

Regular Meeting

March 6, 2007

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., March 6, 2007; 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-Chairperson
Michael Nivison	Member
Dr. Martin Moore	County Manager
Ray Backstrom	Assistant County Manager
Dan Bryant	County Attorney
Bill Lee Parker	Public Works Director
Pamela Heltner	Commission Liaison
Lynn Estrada	Deputy Clerk

DRAFT

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

1. New Business:

Presentation of the proposed Otero County Subdivision Ordinance with a request for approval to hold a public hearing on March 27th with anticipation of a vote for adoption of the proposed revised Subdivision Ordinance.

Commissioner Nivison made a motion to approve the proposed ordinance for publication and scheduling of a March 27th public hearing. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

2. Consent Agenda:

Commissioner McGinn made a motion to approve items A1 thru D8 under the consent agenda removing E9 from the consent agenda. 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. The Otero County grazing Advisory Board is requesting the support of three resolutions adopted by the Otero County Cattleman's Association. Resolution No. 2007-1, removal of Oryx from all areas outside of the White Sands Missile Range. Resolution No. 2007-2, prevent reintroduction or territory expansion associated with any large predator. Resolution No. 2007-3, removal of lions from the protected animal list.

Commissioner McGinn made a motion that we support the Resolutions that were named. The motion was seconded by Commissioner Nivison for discussion.

Commissioner Moore stated that the first resolution is the removal of the Oryx. It is the opinion of the Cattle Grower's as well as many folks that live in rural areas, the Oryx was initially introduced on the White Sands Missile Range as an exotic species. The intent at the time was that they remain within those boundaries, they have not. They have become a nuisance as they destroy fences and private property. New Mexico Game and Fish have a program whereby, if they come on your property outside of the scope of White Sands Missile Range there is some depredation hunting available. The original

agreement was to keep them on the Missile Range, that has not been accomplished. They would like this resolution in support of removal from all other areas.

Resolution No. 2007-2 will prevent the designation of Otero County as the potential habitat for reintroduction of wolves.

Santiago Gonzales, stated that Fish and Wildlife Services doesn't have any plans to reintroduce the wolf into Otero County. We have not received any directive from our regional director or our national director to reintroduce the wolf. If we do decide to take action, then we will apply all of the NEPA and all of the administrative procedures. Anything that takes place would come through the Commission and public awareness.

John Turney stated that just because they don't have plans to do something, doesn't mean that something isn't in the works. When dealing with the Federal Government they are required to have specific plans. They don't always publish these types of things, so I would be leery of verbiage that says we don't have plans to do something, because that might have a specific meaning for a specific plan. Mr. Gonzales also mentioned that if they go through the process they would have to concur with NEPA and possibly the National Historic Preservation Act, which would supposedly include the County and other agency's as consulting parties. However, in my opinion, the Federal Government is lax in following the code of letter in spirit of NEPA, which is the National Environmental Policy Act. I would oppose the introduction and agree with the Cattle Growers that there doesn't need to be an introduction of these wolves into Otero County. Also, I am very leery of what will be happening with the Jaguar. The Fish and Wildlife will be saying the same thing, that they have no plans.

Commissioner Moore asked Mr. Gonzales if Otero County is in the critical habitat area? Mr. Gonzales

stated that it isn't critical habitat. The recovery areas encompasses South of I-40, where Arizona and New Mexico meet and North of I-10, through Las Cruces. The White areas was looked at, but asked the Fish and Wildlife to rule this area out because it was too large of an area. Under the existing rule we can not release any where in New Mexico except in the Hilas. They are not a sub-species, they are the Mexican Grey Wolf. Since 1998, 160 wolves are in the population. As time goes on there will be less and less releases. Ranchers have a right to harass the wolf if they are within 500 yards of their property and if life is threatened or animals, you can kill the wolf.

Commissioner Nivison stated that there is a concern that the wolf has wandered into areas where they shouldn't be. Commissioner Nivison stated that it is only a matter of time before someone gets hurt or killed, especially concerning children. Until these concerns are addressed he opposes even the thought of reintroduction of the wolf into this County.

