

a. Request approval for agreement between The Lincoln County Solid Waste Authority and Otero County for Solid Waste Collection Services.

Commissioner Nivison made a motion to approve the agreement for discussion. The motion was seconded by Commissioner Moore.

Commissioner Nivison stated that we have been considering this agreement for quite some time now. Commissioner McGinn stated that yes this is a reputable company, but she believes that Otero County has an opportunity to address some of the issues concerning the Convenience Center by bidding out some of the projects at the Center. Commissioner McGinn recommends that we bid out certain jobs that need to be done so we can maintain the control and management of the Convenience Center.

Tony Rogers, Maintenance Supervisor, stated that our County is planning on paying this company \$600,000 a year to run the Convenience Center. A contract for the land, building and equipment has not been written or signed. Mr. Rogers believes this is a bad deal for the County.

Commissioner Moore gave a short history of the Convenience Center in Otero County to the audience. They also discussed personnel, money and equipment that has been invested over the last year to get it cleaned up. Commissioner McGinn stated that now that we have gotten to this point and made all these investments, now we are talking about hiring some other County's operation to come and manage us. We can take certain jobs that we know that the personnel can't focus on because of the back log of certain situations like the brush, and bid them out individually.

Commissioner Nivison withdrew his motion of approval of the Agreement until after the Executive Session. The second was withdrawn.

Commissioner Nivison made a motion to table item 48 until after the Executive Session for further consideration of the language. The motion was seconded by Commissioner Moore. A vote was taken

and the motion passed 2-1 with Commissioner McGinn opposed.

b. Request approval for forest thinning and development of walking path in the Community of Timberon.

Commissioner Nivison made a motion to approve the forest thinning and development of walking path in the Community of Timberon. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

2. Elected Official, Department Heads, Committee Reports:

a. Paul Quairoli request approval to extend Fire Ban Resolution No.01-10-96/94-46 with amendments to include a selective fireworks ban as provided for by New Mexico State Law.

Commissioner Nivison made a motion to approve to extend Fire Ban Resolution No.01-10-96/94-46 with amendments. The motion was seconded by Commissioner McGinn.

Commissioner McGinn stated that the resolution states everything in the motion and also says to proclaim a ban on the use of fireworks. Dan Bryant, County Attorney, stated that the issue that has come up is that in prior years our fireworks resolution that has been necessitated by drought, can only ban certain fireworks. The statutory scheme gives us the power to either do a ban on both the sale and the use of those fireworks. In the past this Commission has banned the use of those fireworks but not the sale. Before we drafted the exact language to put in the resolution, Dan would like the Commission to have discussion whether they want to include a ban on use and sale or leave it the same.

Commissioner McGinn stated that it is her understanding that we have the Alamo West site for the public to come and shoot off fireworks. Paul stated that this is correct. Commissioner Moore stated that the motion that we are considering will allow the use of fireworks at the approved site and allow the sale of fireworks in the County. Dan stated that this is correct.

Commissioner Nivison amended his motion to include the description of the legal fireworks to be sold and used at a predetermined site. That language will be added to the resolution. The amended motion was seconded by Commissioner McGinn.

The time being 6:30 p.m. the Chairman recessed the Regular Meeting and opened the Public Hearing to determine the Timberon Livestock at Large Petition to be either valid or invalid and consequently will consider the order to prohibit the running of livestock at large in the Timberon Community.

Commissioner Moore recessed the Public Hearing and returned to Regular Session for the discussion of the Resolution banning fireworks.

Arden Shuggs, Timberon Fire Chief, would like to see the complete ban on sale and use.

Eva Tanninghill believes that the City should not allow the sale of fireworks but hold a fireworks show for the residents.

Ron Wright, Waterfall Addition, agrees that the County should ban all fireworks and the sale of them, but legally it's too late. The vendors have already purchased their fireworks to sell.

Virgil Beagles, Timberon resident, stated that there is no way to stop the sale of all fireworks.

