

Regular Meeting

May 15, 2008

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 15, 2008; 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 |
| Ray Backstrom | Assistant County Manager |
| Dan Bryant | County Attorney |
| Pamela Heltner | Commission Liaison |
| Bill Lee Parker | Public Works Director |
| Lynn Estrada | Deputy Clerk |

DRAFT

Jack Rathgeber 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 A1 thru G31, excluding items 17, 24, 25 and 29 for discussion. The motion was seconded by Commissioner Moore.

Commissioner Moore had some discussion on item 12 for the renovation of the lobby at the Flickinger Theater. Staff was directed at the Work Session to find out if this construction would be completed prior

to the November Election cycle. Ray Backstrom, Assistant County Manager, stated that they have indicated that the lobby will be done by the end of June of this year. Commissioner Moore asked if we have discussed our desire to potentially have early voting in their facility for the November election. Mr. Backstrom stated that we have not. A vote was taken and the motion passed unanimously.

See pages

a. Request approval to renew the Legal Services Contract between Otero County and the firm of Daniel A. Bryant. This is the 2nd of a 4 year contract.

Commissioner McGinn made a motion to approve the proposed hourly rate agreement with the monthly cap. The motion was seconded by Commissioner Moore. Commissioner Nivison stated that he has visited with the attorney about the hourly rate agreement and this agreement could cost us more than what we are paying him now. Dan Bryant stated that with the version of the agreement that has the monthly cap on it, it will give us a good management tool. If we start to see the cost going up, we have the ability within the contract language to re-open at any time and re-discuss. A vote was taken and the motion passed unanimously. See pages

b. Request approval of Resolution #05-15-08/96-64, setting the County License Tax for County Liquor License for fiscal year 2008/2009.

Commissioner Nivison made a motion to approve Resolution #05-15-08/96-64. The motion was seconded by Commissioner Moore.

Commissioner Moore stated that we have approximately six licenses within the County at \$250.00 each. The discussion at the Work Session was perhaps we were taxing just because we could. We discussed withdrawing the \$250.00 or reducing it. Commissioner McGinn stated that there are a couple of Liquor License holders in the County and that includes some bars and restaurants. She believes that we have this

tax in place just to have it. These individuals pay a lot of money to the state and a lot of money in taxes. As a Commission we have an opportunity to reduce this rate so that they could do business in this County without excess taxes and regulations from their own County Commission. Commissioner Moore stated that \$250.00 is the maximum that we can impose. He would consider cutting that amount in half and take whatever yield that it produces and pledge that to the DWI Program for education of youth in the school systems. Commissioner Nivison stated that we have the administrative duties to except these licenses. The fee gives the County the ability to use if we have extra police issues at those places. We do have some notifications when there are to be parties held or any kind of gatherings, there are some administrative fees. Commissioner Nivison believes that \$250.00 is a reasonable amount.

Commissioner Nivison amended his motion to approve Resolution #05-15-08/96-64, set the fee at \$250.00 and pledge the funds to the DWI Educational Program. The amended motion was seconded by Commissioner Moore. A vote was taken and the motion passed 2-0 with Commissioner McGinn not voting.

c. Request approval of Resolution #05-15-08/96-65, regarding the ADA Grievance Procedure for Otero County for public posting.

Commissioner Nivison made a motion to approve Resolution #05-15-08/96-65 for discussion. The motion was seconded by Commissioner McGinn.

Commissioner Moore stated that his understanding of this is that there has to be a posting within the building and it has to identify a person. His question to staff is, "Do we have to name an individual or can we name a position?" Dan Bryant stated that we could name the Otero County Manager, or the Otero County Human Resource Director and whatever human being that is filling that role would be that person. The only purpose for the resolution is to point the party to the office that they need to go for resolution of

their concerns. Commissioner Nivison amended his motion to name the County Manager and or his designee. The amended motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

2. Elected Officials, Department Heads, Committee Reports:

a. Request approval to appoint one member and two alternates to the Otero County Board of Equalization, per the New Mexico tax code, NMSA 7-38-25 requiring the County to create a County Valuation Protest Board.

Commissioner McGinn made a motion to approve Scott DeFoy as member of the Otero County Board of Equalization and 2 alternates as recommended, Sharon Hamilton and Cindy Stagner. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

b. Request approval to advertise and schedule a public hearing for the regular meeting on June 19, 2008 to review and consider a resolution and ordinance relating to a County Regional Spaceport Gross Receipts Tax.

Commissioner Moore made a motion to advertise and schedule a public hearing to consider a resolution and ordinance relating to a County Regional Spaceport Gross Receipts Tax. The motion was seconded by Commissioner Nivison. Dan Bryant stated that we have an issue with the ability to conduct a meeting on June the 19th due to the New Mexico Association of Counties conference in Las Cruces. Is there another date on which we could hold the County Commission Meeting other than June the 19th. Commissioner Moore amended his motion to change the date for the Public Hearing to the 12th of June as well as reschedule the County Commission Meeting to this day and cancel the Work Session on the 11th. The amended motion was seconded by Commissioner Nivison.

