

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 27, 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
Pamela Heltner	Commission Liaison
Bill Lee Parker	Road Superintendent
Lynn Estrada	Deputy Clerk

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Maurice Hobson 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:

Proclamation: Kimberly Turner/Prudential Spirit of Community Recognition Day.

Commissioner McGinn read the Proclamation from the Chairman and CEO of Prudential Financial into the records. Commissioner McGinn presented the Proclamation to Kimberly Turner and congratulated her for

all that she has done for the community.

Proclamation: National County Government Week.

Commissioner McGinn read the Proclamation into the records declaring April 22-28, 2007 as National County Government Week.

Presentation: Presentation of the Travel Management Rule of Forest Service Lands by Peg Crimm.

Ms. Crimm gave a power point presentation on the Lincoln National Forest travel policy that includes, vehicles that can be driven only on open roads, off-highway vehicles that can be driven on motorized trails and vehicles that can be driven up to 300 ft. off an open road for camping or parking as long as no resource damage occurs.

Two executive orders have come down requiring federal agencies to manage off highway vehicle use that protects resources and promotes user safety and minimizes conflicts. The Lincoln National Forest is one of the few that already has a travel policy in place. The Lincoln will be holding public workshops to receive input from the public. A motor vehicle use map will be available to the public in 2008. This map will show the travel system open to motorized use on the Lincoln. Ms. Crimm will be coordinating with the County because there are several county roads in the forest. Commissioner McGinn stated that in the handout it says that the travel rule was published in the Federal Register and comments must be received by May 8, 2007. Is this on the proposed maps and roads? Ms. Crimm stated, no that we will be having public hearings on the proposed map the last week of April and the first couple of weeks in May. We will be asking people what roads they use and don't use and where they want to camp. Commissioner Nivison requested that the County be on the ID team that the Forest Service is putting together. We would also like to be very cognoscente of the Wildland Urban Interface, that we don't shut people down. We will also be submitting something on the RS2477 roads. These are all the roads that have been used prior to the Forest

Service existing. We don't own the roads, but we have prescriptive easements up over these roads. Commissioner Moore stated that over the last 10 years there has been conflict between hikers and 4 wheeler drivers. We have had some challenges on the Lincoln with 4 wheelers and he applauds the Forest Service for trying to get out in front of this issue.

The Board thanked Ms. Crimm for her report and keeping the County informed.

Presentation: Maurice Hobson to present the Board of County Commissioners with the outcome of the 2007 Legislative Session.

Maurice and Mary Hobson presented the Otero County projects that were funded this year in the 2007 Legislative Session. The capital outlay total that was funded this year is \$3,115,000. Mr. Hobson stated that next year we would like to start early with these projects and streamline them. We would like to get the legislators in and have a show and tell. If we are going to finish remodeling downstairs for the District Attorney's Office, we would like to show the legislators what we are trying to accomplish.

Commissioner Moore would like Mr. Hobson to come back and give a report after the Governor has signed all the bills and the session is completely over.

2. Public Hearing:

The Chairman called the Public Hearing to order amending the Otero County Personnel Policy Ordinance 98-01. The Chairman recessed the Public Hearing on the Otero County Personnel Policy and called the Public Hearing to order on removal of approximately 31.24 miles from the Otero County road maintenance list. The Chairman recessed the Public hearing on the removal of miles from the Otero County road maintenance list and called the Public Hearing to order on amending the Otero County Subdivision Ordinance 97-03. The Chairman recessed the Public Hearing on amending the Otero County Subdivision Ordinance and returned to the regular agenda.

3. Consent Agenda:

Commissioner McGinn made a motion to approve items A1 thru E17 under the consent agenda. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously.

See pages

4. Unscheduled Citizen Communications:

a. Judge James Waylon Counts stated that he is here tonight representing District Court. Judge Counts is requesting the Commission to consider converting the Commission Chambers into a courtroom and the old library area into court chambers. Based on this years numbers, we are probably number two in line to get a new judgeship next year. If the Governor signs the bill that created the judgeships that the legislators gave him this year, based on this years numbers, that again will move us up to number two next year. We today also have a need for this space. Our Domestic Violence Hearing Officer is in what was our old hearing room. We propose if we do get a new courtroom here and there isn't a new judge yet, Judge Counts would move to the new chambers and we would give Judge Count's courtroom to Commissioner Brantley to hold the domestic violence hearings there. It's a dangerous situation now where the hearings are held. A more formal setting would improve the situation greatly with these hearings. We know this will be expensive, but it is an inevitable expense. It will be required within a year or two when we get a new Judge. We do have an immediate need for it. If the Commission Chamber is converted the court will make accommodations to the County Commission to co-use these facilities.

