

Regular Meeting

May 3, 2005

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., May 3, 2005; and she announced that reasonable notice for this meeting was given to the Alamogordo Daily News, and to Radio Stations, KPSA, KINN and KYEE.

Present:

Clarissa McGinn	Chair person
Doug Moore	Vice-Chairman
Michael Nivison	Member
Ruth Hooser	County Manager
Ray Backstrom	Assistant County Manager
Dan Bryant	County Attorney
Bill Parker	Road Superintendent
Lynn Estrada	Deputy Clerk

DRAFT

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

The Board presented an award to Gloria Sainz, Health Care Services Manager, for serving on the New Mexico Border Health Council since 1993. Commissioner Moore read the plaque. The Board thanked Gloria for all her hard work.

1. Consent Agenda:

Commissioner Moore made a motion to approve items A-Minutes, B-Bills List #47, #48, #49, #50, C-

Health Care Services monthly report, and D- Personnel. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

2. Purchasing:

Commissioner Moore made a motion to approve items 5- Sealed Bid #05-028, 6-renewal of pharmacy service agreement and all contracts under item 7. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

3. Resolutions, Contracts & Agreements:

- a. Consider an amendment to the Joint Power Agreement for ambulance services 2005/2006 fiscal year.

Commissioner Moore made a motion to approve the Joint Power Agreement for ambulance services. The motion was seconded by Commissioner Nivison. Commissioner Moore asked if all the secondary agreements were in place. Ruth Hooser stated that all the agreements are in place. Once this agreement is passed she will send it to the City to approve through a meeting and then on to Tularosa and Cloudcroft for the same process. A vote was taken and the motion passed unanimously. See pages

- b. Consider an agreement between Otero County and Southwest Ambulance of Las Cruces, regarding indigent hospital claims/medical provider services.

Commissioner Moore made a motion to consider approving the agreement between Otero County and Southwest Ambulance of Las Cruces. The motion was seconded by Commissioner Nivison.

Commissioner McGinn stated that this will allow them to submit claims for the Indigent Health Care Fund as in Other Provider. Gloria Sainz, Health Care Manager stated that this will be done on a claim by claim basis. A vote was taken and the motion passed unanimously. See pages

- c. Consider a service contract between Otero County and Utility Audit, Inc. regarding audit

services for Otero County.

Commissioner Moore made a motion to consider the service contract. The motion was seconded by Commissioner Nivison. Commissioner McGinn stated that this is a contingency contract when they come and review our utility bills for any overage in payment. Dan Bryant stated that it's an auditing service of utility charges. The original proposal that came from the vendor was a contingency fee contract at 50 percent. Dan contacted the vendor's and proposed a 30 percent contingency fee. They didn't reject this offer, but would have to take it to their board. They have never done a contract at 30 percent before, but could possibly go with a 40 percent contingency fee. The vendor e-mailed Dan a revised contract at the 40 percent fee, if the Board is inclined to accept this number. Commissioner Moore stated that they also receive half of any credits that they get for 36 months. Dan talked to them about eliminating this clause from the contract. Their response was they would be willing to do a one year contract with a 50 percent contingency fee which eliminates the 36 months. Commissioner Moore withdrew his motion and would like to negotiate a little more with this vendor.

d. Resolution No. 05-03-05/93-45 regarding authorizing and approving submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority for Bent VFD.

Commissioner Nivison made a motion to approve Resolution No.05-03-05/93-45. The motion was seconded by Commissioner Moore. A vote was taken and the motion passed unanimously. See pages

e. Resolution No. 05-03-05/93-47 regarding the 2005/2006 Final Budget Adoption.

Commissioner Moore made a motion to approve Resolution No. 05-03-05/93-47. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See

pages

f. Resolution No. 05-03-05/93-47 support of the Federal Program payments in Lieu of Taxes.

g. Resolution No. 05-03-05/93-49 budget increase for Emergency Services.

h. Resolution No. 05-03-05/93-50 regarding a budget increase for Recording and Filing.

Commissioner Nivison made a motion to approve Resolution No 05-03-05/9347, Resolution No. 05-03-05/93-49 and Resolution No. 05-03-05/93-50. The motion was seconded by Commissioner Moore.

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

4. Elected Officials/Department Heads:

a. Discuss Planning Commission Denial of Tularosa Farms, Unit A.

Monroe Curtis, Planning Commission, stated that the access to the south to the County Road was only 25ft. instead of 50 ft. They didn't ask for a variance and indicated that 25 ft was adequate. This was the main basis for the denial of the subdivision. Bill Lee Parker, Road Superintendent, stated that he walked the subdivision and looked at the new proposed entrance on the west which comes off of Jim Day Lane. Mr. Parker doesn't see any problem with this access.

Commissioner McGinn announced that being 6:30 p.m. we will continue this discussion after the Public Hearing on the Checkerspot Butterfly.

