

Regular Meeting

May 8, 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., May 8, 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:

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| Doug Moore | Chairman |
| Clarissa McGinn | Vice-Chairperson |
| Michael Nivison | Member |
| Dr. Martin Moore | County Manager |
| Dan Bryant | County Attorney |
| Ray Backstrom | Assistant County Manager |
| Pamela Heltner | Commission Liaison |
| Bill Lee Parker | Road Superintendent |
| Lynn Estrada | Deputy Clerk |

DRAFT

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

1. Consent Agenda:

Commissioner McGinn made a motion to approve items A. Bills List #48, #49, #50 B. Minutes C. Purchasing, D. Resolutions, Contracts & Agreements D5, D6, D8, D9, D10, D11, and D12 pulling D7 and D13 The motion was seconded by Commissioner Nivison A vote was taken and the motion passed

unanimously. See pages

- a. Consider approving Resolution No. 05-08-07/95-65 requesting a burn ban in Otero County.

Commissioner McGinn made a motion that we consider more stringent burn control at our next meeting which will be our Work Session on May 23rd, as an item for consideration on that agenda. The motion was seconded by Commissioner Nivison.

Norbert Sanchez, Under Sheriff for Otero County, recommended that we wait until the work session to vote on this burn ban. We have the 4th of July coming and the fireworks ban will be put in place. They could both be done at the same time.

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

- b. Consider approval to amend the Otero County Commission Meeting Schedule for the remainder of calendar year 2007.

Commissioner McGinn made a motion to approve the amended Otero County Commission meeting schedule for the remainder of the calendar year 2007. The motion was seconded by Commissioner Nivison.

Dr. Martin Moore stated that we have had citizen requests that with our 3 week schedule there are times when our meetings conflict with the Village of Tularosa, City of Alamogordo and Cloudcroft, they can't attend all of them. This will also give staff more time to prepare the documents that were requested at the meeting. Commissioner Moore stated that this will put our meetings to every 3rd Thursday in the evening and we won't have a conflict with the municipalities. Commissioner McGinn also pointed out that the Work Sessions will still be held a week prior to the Commission Meeting. A vote was taken and the motion passed unanimously. See pages

2. Citizen Communications:

a. Request from Charles Walker for Otero County to notify the U.S, Forest Service, the Bureau of Land Management and the NM Game & Fish Department that county property owners and public land ranchers are experiencing excessive elk damage and need to be compensated.

Mr. Walker stated that it was an honor for him to be representing the people here tonight and the problems we will be talking about. Mr. Walker had met with the Commission during the work session and went through the problems that the ranchers were having with the elk, so he will just hit the high points for the people that were not present at the work session.

Mr. Walker explained how the ranchers became allotment owners. We recently found out through litigation that we have been calling our land, public land for many years, but the courts have declared it Federal Land. Mr. Walker stated that we don't claim to own the land, timber or rock, only the water, forage and right-of-ways on their land. Mr. Walker was on the Grazing Board for about 30 years. They gave advice to the U.S. Forest Service to quit issuing the free use permits, because they were utilizing the forage. If they had a free use permit, each one had 10 head. If they had a permit for 10 head they usually had 20 or more. The Forest Service said that they would do the proper thing and cancelled the free use permits. Mr. Walker told BLM that the Forest Service cancelled the free use permits and why didn't they do the same. BLM agreed and did the same thing, so everyone pays their fair share of the grazing allotments. To sum it up on our grazing allotments, the government owns the land, it's federal land, and we have the right on it to utilize the forage, water and right-of-ways on our grazing allotments. When we found this out, Mr. Walker went to the Forest Service and told them about this and he asked them to give us some slack on controlling the elk numbers that were utilizing the forage on our allotments, that is private property. It fell on deaf ears. The Forest Service stated that they can control the cattle, but the NM Game & Fish are supposed to control the elk. Mr. Walker told

the forest supervisor, that when the Mescalero Apaches brought in the elk in 1967, we realized that those elk would come on to our grazing allotments and could cause some problems. We addressed this issue with the Forest Service supervisor, John Hall, who was the supervisor at the time. He told us that he had a degree in Wild Life Management, and that he was against bringing the elk into this part of the country. He didn't want them to become established on the Lincoln National Forest, because if they are they will ruin the best deer herd in New Mexico. Mr. Walker believes that this has been accomplished.

