recycling Grant.

Commissioner McGinn made a motion to approve Resolution No.01-31-06/94-45. The motion was

seconded by Commissioner Nivison. Donna Brandon, Finance Director, stated this resolution includes an appropriation for a temporary cash transfer of thirty thousand dollars from Emergency Reserve. This will be the first purchase on this grant in the amount of about fifty thousand dollars for the purchase of a new tire baler. The money will be put back into Emergency Reserve when the reimbursement from the grant comes in. A vote was taken and the motion passed unanimously. See pages

b. Request approval of Resolution No.01-31-06/96-48 regarding a budget adjustment for the Fire Protection Fund/Alamo West Fire Department.

Commissioner McGinn made a motion to approve Resolution No.01-31-06/94-48. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

c. Request approval of Resolution No.01-31-06/94-49 regarding a budget adjustment for the Fire Protection Fund/Oro Vista Fire Department.

Commissioner McGinn made a motion to approve Resolution No.01-31-06/94-49. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

d. Martin Moore-request approval of Resolution No.01-31-06/94-47 regarding compliance with the New Mexico Open Meetings Act.

Commissioner McGinn made a motion to approve Resolution No.01-31-06/94-47 regarding compliance with the New Mexico Open Meetings Act. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

### **3. Elected Officials, Department Heads, Committee Reports:**

a. Gus Marker-request approval to extend Fire Ban Resolution No.01-10-06/94-46.

Commissioner McGinn made a motion to approve to extend Fire Ban Resolution No.01-10-06/94-46. The motion was seconded by Commissioner Nivison. Dan Bryant stated that pursuant to statute, this ban is only good in 30 days increments. The ban was put in place January 10<sup>th</sup>, and the existing Resolution will expire February 10<sup>th</sup>. The next Regular Commission Meeting isn't until February 21<sup>st</sup>. We are a little early, but so there wouldn't be a break as long as the fire danger exists, that's the reason the Resolution is on the agenda tonight. There have been some questions whether this ban is going to apply to the agricultural farms who burn to get their fields ready to plant. We could make some adjustments to exclude certain agricultural operations. Commissioner McGinn stated that in the past the agricultural operations would call the Fire Departments to have a standby when they were burning. But if this drought continues for 6 months or longer some of these people may not be able to get their fields planted. John Blansett, Sheriff, stated that the residents would also call the Sheriff's Office to report doing a control burn. Martin Moore stated that since people can't burn their branches and greenery, the Convenience Center is receiving quite a lot. Mr. Moore is asking to include in the Resolution to allow the Convenience Center to use the air curtain burner.

Commissioner McGinn amended the motion to approve the Fire Ban Resolution No.01-10-06/94-46 to include exceptions as discussed with agricultural and the Convenience Center air curtain burner. The amended motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

b. Gloria Sainz-request approval to review the proposed amendment to the Otero County Indigent Ordinance 01-04.

Commissioner Nivison made a motion to review the proposed amendment to the Otero County Indigent Ordinance 01-04. The motion was seconded by Commissioner McGinn. Commissioner McGinn stated

that we are not approving the Ordinance, just the review of the recommendations that have come in. Commissioner Moore stated that we changed this Ordinance a couple of years ago. We may have been too restrictive in parts of the Ordinance. We have spoke with our Health Care Providers in the community and some of the recipients of this fund and have found that we need to go back and look at some of the changes that we have done. There will be several public hearings held on this Ordinance. A vote was taken and the motion passed unanimously.

c. Approval to advertise for a public hearing regarding the amendment to the Otero County Indigent Ordinance 01-04.

Commissioner Nivison made a motion to advertise for a public hearing regarding the amendments to the Otero County Indigent Ordinance 01-04. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

The time being 6:30 the Chairman recessed the Regular Meeting and opened the Public Hearing on the approval of a liquor license transfer of Ownership and Location for Brewer Oil Company to Tularosa Pecan, and also to discuss the amendments to the Otero County Subdivision Ordinance 97-03. Commissioner Moore recessed the Public Hearing for the Otero County Subdivision Ordinance 97-03 until the conclusion of the Public Hearing on liquor license transfer.

Glen Cox, resident of the Rosa Del Sol Subdivision, stated that he had signed a petition against the liquor license coming into our subdivision. Since then, Mr. Cox has spoke with Mr. Glover and found him to be a good Christian man. Mr. Glover told him that he wouldn't be selling liquor by the drink only as a package sell. Mr. Cox would like to remove his name from the petition. Commissioner Nivison explained to Mr. Cox that the County really has no authority on these liquor licenses. The State informs us of the transfer so we can apply any County tax and to inform our Law Enforcement. It

is really just an administrative task for the County.