Commissioner Moore thanked the Judge for his report and knows that we are looking at getting another judge and the Commission Room has been looked at for another courtroom.

b. Allan Morrell, a practicing attorney for the 12th Judicial district would like to bring an issue to the attention of the Board. Mr. Morrell asked the Board if they were aware of a no contact policy for the jail.

Basically there is no contact allowed at all in the jail and that it is extremely hard on young children. Mr. Morrell is requesting the Commission to look at their policy to see if there is a possibility of letting the children have limited contact with their parents. Some kind of limited access would be beneficial to the children. Commissioner Moore stated that this isn't about punishment, it's about detention and having respect for other people. We also have security issues within the jail. Commissioner Moore stated that we will have staff look into our policy. Mr. Morrell thanked the Board for their time.

The Chairman reconvened the Public Hearing on amending the Otero County Personnel Policy Ordinance 98-01.

Dan Bryant stated that we have had a number of meetings concerning the draft personnel policy ordinance, the most recent was on Monday of last week. We went through and identified a number of issues, clerical and typographical errors and all have been corrected. The draft went out to the department heads on Wednesday of last week and have not received any additional comments. I submit that the amendments to the personnel policy are right for action by the Board.

Commissioner McGinn made a motion to approve the amendment to the Otero County Personnel Policy Ordinance 98-01. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously.

The Chairman closed the Public Hearing on the Personnel Policy and reconvened the Public Hearing on removal of approximately 31.24 miles from the Otero County road maintenance list: G-006 (4) miles, G007 (2.24) miles, G008 (19) miles, G009 (4) miles and G010 (2) miles. All of these roads are located in the Southeast corner of Otero County in the Crow Flats area North of Dell City, TX.

Johnny Ragan and Gene Ragan approached the Board to state their concerns with G-008 because this goes through their property. The Ragan's presented a map to the Board to show where their property is located.

As of now we have no way of getting into the property. We did have permission to use the road, but Mr. Ragan just found out that he doesn't have that permission anymore. We have a potential buyer for the property, but we just have to have access into the property. G-008 and G-009 are the only access into the property. Commissioner Moore stated that it is his understanding that neither of these roads exists. Bill Parker stated that the reason why he has entered these roads to be taken off the maintenance list is because they have not been maintained since 1965. These roads are listed on a map but they shouldn't be. Mr. Parker is trying to clean up the records of the miles that the County maintains. Mr. Ragan stated that BLM and state land surround his property. He is asking the Commission to obtain an easement from the State and BLM in order for him to have access. Commissioner Moore stated that all the roads around the Ragan's property are privately owned. The Board has tried to contact these people in the past in order to give the Ragan's access, but not one of them returned their calls. Commissioner Moore believes that these folks don't want the County in there at all. Faye Ragan stated that Commissioner Moore has said that these roads have not been maintained since 1965. We pay taxes and she assumes some of these taxes go to maintain roads in the County, so where did that money go? Commissioner Moore stated that it has gone where it always goes, into the road fund. It is used to maintain the roads that we have always maintained and new roads. Commissioner McGinn stated that her understanding that they were given numbers because of the military use back in the 50's and 60's. Bill Parker stated that was correct.

Ms. Ragan asked the Commission if they would use their influence to obtain easements from the State to access their property. Commissioner Nivison stated that a letter just needs to be sent to the State letting them know that these are not County roads and they need an easement to access their property. Commissioner Moore stated that enough comment has been made. We haven't been maintaining these roads for the last 30 or more years. To correct this error we will remove them from our county maintenance

list. Commissioner Moore stated that he will be more than happy to help the Ragan's with the State or BLM to receive legal access into their property.

Commissioner McGinn made a motion to remove G-006, G-007, G-008, G-009, and G-010 as listed for county road maintenance. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

The Chairman adjourned the Public Hearing on removing G-006, 007, 008, 009, and 010 from the county maintenance list. The Chairman reconvened the Public Hearing on amending the Otero County Subdivision Ordinance 97-03.

Commissioner Moore stated that this process has been ongoing for 2 years. We have had several meetings with the building contractors along with our Planning Board. Our desire was to get our subdivision regulations up to what was considered the norm in the industry. We have had some issues where we would approve a subdivision and it would never get built.