Dr. Moore stated that he heard mention about some type of adaptive over site committed, but I didn't hear anything about local government or county representation on this committed. Mr. Gonzales stated that there are 2 counties that are cooperators that aren't part of the adaptive committed. These 2 counties are Sierra County, New Mexico and Greenly County, Arizona. Greenly County has been very active in helping the committee modify some of its management schemes.

Commissioner Moore asked if an animal has to be removed who is the agency that is contacted? Mr. Gonzales stated that you would call the animal damage control.

Commissioner Nivison stated that we were asked to pass the resolutions and we have been looking at ordinances. This is what state statutes say about ordinances and the County's authority. The things that we are responsible for are health, safety and welfare. But county ordinances are effective within the

boundaries of the County, including privately owned land or land that is owned by the United States. So, he would like to postpone this and look at putting these resolutions into the form of an ordinance so they have the force of the law if we are going to do this. Commissioner Moore stated that his desire is to make certain that we have everybody that is an authority or a citizen, and that they had the opportunity to make their comments.

Commissioner McGinn stated that at our work session we did discuss that we were in support of these resolutions, but that an ordinance provided more jurisdiction and power to deal specifically with these items. I would like to entertain the idea of those ordinances and then at that time hold another public hearing in order for all interested parties to make comment.

Dan Bryant stated that the action item that is on your agenda is and the motion was to simply take a vote to support the resolutions. You can take that action tonight. Staff has been given direction to bring back additional matters back to you in the form of ordinances. When we get them ready the first action, with an ordinance is to request authorization to publish, then the second action is to hold the public hearing. It can be done either way. Commissioner Moore stated that the last resolution to consider is No. 2007-3, the removal of mountain lions from the protected animal list and reclassify it as a varmint. A gentleman from the New Mexico Game and Fish stated that the lion is protected under state statute, so they can't be removed from the protected animal list.

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

4. Public Hearing:

Commissioner Moore called the Public Hearing to order for the Personnel Policy Ordinance 98-01. The Chairman recessed the Public Hearing for the Personnel Policy and called the Public Hearing to order

for preliminary plat approval for Spanish Trail Subdivision. The Chairman recessed the Public Hearing for Spanish Trail and called the Public Hearing to order for preliminary plat approval for Desert Edge Subdivision and recessed the Public Hearing for Desert Edge and called the Public Hearing for the Personnel Policy Ordinance 98-01 to order.

Dan Bryant stated that in the stations in front of you, you have both a clean draft of the Ordinance as it turned out with signature page and a title page. In addition, you have a second booklet that has the discussion draft, which includes all of the comments that were gathered, recorded and discussed over the course of the meetings that we have conducted with department heads over the last two to three weeks. A series of the comments that we received to have back when the ordinance was initially distributed in late September. If the Commission desires, I can take you through 8 tabs that are the highlights of changes and discussion that occurred over the last three weeks. There is one item in the list that staff discussed and we broke into three equal groups. We decided to call this to your attention and let the three of you make the call about how that language should come out. If you will go to page 4, section 1.2 over the course of the last year, we have had instances where contract employees move from a contract situation into full time classified status. In those instances the supervisory staff felt that it was unfair to work for the County essentially as a full time employee, under a contract for a year or more and then bring them in to full time classified status and require another 12 months of probation. We drafted the second paragraph of section 1.2 that grants discretion to the department head, elected official and County Manager through action of the Board of County Commissioners, when that situation arises we can ask you to either shorten or eliminate the probationary period. Commissioner McGinn stated that that still leaves it within the discretion of the department head that someone, although they