Commissioner McGinn stated that she didn't have any comments on the dates, they are fine for her. She has a comment about the consideration tonight to consider a resolution and ordinance on a Spaceport tax. Over the last couple of years there has been some information brought forward to the Commission and several other counties have acted on the Spaceport tax. Her personal feelings after looking at all the information and doing some research, is that her opinion comes down to one thing. She believes that the best way for us, as a county government to support economic development and existing businesses within our community is to make decisions that keep taxes and regulations at a minimum. As the Spaceport District Act provides the option to local governments as to whether or not to consider this tax at all, I would say that my vote along the way will be no.

Commissioner Moore stated that the community is probably divided on this issue, but to what degree he doesn't know about the effectiveness and whether this tax should be imposed. It is Commissioner Moore's duty to put the question to the public and let them decide themselves. In the two counties where it has succeeded, those folks sent a message. The residents of Otero County are smart enough to know the pros and cons of this issue. He feels better about getting this issue on the ballot and letting the people vote for it, than not allowing them by his position as a Commissioner to impose this.

Commissioner McGinn stated that the law says that we have the option to decide. She was elected because of her opinions and she has a duty to make a vote and her vote is going to be no.

Commissioner Nivison stated that putting this issue to a vote is very good.

Dan Bryant stated that after the Public Hearing, if the Commission adopts the ordinance, the only thing that that does is, it schedules the election to occur to determine whether or not there will be a Spaceport Gross Receipt Tax. Once that step is taken by the Commission, under the Regional Spaceport District Act, we are obligated to hold three additional public hearings. Once we go through the June 12th hearing, if the

ordinance is adopted, and an election is scheduled to happen sometime in the fall, we would then need to hold three more public hearings through out the months of July, August, September and October, on the issue of the Spaceport District Contract.

Bill English stated that over the years this Commission has developed a reputation for fairness that has not only encompassed Otero County but has had far reaching effects on counties and other states around the United States. The issue of the Spaceport is one that he holds very near and dear to his heart. This is an issue that can not be just decided by this Commission. In all fairness it has to be put before the voters of Otero County, either to sink or swim. This Commission has shown fairness to the people of Otero and to the people they have had to deal with and he is asking to let the people decide what our future as a County is going to be. What Otero does on this issue will not only affect Alamogordo and Otero County, but it could have far reaching affects on the world itself. This is a bold move that will change our future. We need to know the facts and listen to their representatives.

Maude Rathgeber stated that she has heard the comments about putting this issue on the ballot for the November election. On March 4th the Governor had signed the bills for the General Obligation Bonds to be on the ballot in November. There will be 4 bonds on the ballot and usually those bonds pass. People just vote for these bonds and don't realize that they will increase their taxes. Mrs. Rathgeber stated that there was an article in the Alamogordo News that the FAA has not approved the program for the Spaceport. This needs to be considered also.

Commissioner Moore stated that we have a Public Hearing at 6:30 p.m. so we will need to suspend this discussion and continue after the Public Hearing, if there is anymore comment.

3. Public Hearing:

The time being 6:30 p.m. the Chairman called the Public Hearing on amending Section 9.2 dealing

with annual leave accrual of the Otero County Personnel Policy Ordinance #98-01 as amended by Ordinance #07-01 to order.

Donna Brandon, Financial Director, stated that the Commission should have all the statistical information showing the fiscal impact of the current method of accruing leave, as well the additional number of hours that are accrued. An extra 4000 hours a year in leave accrual is getting dangerously close to two man years plus the \$50,000 fiscal impact speaks for itself. When we adopted the new Personnel Policy, the intent was to make right the leave accrual system for those employees who work the 12 hour shifts. Commissioner Moore stated that the proposed change that we discussed was changing the language in section 9.2 to, instead of days per year to hours per pay period. The desire is to go back to the language, hours per pay period, striking the days per year language. Ms. Brandon stated this is correct and also adding one paragraph granting an additional 5 percent accrual for those employees who work 12 hour shifts. This would compensate them for the 5 percent more hours a pay period that they work.

Commissioner Moore made a motion to amend paragraph 9.2, striking the word days per year and substituting the word hours per pay period, adding an additional sentence at the conclusion of section 9.2 with the addition of a 5 percent addition for 12 hour shift work employees for equity. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously.

See pages

The Chairman closed the Public Hearing and returned to Regular Session and the Spaceport discussion. Commissioner Moore stated that we have a motion on the table to approve advertising a public hearing to consider a resolution and ordinance relating to a County Regional Spaceport Gross Receipts Tax, with an amended date of June the 12th that would also move our regular scheduled Commission Meeting to this day. A vote was taken and the motion passed 2-1 with Commissioner McGinn voting against.