Ray Backstrom stated that this document has been through many changes. Our last Public Hearing was in October with all the comments incorporated into the document. Some of the items have been agreed upon, but not finalized. We need to go through a page at a time, where there are changes that need to be made and get comments from the public. The black print is what's left from the actual document, the brown is new language that has been agreed upon by the parties and any remaining blue or red is still to be debated for final decision. Ray stated that this is correct. Dan Bryant stated that at the request of the Board we have taken a special look at sections 6.3C, 8.1 and 8.3. At your direction I have invited Alan Morrell, who is the County Attorney for Lincoln County to discuss with you the Subdivider Construction Guarantee Program or Security Program that is in use in Lincoln County, which is pretty easy to operate and has been pretty successful. The three provisions that I gave you are the provisions in our ordinance that deal with those

topics.

Ray Backstrom started with page 5, verification of completion has been reviewed by the public and Commission. Commissioner McGinn stated that where there is no further discussion or debate, leave it where it is.

Page 6 of 34, Plat-Preliminary- and marketing, strike. Plat, summary review- add "Description" after by. Hans Steinhoff was present with his input.

Page 18 of 34 item 16- strike "one of". Alan Morrell stated that in this section the language mirrors Lincoln County's document. Lincoln County has 66 subdivisions that have been platted and never completed. We are trying to catch up with these situations. On page 18 paragraph 16, if you insert "after performance bond" or "certificate of deposit (or other security approved by the County Commission)". What this does is allow you to approve some other form of security. In Lincoln County, we are allowing the developer to put up a certificate of deposit that is in the amount that's required for the developers required improvements. That certificate of deposit is put not only in the developers name, but also in the County's name. In a \$100,000.00 worth of improvements that need to be made, you put \$100,000.00 in a CD. When so much of the project is completed you can pull out 30 percent and pay off that amount or whatever you want to do.

I have brought an agreement for you to look at that works really well. A lot of our developers are so small they can't get bonds. This allows them to put the money up, you are guaranteeing that it's going to be built or you can take the money out of the CD and you can build it. The developer's in Lincoln County really like it. Commissioner McGinn stated that our objective is not to stifle business, but to allow them to operate, continue to grow and perform in their business, yet have some mechanism of oversight that those promises will be fulfilled. I think this is a good suggestion that we allow some other mechanism for them to provide that security. Dan has one more comment on this section. The opening provision says "with one

of the following.” If you look at items 1, 2, 3 and 4, item 1 is a stand alone. If they do that, if all the improvements are constructed, they are done. If they are going to do 2, you also need 4, because there needs to be an agreement reflecting the security agreement. We need to delete the word “one” there and say, certifying that the sub divider has complied with the following. The way the language reads those provisions work in concert, you either do 1, or you do 2 and 4, or you do 3 and 4. This is just administrative. Commissioner McGinn stated that for clarification you could add or at the end of that first semi colon in 1. “If you do 1 you are done or.”

Page 21, there is some stricken language.

Page 23, 6.3, was one of the review areas. Commissioner Moore asked what is the green on 23 Section 6.4C? Ray Backstrom stated that these are comments that were made in our earlier meetings by a number of individuals. It was left simply to point those things out. Klad and the Builders Association made those comments. Commissioner Moore said to strike “the green,” those are notes. On page 23 we omit “the red” and the green” and insert the “blue.”

Page 28 Section 8.3, mirror page 18 section 16. 1 thru 4.

Page 30 Article 12: Administrative Fees- Dan would like to suggest to strike this language in it’s entirety and replace it with a provision that says: “Administrative Fees: shall be established by Resolution of the Board of County Commissioners on an annual basis.” The rules about amending these subdivision ordinances are so stringent and time consuming. You make it virtually impossible to adjust your fees to meet real conditions if you don’t allow for that. I recommend that you give yourselves that flexibility. Commissioner McGinn stated that in doing so we will need to provide some resolution fairly soon. Dan Bryant stated that under the rules, if you take action to approve this ordinance tonight it will be in limbo for 30 days and we will have that time to put a resolution together and hold a public hearing.

Appendix A, page A-5: Cable TV Company – add “if applicable.”

Appendix A, page A-6, Hans Steinhoff stated to strike the first paragraph. The second part, add “as 6.4B.”

This came from Lincoln County. There should be some time line for doing the construction. Mr. Morrell stated that in this part, the contractor would come before the Board to ask for an extension. Dan stated that the other thing that is important to note, this only applies to summary review subdivisions. We don't have a one year requirement on other types of subdivisions.