Mr. Hall told the ranchers that their animal unit months (AUM), which is what they pay for to graze their cattle on public land, would not be reduced because of the elk. We know that there are thousands of elk out in the Lincoln. The elk have grazed down the allotments before the ranchers can get their cattle on them to graze. The law states that if you are having problem with the elk and you contact the NM Game & Fish and they don't anything about it, you can go and shoot them down. The allotment owners don't want to do that, we feel that this way isn't right. We would rather not take that route so we are asking this Commission to talk to the Forest Service and the BLM to give us some slack in some way. The game commission has the ability to control the elk in whatever matter they want too. We who have the grazing allotments, feel that the public is going to demand that there be elk out there. We don't want to kill the elk off, but by all means give us some compensation for the forage that they are eating. We could have more animal unit months on our allotment if there were no elk.

Commissioner Moore stated that he had to interrupt this conversation to open the public hearing.

3. Public Hearing:

Consider approval to vacate an easement located in Lots 13 & 14 of Government Subdivision of Section 18, Twp.17S, R 9E, Otero County. Property formerly known as Emporium Furniture.

The time being 6:30 the Chairman called the Public Hearing to order.

Klad Zimmerle approached the Board and stated that letters had been sent to all property owners in this subdivision and there were no protests. This will combine these 2 lots into one. The Otero County Planning Commission recommends approval.

Commissioner Nivison made a motion to approve the vacation of an easement located in Lots 13 & 14 of Government 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 and returned to the discussion of the elk.

Commissioner Nivison stated that when we have had hot issues, we generally will have hearings so everyone can have their input. I think it would be appropriate to schedule a public hearing for this issue. We have been discussing carrying capacity of the land and the actual number of elk which keeps getting kicked around. We are in the process of doing a peer review of those numbers. Carrying capacity can be brought to us by Dr. Fowler. We changed the pyridine a couple of years ago on the forest. The pyridine used to be to treat for a single species, which was the spotted owl. That has been changed, now our mission is the health, safety and welfare of the citizens and good ecosystem health. Everybody gets an allotted amount of what's available and we don't do damage to the resource. By having hearings and taking that testimony, we can start on the road on finding some of these things out. We have been working with several attorneys from around the country, mainly Idaho and Wyoming. We own a wealth of information on the science, through the range improvement task force. There is a possibility for us to address, in an ordinance, what we would like to see our ecosystem like and how we would like to keep it. We don't want to damage the resources, as Mr. Walker said there is some out there for everyone.

Dan Bryant stated that he has spent 10 to 11 hours over the last 2 days with some of the best brains on

environmental science on caring capacity, resource health, and identified a very comprehensive outline of the various elements that need to be under consideration. We were looking at putting together an ordinance that is designed to restore what I will characterize as ecosystem health to the Lincoln National Forest, here in Otero County. We do need to do some public hearings and we have identified some places in our science data base where we have holes and we need better, more scientifically sound information. We have identified the resources where we need to go to get this information. I believe we will be bringing issues back before this Commission every single Commission Meeting for the next several months. We will be getting the work completed and getting the public hearings completed so that the Board can have a complete record with which to make decisions on how to ordain your judgment about how ecosystem health, life, safety, health and welfare can be protected in Otero County with a broad base, sound, ecosystem management program on public lands here in the County.

Commissioner Nivison stated that we want to look at other issues also, to include water and timber. We have quite a few people here tonight for this issue. Commissioner Nivison would like for everyone both pro and con to put their information together, so when we start the hearings we will have testimony not here say. Commissioner McGinn stated that it is her understanding that we come up with a draft ordinance that addresses the science, but also addresses compensation, property rights and enforcement on how Otero County sees best fit to manage the situation. Dan Bryant stated those elements and a host of other items that will make up the entirety of our duty to protect the life, safety and welfare of this county and its citizens. Mr. Bryant was hoping that the Board had a chance to see the draft outline that came out of the meetings. It is a very comprehensive set of items to cover. Mr. Bryant stated that it didn't take us very long in our discussion to come to a consensus that if Otero County simply passed an ordinance to regulate elk, deer, water, cattle or forage, we were making the

same mistake that has been made for a generation on the forest. We would simply be putting a layer of single species management on top of other layers of single species management. What we really have is an ecosystem that is direly in need of restoration and a return to its pre settlement healthy condition. While people don't want to see this, but the human dimension, that human interaction on the forest, is one of the critical elements of restoring the ecosystem. We identified elements and criteria to restore that consideration to the formula, and it's in the outline that we have drafted of areas that we need to look at and put in our ordinance framework.