Dan Bryant would like to clear up the a few issues. One gentleman expressed his concerns with the timing. The timing is that the drought resolution had to be passed at least 20 days ahead of the holiday. Our first drought resolution was passed in February and has been reviewed monthly every month since. Your power is limited pursuant to the public hearing process and the drought resolution that we have the ability to use to banning the sale and use of missile type rockets, helicopters, aerial spinners, stick type rockets and ground audible devices. Audible devices are firecrackers and a different kind of spinner. The Commission has the ability to limit the use of the other fireworks that are paved or barren or that have readily accessibility to water for use by the homeowner or the general public. What the

Commission doesn't have the power to do is to ban all fireworks. The State Fire Marshall has that ability, the Governor has that ability through an emergency proclamation, which he may or may not exercise that authority in the coming days. The National Forest has closed the forest because of the danger and the State Forester has another level of ability to limit the use of fireworks in all the State Forests. But the Commission's power is real strict and limited by this statute, 60-2C-8.1.

Sid Benson, Timberon resident, suggested that the vendors pass out a flyer with the restricted fireworks listed.

John Blansett, Sheriff, stated that we had federal money released to the sheriff's department to allow us to put extra patrol in the mountains for the Fourth of July weekend.

Commissioner Moore instructed PaulQuairoli, Emergency Service Coordinator, to make up some colored flyers and distribute to all the Fire Chiefs, Cloudcroft and Fireworks stands stating that there is an official fireworks ban. Give a brief summary of what is allowed and what isn't along with the 800 number for the Sheriff.

Commissioner Moore called the question for the motion after all public comment. A vote was taken and the motion passed unanimously. See pages

b. Bill Parker, request approval to build a fire exit road in Waterfall East as a co-op project between the residents of Waterfall East and Otero County.

Commissioner Nivison made a motion to build a fire exit in Waterfall East, the residents will provide the culvert and we will do the work and we will have no responsibility afterwards as far as maintenance.

If the road is abused we will close it. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

c. Tony Rogers request a temporary pay raise for Doug Bourboun for additional services.

Commissioner Nivison made a motion to approve the temporary pay raise with staff recommendation. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

d. Paul Quairoli request approval to declare a state of emergency for Boles Acres, due to recent flooding there could be a possible contamination of the drinking water system. The New Mexico Environmental Department's Drinking Water Bureau has issued a drinking water advisory for Boles Acres.

Commissioner McGinn made a motion to approve to declare a stated of emergency for Boles Acres. The motion was seconded by Commissioner Nivison. Paul Quairoli stated that he had received some paper work back from the State Environmental Department Drinking Water Bureau. The water contains choliform which is a general bacteria in the drinking water but also found in solid waste. The Department is implementing a process to clean the water. In the meantime we will have some water buffalo's at the Fire Station for drinking water.

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

3. Public Hearings:

Commissioner Moore **recessed** the Regular Meeting and called the Public Hearing to order.

a. Request approval to determine the Timberon Livestock at Large Petition to be either valid or invalid.

Commissioner Moore made a motion to consider the approval to determine if the Timberon Livestock at Large Petition is valid or invalid. The motion was seconded by Commissioner McGinn.

Dan Bryant stated that during the break one of the local citizens advised him that if we approve this order tonight we will go to Federal Court and be sued. On the other side of the issue the statutory

provision that we are dealing with, 77-14-1-5 and 77-14-6, are pretty clear in their instructions. 77-14-5 says that the inhabitants of any such town, refers to unincorporated town, can file a petition in writing that is signed by a least 25 residents of the Town or District asking for an Order prohibiting the running at large of livestock within the limits of the Town. 77-14-6 says that upon receipt of that petition, the Board of County Commissioner shall make an Order prohibiting the running at large of livestock. We have received a Petition from the residents of Timberon with about 50 signatures. The Petition was submitted to the County Clerk's Office for verification of Timberon residents. There were at least 28 signatures verified to be residing in Timberon. The Draft Order will have to be published for four consecutive weeks. Upon the final publication the Order will become effective. From this moment forward, Livestock will not be allowed to run at large within the geographic area. There is going to be a dispute over whether Timberon is the right kind of geographic area. The statute has been amended by a piece meal basis over the years by the Legislators and certain pieces of it have been dropped out of certain provisions and left in other provisions. As your Lawyer, when I read 77-14-6, it says you shall make an Order prohibiting the running at large of livestock if the petition is valid within platted town sites or platted additions. Timberon is a series of approved subdivisions within the County.

Commissioner Moore asked Dan in his opinion does the Petition meet the burden? Dan stated that yes, it does.