Commissioner McGinn made a motion to approve liquor license transfer of ownership and location for Brewer Oil Company to Tularosa Pecan, #9 Radio Road, Tularosa NM. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

The Chairman adjourned the liquor license Public Hearing and opened the Public Hearing on the Otero County Subdivision Ordinance 97-03.

Commissioner Nivison stated that this Ordinance will be a living document. It will be reviewed annually to add to it or take away from it as needed. Commissioner McGinn stated that the Planning Commission has been working on this Ordinance for about a year, coming up with recommended changes from the State level and legislative actions.

Commissioner Moore called on the following people for their comments per the sign up sheet;

1. Klad Zimmerle stated that on page 0 of this new Ordinance it states that it's not part of the Ordinance, but the philosophy has changed. These changes in the philosophy state that roads will be built before the lots in a subdivision are sold. This ensures that the roads are built to County standards or private standards. Since the regulations were implemented eight years ago, Klad challenges the Board to find a subdivision where by the next paragraph this should stop generating more of the problems we now have. In the older subdivisions roads aren't being built to specs, and are not located where they are drawn. What we did in 1996, we established a basis for good subdividing in the County and State and some of the changes to this Ordinance that are proposed are going to nothing more than bog it down. It will put the Board in such a position that you will be here more than 2 times a month, and it will be longer and longer. This will be for Claims of Exemptions and Summary Subdivisions, it will be a whole new ball game. It still needs some work and he thinks it can be done but not this. A

community committee, planning committee and government committee needs to be formed and work together. Commissioner McGinn asked Klad if he could submit his suggestions in writing. He will turn in his remarks.

2. Mitch Hibbard, Penasco Valley Communications, they do telephone and cable TV service in Mayhill, Cloudcroft and Twin Forks area. He is with the engineering department and was asked to review this document to see how it would effect utilities. On page 36 it talks about utility connections, where there will be a \$500.00 fine if you connect before it's a subdivision or it gets a valid building permit. Cable and telephone is listed as two of these utilities. Mr. Hibbard would like to have telephone omitted from this section. On A5, would like to have cable TV added. On D4, item 7- estimated schedule for construction to include- the developer can't control this for the telephone. This is our option, not the developer of when the service will be put in.

Dan stated that in article 2 definitions, we don't define utilities. Dan requested Monroe Curtis, Planning Commission, to look at inserting a definition of utilities that puts the phone and cable in where they need to be and keeps them out where they don't need to be, we could solve that problem with the definition.

3. Hans Steinhoff, Planning Commission, gave his reasons for revising the Subdivision Regulations as follows:

a. Subdividers are promising certain improvements, mainly adequate roads, by filing a plat and a disclosure statement with the County, but then never building the roads to the standards indicated o the plat and in the disclosure statements. Private roads are used as a method to never build roads that comply with the Regulations.

b. Subdividers using the Exemptions for purposes that they were not intended for. Dividing a

parcel into 6, 7, 8 or 9 lots and filing only a summary review plat and avoiding state agency review and a terrain management plan. Subdividers use Exemption 5 (5 year holding period), Exemption 7 (family exemption, parcel sold or donated to immediate family members).

c. Certain words, such as summary review plat, are not included in the definitions.

d. The County does not adequately discourage waste of one of our most precious resources, water. We still permit the same water consumption that was permitted when there were less than half as many people in this County as there are now. The State Engineer has requested that we try to reduce our water consumption, but we don't seem willing to try it.

e. The County does not comply with its own regulations in regard to subdividers building roads without permits and schedules. Roads are being constructed in the County prior to plat approval, without notifying the County as required by Section E17.

f. Subdividers avoid the cost of providing water to lots in their subdivisions by letting buyers drill their own wells without any assurance that they will find water. Section 4.2 requires, at a minimum, the supporting documentation required for the preliminary plat review shall provide sufficient information for the County to determine that: 1. Water is sufficient in quantity to fulfill the maximum annual water requirements of the subdivision. The State Engineer, over and over again, tells us that the subdivider is not providing sufficient information for adequate water. Sure, the subdividers use data to show that there is plenty of water somewhere in the County, but not necessarily available to the lot purchaser.

g. In 2004 The Otero County Board of County Commissioners directed the Otero County Planning Commission to revise the County Subdivision Regulations to change the requirements for the surface of connecting roads in new subdivisions to be similar to the surface of the existing roads to

which they connect, in other words, if the entrance road in a new subdivision connects to a paved road, it should be paved or if to a chip sealed road, it should be chip sealed.

h. Exemptions should be approved by someone other than a single elected official of the County, who is dependent on his clients for future re-election.