Commissioner Nivison stated that several laws that have been passed over the years by Congress, it's called the President's Forest Health Initiative. It is a mandate that protects the safety, health and welfare of the citizens and the resources. The Conservation Districts are the only other elected body by the people in this County. We will visit with them in order to obtain their knowledge that they posses. Commissioner Moore stated that Mr. Walker has come before us to request that the County notify some government agencies, that the ranchers need to be compensated for consumption of property that they own and damage to their property. Commissioner Moore asked if any one was present from the Forest Service tonight. No one was present. Commissioner Moore stated that for many years we have encouraged the leadership of our forest to provide us with a caring capacity. They are able to do that on any variety of species, give it trees, bud eating moths, owls, they can snap something right up. I have been assured for the last 27 months that that number is right around the corner. The Forest Service has not provided the leadership when asked to do so repeatedly. They have not put side boards on how much grass is there, how many tons is there in 29, how many animals will that sustain if we fully stock our allotments and use 35 percent utilization, what will be left on the ground. How much will be left for wildlife, how much wildlife is there and how much will they consume? Simple math, get us all

pointed in a direction. A big concern for Commissioner Moore is that as land managers, he wants them to treat everyone fairly. Equitable treatment for all and what he has seen in the last 5 years is time and again they will reduce the livestock component, which was here first and has a document that says the grass belongs to them. There is documentation that the Forest Service has sold them the grass. We have looked for leadership for years from the Forest Service. They are the stewards of the land. They expend millions of federal dollars on this mountain top managing this land. For years they have refused to give us a caring capacity. What we are going to do is quit asking for caring capacity and we are going to spend more tax money to get the university, once again, to step in and give us caring capacity. Three week ago there was a meeting at the Civic Center and the Forest Service was there. We asked them point blank, will you give us a number, what can we do? The Forest Service refused us outright. Commissioner Moore was very upset over this and still is. To say that I refuse to do my job while they are still collecting a check that we are paying is remiss. If the Forest Service isn't going to do their job the County will step up and do it for them. We are just looking for fair and equitable treatment, so we don't damage what's there for future generations.

Tim Turri stated that the Forest Service is holding a meeting in Cloudcroft, Wednesday and Thursday at the Civic Center. The Forest Service is planning significant changes on how they are going to manage the forest. Mr. Turri encouraged everyone present to attend. Dan Bryant stated that it is critical to attend. If you are interested in using the forest, you should go and express your opinion. The Forest Service is proposing to close roads and limit access and travel.

Commissioner Moore stated that under the New Mexico Game Regulations, there is not the mechanism in place by which to monetarily compensate a private property owner for loss and or damage done by wildlife. This is Mr. Walker's desire to be compensated in some way for what they perceive a loss.

Commissioner Moore stated that he didn't know how to do this, but there needs to be a way to provide equity to those that have suffered losses.

Kenneth Driscoll, an allotment owner, stated that he had 35 acres of oats planted on his private land this last year for his cattle. He had 60 head of elk on it and they ate it up in 4 months. Commissioner Moore stated that depredation hunts need to be restored. When the herds come into your fields and eat everything, there has to be a real time reaction to this. If we can't respond rapidly enough, there needs to be some compensation for your loss.

Sandra Hunt, a resident in the Sacramento Mountains, stated that she doesn't have the same plight as the Goss's or Mr. Walker where their income is dependent on their grazing ability. She has taken 30 years of her income to buy property here in New Mexico, after doing research on many different states. Her impression of New Mexico was that we were very pro ranchers and we took care of our private property owners. As a private land owner, her first allotment started with 3 elk tags that helped her very much. Then it was 2 elk license, then it was one and now she is in an allotment that didn't get any. She received a 1.25 rating for all the work she has done to support the wildlife. Ms. Hunt believes that in this state, elk is about money. The elk brings a lot of money to New Mexico and Ms. Hunt doesn't have a problem with that except that she is feeding and watering the elk at her expense.