Commissioner Moore stated that this issue is three parts. The motion that is on the table is that this Commission will determine whether we believe by vote that the requirements of the statute and the petition are valid. The next step is the issuance or the beginning steps of the issuance of an Order to prohibit the running of Livestock.

A Timberon resident stated that New Mexico is a fence out state. If you don't want the animal on your

property, you better put a fence up. Is this Commission trying to change Federal Law by creating an order with these 25 signatures?

Commissioner Moore stated that New Mexico is a fence out state, but within the statute 77-14-1-6, a provision by which a subdivision can petition and create an ordinance within it's boundaries that pertain to livestock at large.

A Timberon resident stated that what she understands is that areas outside of Timberon, that aren't part of Timberon property, Timberon needs to do the fencing if they don't want the livestock in here. Can Timberon afford to do this?

Commissioner Moore stated that the Statute reads that the community has to have a fence at its boundaries. The way that the petition is worded the fence exists today.

Dan Bryant read statute 77-14-3, which is one of the beginning pieces of the provision that has the petition process in it, provides specifically it is unlawful for a person or his agent or employees having charge of livestock to permit or allow the livestock to go upon the lands of others in the State for the purpose of grazing or watering upon the lands without the permission of the owner or legal claimant or his agent. The provisions of this section shall not be construed to effect the obligations of a property owner to meet the requirements of 77-16-1, the fence out rule. It shall apply not only to title lands in the State, but to any lands upon which a person may have a valid existing filing under the laws of the U.S. A person who owns lands that wants to gain the benefits of this prohibition shall carefully and conspicuously mark the lines of his lands so that such mark may be easily seen by persons handling livestock and shall post a notice upon the land conspicuously warning against trespassing or shall serve personal written notice giving descriptions of his land by metes and bounds to the person who owns the livestock. This carves an exception out to the fence out rule and provides the petition process for the

Order to get drafted.

JJ Dugan stated that a Mr. Curtis said that certain properties aren't part of Timberon. He believes he was confused because some of the Timberon Subs don't have Restrictive Covenants on them but they still part of Timberon and the platted subdivision.

Gonzalo Estrada, Chief Deputy Assessor, stated that under the Property Tax Code last year, a Legislator included deer and elk in the definition of livestock.

Aurora Quarter, asked the Chairman who the owner of the goats are. Commissioner Moore stated that he does not know who owns the goats but we are not discussing the goats at this time. We are discussing the validity of the petition.

Lynn Foster asked what Subdivision in Timberon we are talking about. Virgil Beagles also wanted to know what specific platted Subdivisions in Timberon are in question.

Linda Gentry would like to have some clarification on the petition rules. She understands that in order to pass an order inside a subdivision is that all that is required is 25 signatures. Commissioner Moore stated that specific statutes that we are talking about here deals specifically with livestock.

Gary Star stated that he feels that this issue is more about politics than goats.

Helen Cook has nothing against the goats. Where was the petition, she never saw it. The petition needs to be made accessible to all property owners not just a chosen few.

Kim Duckett stated that property was destroyed from these goats. They tear up everything.

Commissioner Moore stated that as soon as we determine whether we have a valid petition or not, the very next thing to request an issuance of an order to prohibit the running of livestock at large. The comments about the goats please reserve until after the validity of the petition is determined.

Larry Church stated that the petition was worded as the un-platted subdivision of Timberon. Do we

have a description of what part of Timberon we are talking about?

Commissioner Moore stated that we are going to give staff an opportunity to find the petition and give him the description of boundaries that we are talking about. Dan stated that he has the petition and read as follows: The petition defines the boundaries as, the limits of the Timberon area are the boundaries of the subdivision as filed with the County of Otero. These boundaries are presently fenced.

Commissioner Moore stated that it would be all subdivisions within the Timberon area. Dan stated that this is correct.

Dan Bryant read the statute 77-14-5 that deals with the validity of the petition. The petition must be in writing, signed by 25 residents, and defines the limits of the area. The limits must be marked by posts at the corners.