have served that amount of time on a contract, it still gives them the discretion to say we would like this person to continue on probation or not. Mr. Bryant stated that this is correct. It doesn't eliminate probation, but allows us to look at particular situations. The second area that I want to call to your attention is starting on page 6. We have inserted section 2.11, 2.12 and 2.13. 2.11 gathers up the concerns of the Commissioners about a number of the operating procedures that we have, that were previously in the ordinance. When we got a request from the Insurance Authority or somebody else to adjust the policy or if the law changed because of a federal case law decision, we then had to go back and amend the ordinance. We have created a section that grants the County Manager the ability to put together standard operation procedures. The list is pretty comprehensive but not a completely comprehensive, list of standard operating procedures, because there is no way that you can anticipate them all. We have about 28 items on the list that would be handled by policy so that when it's necessary to adjust them they can be adjusted quickly and efficiently to stay current with the changing legal environment. In Section 2.12 we have addressed the issues with the interface between this policy and the collective bargaining agreements that we have. We have provided where they are inconsistent, the collective bargaining agreement controls where they are consistent or where the collective bargaining agreement references this agreement, is the governing document then it would control. In Section 2.13, we recognize the Sheriff's Department, the Detention Center and parts of Public Works are areas where they have to meet OSHA regulations and special rules to conduct their work safely. We have recognized that in these three departments they need to have the ability to address their own operating procedures to govern those issues and we have granted them that power and authority. Page 10 Section 3.9 deals with reference checks and background checks. Over the years we have had lots of

issues concerning reference checks and background checks. We have had a number of problems with those. We have adjusted the language so we have more flexibility and choices in terms of how to verify the references that we are getting and how to obtain background checks on potential employees. Page 12 section 4.3B, the last clause in this provision. This is one that four lateral transfers between departments, the department head of the receiving department must consent to the transfer and has a right to require a probationary period where they think it is appropriate. Page 14 section 5.1 items B and D. This is a provision that governs what are the rights of an employee during the probationary period. Our existing policy allows probationary employees to take vacation time after the first six months of probation. It does allow them to take sick leave as soon as it accrued during probation. One third of the group thought that it should stay the way it is, one third of the group thought that probationary employees should not be eligible for either sick leave or vacation and the other third thought they should be eligible for both during the whole probationary period. Mr. Bryant told the group that he would bring it before the Commission and let them decide how it should be written. Commissioner Moore stated for his part that you shouldn't take annual leave until you have been here for a year and sick leave you should be able to take it as you accrue it. No one ever chooses to be sick, if they have accrued it, it should be available to them. Commissioner Moore thought that we should come back to this issue after Dan is finished with his four other changes.

On page 33, section 9.2, provisions a, b, c, d and e in addition to the language that you see in your draft, also had accrual rates specified. We use a 26 pay period year, the accrual rates that we specified were wrong almost completely across the board. We all agreed that you accrue your vacation the way it's set out. If you have less than five years you accrue 12 days of annual leave per year or 1 day per month.

The other thing that we did on page 34 was we had big discussion about donating sick leave. In the existing ordinance, employees are permitted to donate both annual and sick leave. The group felt that we should take annual leave out of that formula because a number of our employees felt obligated to donate their time and felt like they couldn't say no. We tried to protect the employees by narrowing it down to donating sick leave only. We looked at sick leave accrual and felt that we needed to protect the employees and get them more sick hours on the books. We increased the bottom threshold at which you can donate from 80 hours on yours books to 160 hours on your books. Commissioner Moore asked if there was a maximum accrual rate for sick leave. Under annual leave there is a maximum accrual of 280 hours, in sick leave there is no maximum accrual established. The vast majority of our employees have less than 200 hours on the books and the balance are scattered between there.

On page 38, section 9.14, what we did with some of the language was, we put in some accountability and verification for jury attendance and jury leave requiring the employee to produce to the Human Resources Department a verification that they acutely served on the jury and or how long it lasted.

Dan returned to page 14 where the group was fractured into 3 positions. The existing policy provisions are provided in the draft the other 2 options are 1.) no vacation and no sick leave at all for the 12 months of probation or 2.) all of both for the entire 12 month of probation. Commissioner McGinn asked how is annual leave and sick leave accrued on the probationary period. Dan stated that both leaves are accrued in the course of that first 12 months. If you allow one and not the other perhaps you are encouraging the probationary employee to abuse the one that you are allowing. Commissioner Moore stated that you can take off without pay too. This policy allows sick leave to be taken as soon as they accrue it. Commissioner McGinn stated that the question is then whether or not to have the annual

leave available before the 12 months probationary period is finished. Dan stated that after 6 months, they would have accrued 1 week of annual leave.