Commissioner Moore was glad to hear what Ms. Hunt had to say, because he had heard that the Forest Service was changing how they were doing the land owner permits. I think part of what was driving this change was they didn't want it to seem like you were being paid off, so they tried to come up with something that would be fairer in the big scope. Commissioner Moore has heard repeatedly, especially from small operators, that they are in the big pool as you say, there were no tags for them. This is interesting and very interested to hear what the Game and Fish have to say as they evaluate this

program.

Commissioner Moore stated that what we have on the floor is a request from Mr. Walker for Otero County to notify U.S. Forest Service, Bureau of Land Management and New Mexico Game and Fish, that county property owners and public land ranchers are experiencing excessive elk damage and need to be compensated. I believe we can instruct staff to create something along those lines for review and send it out again.

Commissioner Nivison made a motion to notify U.S. Forest Service, BLM and New Mexico Game & Fish, that county property owners and public land ranchers are experiencing excessive elk damage and need to be compensated. The motion was seconded by Commissioner McGinn.

Commissioner Nivison amended the motion to add that the elk are causing serious damage to our custom and culture and the health, safety and welfare of our citizens. The amended motion was seconded by Commissioner McGinn.

Janet White asked if it would be possible to present this item to the U.S. Forest Service tomorrow night at their meeting. Commissioner Nivison stated that if staff can get it together he will present it to them, otherwise he will be there and do it verbally.

Commissioner Moore stated that we have an amended motion on the floor. Unless there is further discussion about a letter to notify these agencies about the elk, is there anymore discussion about the elk. A vote was taken and the motion passed unanimously.

4. Commission Discussion/Correspondence:

a. Commissioner Moore stated that we are recipients of many legislative grants and would like to let the legislators know how much we appreciate what they have done for us this year.

b. Commissioner Nivison stated that according to the fly over made on the forest, 25,000 acres

have been affected by the Looper and the Beetle. The prospect of recouping the trees doesn't look very good. Commissioner Nivison is requesting County funds to help with the cost for the expense of the assessment of the damage done by the loopers and the beetles. This assessment will be done by a team from the university.

Commissioner Nivison made a motion to set aside for emergencies for all of these ecosystem health issues that were discussed tonight in the amount of \$100,000. The motion was seconded by Commissioner McGinn. Dan Bryant stated that you can direct staff to bring a budget resolution back to the Board at the next meeting that will accomplish this. Because this item is not specifically on our agenda, we can't actually make the change without a budget resolution and having this on the agenda. Commissioner Nivison withdrew his motion and directed staff to put on the agenda a resolution in the amount of \$100,000 to be utilized for our ecosystem health emergency.

5. Unscheduled Citizen Communications:

a. John Secrest Jr. stated that about a year ago he came before this Commission on a standard liquor license transfer. Commissioner Nivison was gone for medical reasons, so it was one and one. It has to be a 2 and 1 Commission vote to pass. If it goes 1 and 1, then it goes to the state. Commissioner McGinn voted to pass it as Dan Bryant, who is the highest paid County Attorney in County government, also recommended that they pass it. Commissioner Moore had said that he had 12 people that had called him that day stating that this was not something they wanted done. They did not want another liquor license down in Chaparral, because there were too many young people drinking beer as it was. My reply was, "Who do you think is selling it to them, because I haven't sold anything down there." There is only one liquor license owner for a population of 32,000 in Chaparral. He runs ninety-five percent of the grocery sales, two thirds of the gasoline sales and hundred percent of the liquor sales.

This is monopolizing. I worked hard to get this license. This is the first time in Otero County or New Mexico's history that a building permit has not been delivered to an authorized person to build a grocery store for fourteen months. Why?; because this Commission will not stand up to its obligations to go down there and take control of the Otero County side of 12,000 population, in Chaparral. We have three or four Sheriff's Deputies down there, and they are working their tails off. I am sure that it is dangerous. I've heard there are a lot of drugs down there. My question is, why do we let the construction industry division out of Las Cruces control our 12,000 constituents? This area is Doug Moore's constituency. When I asked to see the telephone log of the twelve people that called, after I had posted for 45 days and had not one negative comment from all those people down there. The only comments were we are glad that you are coming, we hope you kids are going to save us a lot of driving, and we don't like paying those high prices. You can go down there now and pay an extra \$4.75 for any liquor that you could buy here. This isn't right. I haven't had a moving violation in Otero County for 39 years and never served a day in jail and I have been treated like a criminal. I object to it. I have spent most of my life savings and that of my family and I object to that. It's time that this Commission stand up to take it's responsibility and go down there and do their job. Commissioner Moore didn't know who called him, he didn't have a record of that. John said that you put this Commission into a 1 to 1 vote and threw it to the state. Guess what happened when it got thrown to the state, it got red tagged, then the liquor control board thought that I was some kind of criminal that nobody wants down there, just because Mr. Moore said that he had 12 people that he can't produce the names on. We don't know where they came from or if it happened at all. I think that I have been misused. Mr. Moore did not take the advice of council as did Clarissa McGinn. You should have known better than that. Fourteen months without a building permit, you think there isn't some kind of hanky panky going on down there.