5. Public Hearing:

Being 6:30 p.m. the Chair person recessed the Regular Meeting and called the Public Hearing to Order for approval of Ordinance No. 01-05 amending the Otero County Subdivision Ordinance regarding the Sacramento Mountain Checkerspot Butterfly Conservation Plan.

Commissioner McGinn stated that we have held one prior Public Hearing on April 12th to discuss the ordinance approving a butterfly conservation in a 54 sq. mile around Cloudcroft. At the last public

meeting, Mr. Steinhoff submitted some comment to be included within the ordinance for revision. It was decided at the end of that Public Hearing that we would hold another Public Hearing tonight to continue the discussion of passing the ordinance for the Butterfly Conservation Plan. Dan Bryant stated that Mr. Steinhoff submitted 15 recommendations, 6 of those, Dan put into the ordinance precisely as requested. The 5 other provisions, Dan adjusted the language to limit the scope of the ordinance to eliminate the objection. Those are section 6, paragraph B, iii, section 7, paragraph B, C, and D. In section 10 he added a clause that requires reporting of population levels of the butterfly to the County on an annual basis so we can review the need of continued regulation and take action at that time. There is no specific time frame because with the annual monitoring we are going to know year to year if the conservation plan, that this ordinance is related to, is effective or not. There were 4 requests that Dan didn't make amendments in the draft. The first one of those was a request that public health safety and welfare be deleted. By definition when you exercise police power to do regulation, you exercise it in order to protect the public health and safety. Commissioner Moore agreed to leave this in the ordinance. Section 7F, there was a deletion requested because the term ID was thought to lead to an endless progression of noxious weeds to look at. Dan looked at noxious weeds as defined in the Federal Law and the weeds listed are the noxious weeds, there are no others. We can remove the ID and provide that if those noxious weeds are present we will take action. This particular comment was tied to the comment for section F. Mr. Steinhoff wanted us to put a provision in that says "if an equivalent program is in effect on all adjacent lands." The problem with this is if you tell a group of neighbors you have to do this only if everyone else is doing it, as long one guy says no, it never gets done, the noxious weeds never get controlled, and you don't have any ability then to provide conservation to the food plant species. Mr. Steinhoff's concern is that once somebody comes before the

County Planning Commission requesting a subdivision and they have say 40 acres and they want to divide it into 22 acre pieces, every one of those homeowners is required to come up with a plan and monitor their property for this list of weeds. Mr. Steinhoff asked Dan in the Federal Register, how many noxious weeds were found? Dan stated that he didn't find a list of noxious weeds. What he found was that in our area these are the noxious weeds that have been identified.

The most important changes that were asked for, had to do with section 6. The way it was worded in the former draft was too broad. The only food plants that are known are the ones listed in paragraph 6B ii. Dan deleted the language from that provision that expanded that and opened it up to other plants. If other food plant species become known to us during the course of the Conservation Plan and it becomes critical that we regulate those we can amend the Plan at that time. In doing this, it limits the application of paragraph 6B iii, paragraph 7B, 7C and 7D because all of those tie back to the food plant species in 6B ii. What we've done is now the ordinance requires us to look to transplant only those particular plants species and not any others. Mr. Steinhoff stated that with all the changes the have been made to the draft ordinance his stand has gone from opposed to neutral.

John Connor, Mayhill resident, stated he had worked with the Forest Service for 32 years and is now retired. He would like to give the Board a little advice. Anytime you involve the US Fish and Wildlife Service in anything, you may be asking for a headache in the long run. Mr. Connor asked if anyone was present from the Forest Service or the US Fish and Wildlife and there was no response. Mr. Connor stated, well that's how interested they are in this. The butterfly isn't listed as endangered so we may not have to go this far yet with this ordinance. He is not speaking for the Forest Service or Fish and Wildlife, but anything that's a private property right issue they are against. The Endangered Species Act is being revised at this time and part of the revision is going to be a complete rebuild of the habitat

part of the act. Mr. Connor suggested that the Board put off passing the ordinance until the new act is finished. It might solve a lot of what their concerns are. Commissioner Nivison stated that part of the reason that it's not being listed is because of our working with the Fish and Wildlife. Commissioner Moore stated that his understanding of the situation is that the Checkerspot Butterfly had been proposed for listing. There wasn't enough information so a study had been started. Fish and Wildlife was up against their time limit of list or don't list and they didn't have enough information, this could be a reason for listing. They came to the County and asked them to join in working on a Conservation Plan. If we all work together this would be better than listing all kinds of species because that's what the rule book says we have to do. In an effort to keep this species from being listed, for lack of knowledge, we will enter into this Conservation Plan and all work together to monitor and learn more about this species. Commissioner Moore stated that if we hadn't done a Conservation Plan the Federal Government would come and list this species. If that happens they would shut down our campgrounds in Cloudcroft and suspend all hiking, biking and skiing in the forest.