4. Update on the Grip 2 Project (Fresnal Canyon Road).

Bill Parker stated that since the Work Session he did meet Tuesday with the Forest Service. We went through the entire 2 miles of the Grip 2 Project. We showed them where we would like to widen the road and some of the work we would like to do. We did get a verbal OK for whenever we can start the project and they would get their surveyors out to survey out the 50 foot easement. Commissioner McGinn stated that by the end of the year Fresnal Canyon will be chip sealed from Highway 82 to Laborcita Canyon.

Bill Parker stated that this is correct.

Commissioner McGinn stated that we also had discussion at the Work Session on this particular item about the RS2477 Resolution. We had asked Ray Backstrom, Assistant County Manager, to research this and give a report. Mr. Backstrom stated that researching back through our records we do not have a resolution that supports the RS2477. In September of last year at the meeting, there were 2 items on the agenda discussing that and the inventory. At that time we were told that those items in and of themselves were sufficient to support our claims to those RS2477 roads. Commissioner McGinn stated that someone at the Work Session asked about the resolution. Mr. Backstrom pulled some minutes that show that we did approve to designate mapped or inventoried roads. It has a specific county record and maps that show all of those RS2477 designations. Commissioner Moore stated that there was not a resolution. There was recognition by this Commission of an inventoried list as well as maps to document those inventories that we claim as RS2477 designation. We don't have to pass a resolution, we just have to turn in the inventory, was the opinion at that time.

5. Commission Discussion/Correspondence:

a. Commissioner McGinn requested an update on the Operations Agreement Phase 3 with the Attorney General and Department of Finance.

Dan Bryant stated that we submitted the operations agreement for the Phase 3 side of the facility in late March. It has been under review by the Attorney General's Office and DFA. There were some issues of concern raised by them. We conducted a telephone conference call today to discuss those and he believes they have found a path to resolve those issues and are going to negotiate a merged operations agreement that will include all three phases in one operations agreement. Ms. Call is working with the people from MTC, (Management Training Corporation) and Dan has a couple of legal issues to look at in the statute about the length of operation agreements and the number of renewals that we can build into an agreement before we go back out to procurement processes for operators. We are expecting to have an AG, DFA approved operations agreement within the next several days for the Commission to consider. The current scheduled opening date for the facility Phase 3 is June 2, 2008.

b. Commissioner Nivison stated that we had a meeting with the Fish and Wild Life Service. We had some issues that needed to be cleared up. A MOU will be a result of this meeting with the Fish and Wildlife, so we don't have these issues again.

6. Unscheduled Citizen Communications:

a. Janet White stated that she had traveled to Weed for a meeting and she noticed several huge boulders that were being deposited on the right side of Hwy. 82. This is where they are doing the construction on 82. They are taking them from one side of the highway and depositing them on the other side in Dry Canyon. She wants to know if the Forest Service did an Environmental impact assessment or if they notified the Commission. Who ever is allowing the boulders to be put in the drainage, whether it's the Forest Service or the Department of Transportation. Who would be liable and are they going to be staying there permanently?

Commissioner Nivison stated that he had noticed the same thing. He made a call and the supervisor will be

back tomorrow. He doubts that the Department of Transportation notified the Forest Service. Commissioner Nivison will bring this up tomorrow with the supervisor of the Department of Transportation when he meets with him.

Ms. White would also like an update on the World Heritage Site designation. A number of us in the community were concerned enough to bring you our support and signatures and she is wondering if the Board has heard anything. Dan Bryant stated that he will be happy to chase this issue down and get back with Ms. White and let her know what their position is. Commissioner Moore stated that he would like to hear this himself. Commissioner Nivison stated that he heard that each country can only designate one during their term and that had already been done. That would be one of the things to verify. Commissioner Moore stated that White Sands did make the tentative list that those will be chosen from for the potential to receive the designation. Once that is done, whoever does it, will be in violation of our ordinance and we will go find them and issue them a citation. Commissioner McGinn stated that is where we left it last, was sending that letter out to the state. You placed it on the tentative list and it violates our ordinance.

6. Executive Session:

Commissioner Moore made a motion to go into Executive Session to discuss as listed on the agenda, items A, B, C, D, E, F, and G as well as their underscored specific items. The motion was seconded by Commissioner McGinn. Roll call was taken as follows:

Commissioner McGinn	yes
Commissioner Nivison	yes
Commissioner Moore	yes

Commissioner Moore made a motion to come out of Executive Session having discussed items as listed on the agenda under A thru G, having made no decisions. The motion was seconded by

Commissioner McGinn. 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 7:40 p.m.

APPROVED:

Doug Moore, Chairman

ATTEST:

Robyn Holmes, County Clerk

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