John Blansett stated that by allowing one and not the other you would be encouraging abuse. In his opinion we should allow them both.

Virginia Blansett stated that she too believes that annual and sick leave should be able to be used.

Donna Brandon stated that leave without pay, people aren't going to do it. If confronted with a choice of using sick and get paid or take leave without pay, they would choose leave to get paid. The likelihood of anyone going 6 months without needing a day off for an appointment or getting sick is very unrealistic.

Paul Quaroli agrees with the policy the way it is written now. We want the employee here the first 6 months to make sure they are getting the training that they need. The sick leave allows that you aren't bringing somebody in or forcing them to come with something that could spread about the office.

Commissioner Nivison made a motion to make sick leave and annual identical where the employee can use it as soon as it accrued. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

Commissioner Moore made a motion to incorporate the changes that have been discussed here tonight and republish for an additional public hearing at the next scheduled County Commission Meeting. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously.

The Chairman adjourned the Public Hearing on the Personnel Policy and reconvened the Public Hearing for the preliminary plat approval for Spanish Trail Subdivision.

Dale Palkki, County Assessor, and Mr. Hanes, Subdivider of Spanish Trail Subdivision approached the Board. Mr. Palkki stated that this is a 36 acre tract of land being divided into about 30 lots. We have gone through all the proper procedures and reviewing agencies. The Planning Commission had a few recommendations for amendments. They met last Tuesday and approved the amended changes. Commissioner Nivison made a motion to approve the preliminary plat for Spanish Trail Subdivision. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

The Chairman closed the Public Hearing on the Spanish Trail Subdivision and reconvened the Public Hearing for the preliminary plat approval for Desert Edge Subdivision.

Dale Palkki stated that this is a 76 acre subdivision in the Chihuahua Road area. The Planning Commission has recommended approval to this subdivision. It has gone through all the proper procedures and reviewing agencies. Commissioner Nivison made a motion to approve the preliminary plat for Desert Edge Subdivision. The motion was seconded by Commissioner McGinn.

Janet White stated that she would like to have the name of the developer and the location of the new subdivisions being submitted included on the agenda report.

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

The Chairman closed the Public Hearing on Desert Edge Subdivision and returned to the regular meeting.

5. Commission Discussions/Correspondence:

a. Commissioner Moore stated that he recently attended a Workers Compensation Meeting. The losses this year for Otero County have been drastically reduced. Commissioner Moore thanked the

employees of Otero County for all their hard work with safety issues.

b. Commissioner Nivison stated that he had been to Santa Fe and some of our Capital Outlay requests had been up for discussion. He will be going back on Friday to speak with the Governor about some of our issues.

6. Unscheduled Citizen Communications:

a. John Turney stated that he would like to congratulate the Board for their stand on the resolutions for the Wolf, Oryx and large predator.

Mr. Turney stated that what he would like to speak about is the same thing that he spoke about last June. He objected to the agreement with the County Attorney, Dan Bryant that was entered into on the 1st day of July 2006. It is an eight year contract, it says so several times. This agreement shall remain in full force and effect for the eight years that is entitled to pursuant to the procurement code. It was for thirteen thousand five hundred dollars per month for a county attorney. I objected to the size, I objected to the length and I also said that competition would have been a good thing there. Many people that he had spoken with were shocked that the contract was not going up for bid. I would like to put my last comments in the public record this time, so I don't have to go through all of them again. I raised an objection to Mr. Moore and I believe an investigation was ensued. Now this contract is going up for bid at the end of this month. I spoke with Ginger Herndon and had no reason to doubt the things she was telling me. She seems like a good public servant. What I want to know is how eight years got inserted into this contract and who is responsible for this document of my County Commissioners, if one, two or all three. This does not seem consistent with procurement law. That's my question, who would be responsible for this document? Commissioner McGinn stated that the contract is written as