Do you think that man down there in Chaparral is not controlling the construction industry division? They have given me things one after the other that I can't comply with. They have given me an electrical inspection that no electrician in Alamogordo has ever heard of, never been required to do, and yet this has held me up for three months. This is the last leg of it John, if you do this you will get your permit. I have been their fool for too long. I think it's time the newspaper write something about this, because I figure I could produce, for this county, which is supposed to be ours, supposed to be this Commission's responsibility, over \$70,000 a year in gross receipt taxes. We aren't getting it, it's all going to Dona Ana County. If I go down there, I believe a lot more people will follow me. There would be more things down there for those people that they don't have right now. It's all controlled by if you want to say, "Mafia" maybe that's what we want to say. Are we afraid to say it, everyone tells me not to say that John, you are going to get hurt. This is America, I have a right to open a business. My father always had a grocery business and I am proud of it, it's an honest way to make a living. Would they do this to John Lattuzzio, or the Allsup's Company or any other grocery chain that is around? No, they do it because they think they can get away with it from me, because I am a little business man that has worked his whole life away scrounging two to three cents profit at a time. I want to say my word here and I hope the newspaper has the back bone to print it, because nobody is listening. I deserve better than this and so does everyone in this County.

b. Arden Schug, Timberon Fire Chief, would like to say a few words in defense of the Forest Service. We have the finest fire service from the forest service in the country, in the Lincoln zone. When we bad mouth the Forest Service and include the fire end of it, we are doing a disservice. They protected us better than any place in the country. If you want to talk about the management end on the ecology or whatever, that's fine, but don't include the fire management people, they don't deserve it.

They need money, they have a small group that is doing the best they can to thin that forest out. They don't have the man power to do it. What we need is a civilian conservation group again to get out there and thin that forest out. A healthy forest is healthy for everything. The elk wouldn't have to graze in the farmers fields if they had meadows that were natural. We need to get out there with chainsaws. We have studied this thing till we are blue in the face. Everybody knows what needs to be done, we need to thin the forest out and get it back healthy again.

c. Mary Breuer, she is the Counties tenant at Aces School, 301 Texas. She is the owner and Director of Carousel Pre School and Child Development Center. We are a nationally accredited preschool and she has 26 employees and 137 children in the building. She would like to talk to the Commission in executive session about purchasing the building. She offered an invitation to the Board to come to the center and meet the staff and observe the children.

d. Cruz Hernandez, Chaparral New Mexico, stated that Chaparral is surrounded by 3 landfills. One is suspended and the other is waiting for a permit. Mr. Hernandez would like to remind the Commission that we are working with the Orange Campaign. We are doing training on how to reform about the difference between the landfill and the transfer station. We are asking for the continued support of this Commission.

6. Executive Session:

Commissioner McGinn made a motion to go into Executive Session to discuss C. Personnel, organizational restructuring, request approval of an employment contract for Ray Backstrom, D. Land, disposal and acquisition of land and Aces School. The motion was seconded by Commissioner Nivison. Roll call was taken as follows:

Commissioner McGinn	yes
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Commissioner Nivison yes

Commissioner Moore yes

Commissioner McGinn made a motion to come out of Executive Session having discussed C.

Personnel, organizational restructuring, request approval of an employment contract for Ray Backstrom, D. Land, disposal and acquisition of land and Aces School, 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 9:16 p.m.

APPROVED:

Doug Moore, Chairman

ATTEST:

Robyn Silva, County Clerk

Regular Meeting May 8, 2007