A-51 Preliminary Plat requirements: Hans stated that they would like this check list to stay. We wanted the County Planning Coordinator to use a checklist. It was pointed out that this list wasn't really appropriate for this part of the document. Ray Backstrom stated that you will also find on the next page that there are some additional checklist language that Mr. Steinhoff proposed. Hans stated that everything has to be complete or not complete. In the past a lot of stuff has come to us that wasn't really complete and if somebody at the County level had used the checklist, they would have seen that the sub divider did not provide everything that was required by the regulations. This could have been taken care before coming to the Planning Commission. Commissioner McGinn stated that the checklist on A-52, there is now a D-Road Construction Plan, where there wasn't on the Blue on the previous page, and there is a request for 15 copies of plats versus 17. Commissioner Moore thought we had reduced that to 8 on the preliminary. Dan stated that he would find the language. Commissioner McGinn would like to use the green language on A-52 and strike the language on A-51. Commissioner Moore instructed Dan to verify under E, the number of preliminary plat copies. The final plat check list is presented on A-53 and A-54. Hans stated that on A-54 is the checklist for the summary review plat. Dan has found the language Commissioner Moore wanted. It is on page 13 of 34 section 4.4. It says 8 copies here in brown. Is this enough copies Hans for the state agencies and the planners? This is OK for the initial that gets sent out to the agencies. When the comments

come back they will need to have more copies. Commissioner McGinn stated that A-52, item E change it from 15 to 8 copies. Dan stated that on page 9 of 34, in brown it has 15 copies required of the preliminary plat. We have some disconnect. Commissioner McGinn stated that she would rather not have them do 15 copies unless it was absolutely necessary. All preliminary plats have to go to 6 state agencies, so we know that 6 copies leave the county. We have 7 planners, that would take us to 13 copies. Then you put in 1 or 2 copies for staff, here at the County, that puts us at 15. Hans stated that you wouldn't want them all done at the same time in case something has to be changed. You should do the copies in stages. Dan stated that in reading section 4.4 that makes that clear that the 8 copies initially go out to the state agencies. I would recommend that on page A-51 or A-52, that you delete the reference to copies. It is covered elsewhere in the ordinance, it doesn't need to be on the checklist. You could also simply say, sufficient copies of the plat is required in this ordinance. Commissioner Moore stated that he is all for striking item E on A-52.

Page B-5, Shared Well. This is new language.

Page B-7 D1, for all subdivisions, with more than 5 lots, a water quality analysis. Commissioner Moore stated that this was discussed in length during the public hearings. When we discussed this, if it's a family transaction they can get an exemption and forgo all this. If it's a 4 lot deal and the guy intends to market it, we felt that he had at least some responsibility to the folks that he is selling these lots to that these standards are complied with. So the people buying have some reasonable expectation that safe water is available by state standards. This analysis is less than \$200.00. Dan stated that we have informed the public records and he is satisfied.

Page B-9, where did all this green language come from? Hans stated that it came from Lincoln County. Ray stated that it was submitted by Hans Steinhoff 7-29-06. Hans stated that it was discussed, but no decisions

were reached. There were no public comments on it. Commissioner Moore asked what a Type 1 and Type 2 subdivision is. Dan Bryant stated on page 8 of 34 it states that a Type 1 subdivision is 500 or more parcels, Type 2 is a subdivision at least 25, but not more than 499 parcels and Type 3 is 6, but not more than 24 parcels.

Mr. Morrell stated that this is probably the most important section of our subdivision ordinance. This tells you at what point you have to have community water systems and sewer systems. Lincoln County is trying to promote large tract development, so basically most of our subdivisions are Type 3 subdivisions. We have never had a Type 1 subdivision in Lincoln County, most are Type 2 and 3. Basically we require a community water system if you had any lots less than 2 acres in size. You actually have to own the water rights, you can't drill a well. This promotes larger tract subdivisions. Commissioner McGinn stated that Lincoln County's rationale is looking at their water and encouraging a certain type of growth. Mr. Morrell stated that this is correct. Commissioner Moore stated that what they are trying to do is limit the domestic wells. When you go to that water right application, you have to cross that threshold, is there available water. If you are granted those rights, will my proposed consumption effect any of my neighbors and create a draw down of more than 2 feet per annum. This would take you beyond the threshold that the state currently allows. Commissioner McGinn stated that from our standpoint, what are we trying to accomplish here? I heard Lincoln County's rationale, but what is Otero County's rationale. Isn't there some other part in our ordinance that checks availability and impact on other well users if they are using a domestic? Commissioner Moore stated that it's a State Engineer's requirement. Dan stated that because this says, any Type 3 subdivisions containing 6 or more parcels, it is limited to Type 3A subdivisions. Commissioner McGinn doesn't see the advantage of this. What advantage does this language have for Otero County? Commissioner Moore believes you are being a good steward of your water. If we go to the shared well

mechanism, it's a more real amount of water for each household.