4. Ernesto Martinez stated that he has a lot of concerns for the small subdivider. If we encourage the big subdivider, he has a lot more money than the little guy, who do we want to encourage more. With water being a big issue why would we encourage the big developers with their big subdivisions. The regulations are wanting the roads to be complete prior to any sales. This will be very hard for the small developer with no money from sales coming in and trying to complete the roads. Mr. Martinez thanked the Board for the opportunity to speak.

Commissioner Moore stated that within the Ordinance there is more than one classification of subdivision addressed. We have to make provisions for the big developers and keep the small developer as well.

5. Dale Palkki, Subdivision Coordinator, explained the process of the Claim of Exemption. The proposed change in the Ordinance would require presenting the claim of exemption to the Planning Commission for recommendation of approval and then sending it on to the County Commission for final approval. This defeats the original purpose of having the claim of exemption procedure available. Property owners desiring to obtain a mortgage or transfer property to their children would be unnecessarily delayed. Realtors, title companies and lending institutions involved in this type of transaction would also be adversely affected. Dale is asking to have this section stay as is with no amendments.

Under Definitions of Subdivisions, pg 6 of 37, would like to have this stricken.

Klad Zimmerle recommended a committee be set up with Home Builders Association and the Planning Commission to go through the Ordinance again and give it back to the Commission with their recommendations. Commissioner McGinn stated that if the Home Builders Association reviews the Ordinance and comes up with recommendations, we could discuss the recommendations at the Work Session prior to the Regular Commission Meeting. All that were present agreed to come to the Work Session with their recommendations.

Commissioner Moore requested staff advertise for an additional Public Hearing for the Subdivision Ordinance 97-03. We appreciate everyone's input tonight.

The time being 7:35 p.m. the Chairman closed the Public Hearing and returned to the Regular Meeting.

#### **4. Resolution No.01-31-06/94-53, Declaring Drought Emergency.**

Commissioner McGinn made a motion to approve Resolution No.01-31-06/94-53, declaring a drought emergency. The motion was seconded by Commissioner Moore. Mr. Martin Moore, County Manager, stated that we have spoke to various people throughout the County about our drought situation. The drought areas are explained in the Resolution. Cloudcroft and Twin Forks are seeing a significant reduction of water that is coming from the springs. Alamogordo is also seeing a significant drop of reservoir levels coming from Bonita Lake and there is no snow. This Resolution will help us to ask the State for help if it is needed and would also allow us to appeal to the Federal Government for help. Dan Bryant stated that we would propose to put this item back on the agenda on about 90 day increments to review, to see whether there has been any change in the precipitation levels or any adjustments that need to be made . A vote was taken and the motion passed unanimously. See pages

#### **5.Commission Discussions/Correspondence:**

a. Clarissa McGinn stated that Bill Parker has had a discussion with the Engineer about the

water flow information in order to proceed with the Riata Road culverts. Bill Lee stated that he has spoken with Mr. Livingston, but he keeps saying by next week he will have the report. Bill stated that if we don't have it by next week he will obtain the information elsewhere.

**6. Unscheduled Citizen Communications:**

Hans Steinhoff stated that he used to be a volunteer at the upper Cox VFD. The Fire Department has what they call a slash pit, which in the past was used for fire training. This pit has become a problem with people throwing their trash and slash in the pit. The Fire Department is concerned about burning it because of the fire danger. Mr. Steinhoff is hoping the County will come and chip what's in the pit and haul it away. He would also like the County to set up some alternate safe sites for the residents to dump their slash.

Commissioner Moore instructed Bill Parker and Randy Horn, to go look at this pile of slash to see if we could take our mobile air curtain up there when it rains again in order to burn it. Another option would be to rent a commercial chipper to come and chip the whole pile. Commissioner Moore would also like to see if we could put a fence up to keep people from dumping their slash.

**7. Executive Session:**

Commissioner McGinn made a motion to go into Executive Session to discuss item B. Pending and Threatened Litigation, item B1 through B7 as listed, Personnel Issues and Land issues. The motion was seconded by Commissioner Moore. Roll call was taken as follows:

Commissioner McGinn	yes
Commissioner Moore	yes

Commissioner McGinn made a motion to come out of Executive Session having discussed the items listed B1 through B 7 pending and threatened litigation, C. Personnel Issues and D. Land issues. The

motion was seconded by Commissioner Moore. Roll call was taken as follows:

Commissioner McGinn	yes
Commissioner Moore	yes

Commissioner Moore made a motion to approve item B5 under pending and threatening litigation, approve settlement agreement on the Justice Benefits vs. Otero County Lawsuit. The motion was seconded by Commissioner Moore. A vote was taken and the motion passed unanimously.

There being no further business before the Board the Chairman adjourned the meeting at 8:28 p.m.

APPROVED:

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Doug Moore, Chairman

ATTEST:

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Robyn Silva, County Clerk

Regular Meeting Jan. 31, 2006