an eight year contract and goes out to bid once a year. Mr. Turney doesn't read that, you can negotiate for a raise every year. Commissioner Moore stated that he hasn't reviewed the document as of late and I don't know the language in it. I believe it was a eight year contract with annual renewals. Mr. Turney stated that Doug Moore, Dan Bryant and Robyn Silva signed it. Dr. Moore stated that every year for those that go out to bid and are awarded they have a contract that is given a perennial length and the award is subject to renewal every year. Every year we have 3 options. We can go back and request the item be approved as it was the previous year, we can submit a request for an amended contract that the Board would have to approve, or we can request that it go out for re-bid. Ms. Herndon stated that the eight years was a mistake. It should have been four years. Ms. Herndon has a contract that was initialed and crossed out and put the four years. It was a mistake and myself I know that every four years for professional service it goes out to re-bid. It would have never have lasted eight years, it just was not caught at the time it was signed. Mr. Turney stated that he congratulates and compliment, Ms. Herndon for her public service and her attitude I think it's been great. However that doesn't address what I am addressing, my public officials. My question was who is responsible for this document? Commissioner Moore stated that I am. I am the Chairman of the County Commission, I assume that makes me responsible for all County documents. Is this document consistent with procurement law? You don't have to answer now I want this question answered by the District or State Attorney or whoever the appropriate legal entity is. This document is a public document, it's signed and that's what I arise to ask the questions about. The reason I am so adamant about this is because thirteen thousand five hundred dollars per month is outrageous. These are our tax dollars. These are monies that come from our homes, some of us have expensive homes and some of us don't. As we have seen recently

with the City, it seems like we are sitting ducks as taxpayers sometimes. We need to watch these things. It's my opinion that we have lost control of our Federal government. I almost have no hope anymore, I think we have lost control of our State government and all we have left is citizens to speak out to our City and County governments. That's what I am afraid of, that's why I was encouraging you folks on what you did and complementing and giving credit where credit is due, when it comes to trying to protect us from what the Feds might want to come in and this huge wolf corridor from I-10 to I-40 to where ever. If we don't control these things we are done as a democracy. That is my public opinion and I wish I had better faith in the Feds and State, but this is the type of thing that we can not have. The highest paid attorney in the state is a hundred and twenty-eight thousand dollars, that's for the Los Alamos County Attorney who is dually the City Attorney for Los Alamos. Some one working part time making fifty percent more than that, it isn't right. When this comes up again, I would expect more response because I called for it to be bid on and now it is. I would appreciate an answer to that question of who is responsible for this and is it consistent with procurement law. Thank you.

Dan Bryant stated that contract was bid the last time around in 2003. Sometime in the spring, perhaps I think this one is expiring in April or so. During the legislative session that year there were 2 bills that were run through the legislative amending the procurement code for professional services. Both bills have provision that extended professional services contracts from four years, before they were re-bid to eight years. One of the two bills had a provision in it that said, that eight year provision applies for all professional services except legal professional services. The other bill included all professional services, legal and all. Both bills passed both the Senate and the House. Both bills went to the Governors desk. One of the bills got reported into the New Mexico Law disc system, and that was the