Dan Bryant stated that without these provisions, New Mexico state law in the County Subdivision Act of 47-6-11.2 already requires this for Type 1, Type 2 subdivisions and Type 3 subdivisions with 20 or more lots. The State Act is silent on the issue of a acreage size. If you approve paragraph 1 for Type 1 you are simply restating the State Law. The second paragraph for Type 2, same conclusion. On Type 3, what you are doing is you are taking that 20 lot threshold and pushing it down from 20 lots in the state statute to in this proposal 6 lots. Is there a different number that the Commission likes, 10 lots or 15 lots? If 6 is too low and 20 is too high. Where do you want to set that number? Hans stated that we haven't been complying with State law. We have just looked at our ordinance to make sure the developer has complied with the County ordinance. We approve subdivisions with more than 20 where each guy is going to punch his hole. Commissioner Moore has an idea. Let's take this Type 3 amended A on B-9 strike 6 put 20, go backwards fix it in the definitions and wherever it occurs on a Type 3A. We will go back to state regulations. Hans stated that you don't want to do this across the board because Type 3B requires a summary review and the Type 3A requires a preliminary and final plat. Leave the wording as is and change the 6 to 20 and that will take care of it. Commissioner McGinn stated she would like to put a statement in there that says the following is "per State statute." We didn't create this, this is what state requirements are. Dan stated this provision on B-9 is just for water. I think the 20 lot threshold is good, but eliminate any reference to Type 3 subdivision. Change the 6 lot minimum to 20 lots and this should do it.

Page B-11 item D. Looking at the proposal in B-5D in green, it will not conflict with the Type 1 provision on page B-9 for water sewage system requirements, because in all Type 1 subdivisions where you have acreage less than 2 acres you have to do a community sewer. So that is off the table with the aerobic systems specified here. Ditto for Type 2 and ditto for Type 3. Except in the last sentence, any Type 3

subdivision containing any parcel smaller than 1 acre shall be required to provide for a community sewer system. If you had a Type 3 between 1 acre and 2 acres then B-5D would apply, if anyone of those three criteria are met, you would have to go to a aerobics system. For Type 4 and below in that provision, the provisions of D are subject to being applicable if any one of those triggering mechanisms are present. In those you don't have any statement in B-9 about what a minimum lot size is. Those types of subdivisions can be as small as they can get away with. It would have some applicability if the circumstances were right in those kinds of subdivisions. I will tell you that although it's not universal statewide yet, aerobics septic systems will be pretty much the requirements going forward in time. Commissioner McGinn asked if this will suffice by itself or do we have to change something. Dan stated that the language in D is as fine as is. Leave the green on B-11D.

Appendix C. Commissioner Moore stated that we need to go with what we have in this section and review it in 12 months.

Appendix E. Dan stated that he had a change on E3-Road Layout. The second paragraph, rewrite to say "Any recorded easement upon the property being subdivided may be vacated, altered or abandoned in accordance with the State law."

Commissioner McGinn made a motion to amend the Otero County Subdivision Ordinance 97-03 as discussed in the Public Hearing tonight. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

5. Executive Session:

Commissioner McGinn made a motion to go into Executive Session to discuss D. land, disposal and acquisition of land, F. Detention Center, housing of city prisoners, G. contracts and agreements, Pecos River Regional Water Planning and H. 10-15-1 H6 to discuss contents of competitive sealed proposals

under the procurement code. The motion was seconded by Commissioner Nivison. Roll call was taken as follows:

Commissioner McGinn	yes
Commissioner Nivison	yes
Commissioner Moore	yes

Commissioner McGinn made a motion to come out of Executive Session having discussed D, land F Detention Center housing of City prisoners, G contacts and agreements, Pecos River Regional Water Planning, and H 10-15-1 H6 to discuss contents of competitive sealed proposals under the procurement code, having made no decisions. The motion was seconded by Commissioner Nivison. Roll call was taken as follows:

Commissioner McGinn	yes
Commissioner Nivison	yes
Commissioner Moore	yes

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

APPROVED:

Doug Moore, Chairman

ATTEST:

Robyn Silva, County Clerk

Reg. Meeting
March 27, 2007