Commissioner Nivison stated that we were told by the past Commission that the area was definitely marked. This is the issue that we have to clarify before we move on. The written part of the signatures and the documentation from the Clerk's Office is all in proper order. The thing that he doesn't know is how we resolve the problem of the boundaries of the area in question. Commissioner McGinn agrees. From reading the statute, it needs to be clearly defined what those boundaries are, what the posting is, whether there's fencing or some kind of marker and a township and range so we know if there is one subdivision, 2 subdivisions and so on. The statute defines it as town, but it's not an incorporated area so we have to define, if it's a subdivision in this petition what is the township and range, what are all the areas that would be within that posting or fencing before we could really validate the petition. From what we have heard tonight, Timberon could be all of the subdivisions, or one subdivision. It needs to be clearly defined in the petition.

Dan Bryant stated that he has consulted with the Assessor's Office. There are two definite legal

descriptions that encompass the area that is Timberon. The first one is one that the Assessor's Office uses to define the Timberon Community. When the Water and Sewer Sanitation District was formed, part of the requirement that was placed on them, was to have an actual physical description of the boundaries of the Water and Sewer Sanitation District. This boundary also encompasses the exterior boundaries of the community of Timberon. It would be fairly simple to incorporate either one or both of those descriptions into a petition. Commissioner Moore stated that would be a different petition than the one we are considering for validity tonight. If we declare this petition invalid, the discussion he is hearing tonight, the weakness is not in the signatures. There was three burdens, the signature requirement, the corner posts and we need to clearly define exactly where they are. There may be un-plated sections of ground within the subdivision that if we enact this, would not be governed by it. Is a plat requirement within the statute, that it be plated? Dan stated that the area be a plated addition is required, but every square inch within the boundaries of the area be actually plated is not required. There is a difference between the two. With respect to Mr. Beagles property, by definition the order will not apply to him because you are not prohibiting goats on his own property. You are only prohibiting running at large. Commissioner Moore stated that the vagueness of the description of the land mass is the weakness of the petition.

Bill Gideon suggested that the boundaries of Timberon, which are described in the petition of the Water and Sanitation District be used for this petition. Commissioner Moore stated that had the petition used these words in the beginning it would have been clear.

Commissioner Moore stated that he has had enough input from the residents to make a decision. The motion was to approve the petition as valid. A vote was taken and the motion failed.

Commissioner Nivison stated that he would have voted for this petition if we had a clear description of

the boundaries. Commissioner Moore agreed with Commissioner Nivison.

b. Letters of intent to proceed with the formation of a Community Service District for Parks and Recreation in the Timberon Community.

Martin Moore, County Manager, stated that the letter of intent is to proceed to develop a district. A Parks and Recreation District would be a mill levy on the property taxes for Timberon. The money will be used to maintain the parks and to provide some recreation within the community.

J J Duckett stated that it would be nice to have some nice parks for the community.

Syd Benson stated that with the reduction in the tax mill levy, this leaves the Water and Sanitation District unable to take care of all these nice facilities that we have. Initially, this was thought up to generate funds for the lodge pool and golf course.

Dan Bryant stated that a petition will have to be circulated first for the formation of the district. Dan told the audience that they need to hire a lawyer to help write up the petition. The petition will be filed in the District Court Office and then taken to the County Clerk's Office for verification of the signatures. Once this is all done the Board of County Commissioners will instruct Dan as the County Attorney to draft a petition to file in District Court asking the District Court to oversee the formation of the District. Once the District Court Judge issues their order an election will have to occur within sixty days after the order and the election will consider should be form a district.

Commissioner Moore stated that the funds generated will be earmarked specifically for Parks and Recreation and can't be diverted for any other public entity.

Timberon residents would like for whoever is circulating the petitions to please try and get input from as many residents as possible.

Commissioner Nivison stated that Timberon needs to have a town meeting so all the residents will have

a chance to comment if they want this Special District or not. This will also give them a chance to sign the petition.

The time being 9:25 p.m. the Chairman adjourned the Public Hearing and returned to Regular Session.

4. Executive Session:

Commissioner McGinn made a motion to go into Executive Session to discuss pending and threatening litigation, Special District Formation and discuss settlement of the Kmart bankruptcy personal property tax claim and the Lincoln County Solid Waste Authority Contract. 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 under pending and threatening litigation, Special District Formation and settlement of the Kmart bankruptcy personal property tax claim and under contracts the Lincoln County Solid Waste Authority and 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 10:30 p.m.

APPROVED:

Doug Moore, Chairman

ATTEST:

Robyn Silva, County Clerk

Regular Meeting June 7, 2006