version that said eight year contract on all professional services. The County was re-doing it's procurement, picked up that language and put the eight year provision in. At some point in your meeting minutes in 2003, there's a discussion where we talked about the contract, we discussed where it was in error. What happened was that the Governor signed both bills, but he signed the bill with the four year provision for legal services second, which means that it controls. It's a repeal by implication of the first to the extent that it was inconsistent with the second bill. We corrected the contract so it reflected a four year renewal, that four year renewal is up now and that is why it's being re-bid now, because we are at the end of the four year tract on the legal services for the County. That's what happened. I can't explain why in the 06 version the eight year number was picked up again instead of the four year number, but Ms. Herndon is correct, she called it to our attention. There is some place in Ginger's file there is a signed agreement where the eight years is marked out and it's put back to four. I initialed it and I don't know who else signed it, but somebody else initialed it to put it back to four years and that's what happened. The correct renewal for legal services is once every four years. We are due and we are doing that now because we are supposed to. Commissioner Moore stated does it meet procurement law, the answer is yes and no. At the time it was signed with a typo in the amount of years and it may not be a copy of what has been publicly handed out. The bulk of contract met the procurement law in 2003 when the contract was entered into. Mr. Turney stated that this is inconsistent with what I learned from Ms. Herndon today. Commissioner McGinn stated that your question was, does it go by state procurement code. Staff is saying that originally it was eight years when all this stuff was going through the Legislative, but that was corrected to four years and in reality going out to bid right now, which would be the end of the four years. So it is following whatever procurement code that

is out there and you are performing the action to adhere to that code. Ms. Herndon stated that is correct.

Mr. Turney stated that this isn't consistent with this document. That's my question. What you are saying might be so, but this document is an agreement entered into on the 1st day of July 2006. This document seems to circumvent the procurement process and I think that is why Mr. Key was looking at it. Have any of you Commissioners been interviewed by Mr. Key in this investigation? The Commission all answered no. Dan stated that he hasn't been interviewed, but Mr. Key notified him that he was looking into it, but he hasn't been contacted since then. Mr. Turney asked what are the public's right to know on any kind of amendment to an agreement that would be initialed and resigned.

Commissioner Nivison stated that it was a public document. Mr. Turney stated therefore it would have been published in your public documents on our website. Commissioner Moore stated that we publish things on our website as a courtesy, it's not a requirement. Mr. Turney stated that he will be coming to Dr. Moore's office tomorrow and doing an additional inspection of public documents for all iterations of this agreement.

b. Donald Homan Chaparral United Neighbors, thanked the Commission and County Staff for making available to us the three ordinances in the Spanish translation. The ordinances were garbage and trash, noise and junk cars. As a neighborhood group we feel that we can accomplish getting the word out to the residents to clean up their property with these ordinances. If not we will come back to the County for their help. Commissioner Moore stated that any document that is our document we would be happy to translate into Spanish for them.

c. Cruz Hernandez, Chaparral United Neighbors, stated that we are continuing the Orange Campaign against the landfill. The Orange Campaign is not just against the landfill, we are working on

educating the people on the different regulations that the County has given us. We are requesting for the Commissioners to give us a public declaration against the landfill. We have received one from the Dona Ana County Commissioners.

Commissioner Moore stated that by the New Mexico Constitution, State of New Mexico requires that the Spanish language be embraced. Any state regulations or codes they are required by the Constitution to be bilingual. We can make this request to the State that they be provided to you. Commissioner Moore stated that he would be happy to present you with a Declaration at a future meeting. The booklets that Mr. Hernandez is requesting, he can receive then from the New Mexico Environment Department in the Spanish language.

7. Executive Session:

Commissioner Nivison made a motion to go into Executive Session to discuss pending threatening litigation-Forest Guardians vs. U.S. Forest Service. The motion was seconded by Commissioner McGinn. Roll call was taken as follows:

Commissioner McGinn	yes
Commissioner Nivison	yes
Commissioner Moore	yes

Commissioner Nivison made a motion to come out of Executive Session discussing pending threatening litigation-Forest Guardians vs. U.S. Forest Service, making no decisions. The motion was seconded by Commissioner McGinn. Roll call was taken as follows:

Commissioner McGinn	yes
Commissioner Nivison	yes

Commissioner Moore

yes

Commissioner McGinn made a motion in relation to item B that was discussed during Executive Session that we move to intervene as party defendant and file a cross claim against the U.S. Forest Service. The motion was seconded by Commissioner Nivison. A vote was taken and the motion was passed unanimously.

There being no further business before the Board, the Chairman adjourned the meeting at 8:07 p.m.

APPROVED:

Doug Moore, Chairman

ATTEST:

Robyn Silva, County Clerk

Regular Meeting March 6, 2007