R.L. Posey approached the Board and stated his concerns about this ordinance. He attended a meeting with the Game and Fish and they listed 393 species of special concern. Mr. Posey would like to know if we are going to propose an ordinance for everyone of these species? Commissioner Moore asked if they were in our County? Mr. Posey didn't know. Commissioner Moore stated that he could not just sit back and do nothing. Look what happened to our logging when they listed the Mexican Spotted Owl. We didn't do anything to stop the listing and this won't happen again. Mr. Posey stated that if we go to this extent for one species, then we are going to be bombarded with ordinances every time a species is listed.

Ernest Martinez approached the Board and stated that he doesn't like the whole ordinance. He owns

160 acres off La Luz Canyon Road. Dan Bryant stated that the areas that are delineated on the map in dark purple are the areas that are affected by this ordinance. If you don't own land within the purple area you are not affected by this ordinance. Mr. Martinez stated that maybe not today it's not in the purple, but if tomorrow the Fish and Game come out to my property and see a butterfly I become part of the purple area.

Debbie Martinez stated that her concern is the ordinance is very broad about the plants and the plan. The plan talks about us being subject to the US Federal Government's regulations and it's very extensive. Commissioner Moore stated the survey that is being talked about is that we have the monitoring person go to the property and do a plant survey in the limits of the construction area. If she finds 12 plants you can move those 12 plants or plant 12 new plants. The survey is done by some one that was hired by US Fish and Wildlife to do the ongoing monitoring. Ms Martinez would like to see some clear definition on what is required, how you go about doing it and who is responsible for doing it. Commissioner McGinn stated that the Martinez's have identified themselves as property owners within the area, how many other property owners are out there that aren't aware of the ordinance. She would like to submit a notification to all property owners within this area before we pass this ordinance. Commissioner Nivison stated that generally speaking the Fish and Wildlife will come down and look at your property if you have any questions. He feels that they have gotten better working with the public in the last couple of years. Commissioner Nivison stated that this issue has already gone to court and it's not in the Fish and Wildlife's hands totally.

Commissioner McGinn stated that from our earlier discussion about contacting the property owners, she suggested that we direct staff to notify the property owners within the purple lines, not just the potential habitat areas that are shaded in. Once reasonable time has been given for notification, then we can get

their responses and hold another public hearing. Commissioner Moore is all for notifying the people that fall within the limits of what is considered habitat. The 54 square mile box is made up of 99 percent habitat that is not Checkerspot Butterfly habitat. Commissioner Moore stated that we have had good input tonight and we still do have room to improve our ordinance and that is the purpose of the Public Hearing. He also believes that with this ordinance it will affect private property rights, not across the board, but people who live in the meadows he is OK with notifying them all for another Public Hearing. Commissioner McGinn directed staff to notify people with GIS mapping in the 54 square mile box, get a clear definition of the survey, and eliminate reporting to the Fish and Wildlife where possible and put on the May 24th agenda to advertise for a Public Hearing.

There being no further discussion on Ordinance No. 01-05 the Chair person adjourned the Public Hearing and returned to Regular Session.

Commissioner McGinn returned to the discussion of the denial of Tularosa Farms, Unit A. Klad Zimmerle approached the Board with a response to the Commissions denial, other adjustments were made for access that all parties agreed to. Emergency turn arounds were addressed and every lot can be accessed with these turn arounds. Randy Burroughs, representing Mr. & Mrs. Keogh, stated that the emergency access language be taken out. Klad stated that he had no problem of removing the language from the plat. Mr. Burroughs stated that this is not a matter for the Commission, but is a civil matter and will be resolved in court.

Robyn McClaire, a property owner on Jim Day Road, thought that being an adjacent property owner she should have been notified of this subdivision going in. With the traffic increase on the roads she is very concerned for everyone's safety. Jim Day is currently County maintained and Bill Lee stated that he will have to keep an eye on the road since there are big trucks and quite a few horse trailers using this

road. Bill stated that since this road is chip sealed we can legally put up a speed limit sign.

Commissioner Moore made a motion to approve the summary review of the subdivision based on the amended drawing and the low water crossing on Sainz Lane, with the language of the proposed 25 ft. emergency ingress and egress, based on litigation be stricken from the plat and from the record. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

6. Commission Discussion:

- a. Clarissa McGinn- Discuss/Approve revisions to the Red Brick School House License Agreement.

Evelyn Trammell, Mary Beth Fraley and Jean Tyler Dan, Board members for the Red Brick School House approached the Board. Commissioner McGinn stated at our last Work Session we discussed some revisions within the contract. The County Attorney has made those revisions as discussed and they are ready for review. Dan stated that there is no problem with the insurance. It provides for both the County and the Red Brick to put the same property coverage insurance on it, and that needs to be fixed. What it intended to address was during construction they would have appropriate insurance concerning the construction activity on the property. This language will be fixed before tomorrow morning.

Commissioner Moore made a motion to approve the revised Red Brick School House License Lease Agreement as amended and reviewed. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

There being no further business before the Board the Chair person adjourned the meeting at 8:55 p.m.

APPROVED:

Clarissa McGinn, Chair person

ATTEST:

Robyn Silva, County Clerk

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