

The Board of County Commissioners, in and for the County of Otero, State of New Mexico, met in a Special Meeting at the Otero County Courthouse in Alamogordo, County and State aforesaid. Meeting called to order by the Chairman at 6:00 PM, June 10, 2002; and he announced that reasonable notice for this meeting was given to the Alamogordo Daily News, Holloman Sunburst, Mountain Monthly, and to Radio Stations KPSA, KINN, and KYEE.

Those being present:

Richard Zierlein	Chairman
Tim McGinn	Vice-Chairman
Michael Nivison	Member
Ruth Hooser	County Manager
Dan Bryant	County Attorney
LaDonna Adams	Department Assistant
Robyn Silva	Deputy Clerk

The Chairman called the meeting to order and gave the invocation. Commissioner McGinn led those assembled in the Pledge of Allegiance and Commissioner Nivison led the Salute to the flag of the State of New Mexico.

1. Commissioner Zierlein stated that this Public Hearing is being held to discuss the Junk Car Ordinance.

Commissioner Nivison stated that his feeling on this issue is, if we have some health or welfare issue to a child, or something like that, then it is something that we need to address, and it's our duty to do that. If that situation doesn't exist, speaking for himself, he doesn't have any interest in pursuing it, on an individual basis, all the way down the County line

and back. He stated that he feels that it could upset the county citizens and cause bad moral problems.

Mr. Harvey Hinkle asked if the County Attorney, Mr. Bryant, would please tell everyone what consists in this law, in layman's terms, and exactly what can be done and what cannot.

Mr. Bryant stated that he is making a couple of assumptions. One, that we want to talk about the Junk Vehicle Ordinance, and number two, we want to talk about the Weed, Litter, and Trash Ordinance.

Mr. Bryant stated, in a nut shell, the Junk Vehicle Ordinance means that you can't keep inoperable vehicles on your property. If the vehicle becomes inoperable, it is to be disposed of and not maintained on the property. Mr. Bryant stated that the Ordinance has a provision which states, if the vehicle is fenced out of view, it can be maintained on the property.

Mr. Bryant stated that, with respect to the Weed and Litter Ordinance, that's even simpler; we are suppose to keep our property cleaned up from weeds and liter. He stated this is a fire safety and health issue more than anything else. The Ordinances also have other things that are out there. For instance, the Weed and Litter Ordinance contains some burning provisions. Those particular provisions of the Ordinance are essentially mute because pursuant to the Environment Department regulations, nobody is suppose to be burning in New Mexico except for agricultural purposes.

Commissioner Zierlein wanted to point out that both of these Ordinances have been drafted and written so that they are only implemented by complaint only. If we get a complaint, we will follow through with the Ordinance and follow up on the complaint.

Mr. Hinkle questioned if the Junk Vehicle Ordinance covers parts of vehicles that

are used to repair other vehicles or farm equipment? Commissioner Zierlein stated that the way the Ordinance reads, it's okay until someone complains, then you would have to fence them from view and keep them from a public right-of-way.

Mr. Dewitt Foster from west of Tularosa, questioned the Board about who the people are that are taking pictures of people's property and threatening them, if they don't clean up their property, they will get a letter from the County Attorney. Then if they still don't clean it up, the County will send a Sheriff out, and if they still don't do something, the County will come out and clean it up. Mr. Dewitt stated that he feels like that is a threat. He stated that he was not told this, but a friend of his was. He stated that using the First Amendment, Freedom of Speech Act is wrong.

Commissioner McGinn stated that what Mr. Dewitt is talking about is, a couple of people from the organization, Make Otero Beautiful, are going right up to people's property and taking pictures of their property. Commissioner McGinn stated that they are doing it from a public right-of-way, but that still angers some people.

Mr. Dewitt stated that what concerns him is that these people are parking on the right-of-way of the by-pass. He stated that on each end of the by-pass there is a road that is posted Emergency Parking Only. Mr. Dewitt stated that that person is violating the law just the same as the person who has the trash is violating the law.

Mr. Robert Calkins from High Rolls approached the Board and stated that he would like to see someone build a fence around his place so that his neighbors, that are 500 feet above him, can't see his place. He also stated that, if it wasn't for weeds, there would be a lot of erosion up there. He stated that because we are in the middle of a drought, there is no way anything will grow up there because we are on water restrictions.

Commissioner Zierlein explained to Mr. Calkins that the way that the Weed Ordinance is written, the weeds can't be within a certain number of feet from a structure where it is a fire hazard. It is not addressing all of the weeds.

Commissioner McGinn questioned Mr. Bryant if he has been enacting the Weed Ordinance. Mr. Bryant stated that he has not had any one call and complain on the Weed or Liter Ordinance to date. Mr. Bryant stated that there is a state statute that has to do with unsafe buildings and structures, and that is where he has been receiving the complaints.

Commissioner Zierlein explained that the reason that they included weeds in the ordinance is, if someone has a neighbor that has weeds growing up to their fence, it could create a fire hazard. He also stated that ordinance doesn't state that the weeds have to be removed, it just states that they need to be mowed and kept under control so that it doesn't create a fire hazard for your neighbor.

Commissioner McGinn stated that the issue of junk cars is usually not one or two junk cars, but 15 or even 100 cars that are not at a licensed business.

Mr. Calkins stated that he has always made his living and raised his kids working on vehicles and he personally doesn't think there is any such thing as a junk car.

Commissioner Nivison read the definition of a junked car and stated that the definition can be interpreted several ways.

Mr. Calkins stated that a lot of the junked cars don't look like anything until they are refinished.

Mr. Hinkle asked if they are going to pursue the complaint on his building any further. Commissioner Zierlein stated that his interpretation of the issue is that it is finished because it has been declared structurally sound and the County has no further interest in it.

Mr. Hinkle stated that he feels that this was handled very unprofessionally. He stated the reason he feels like that is because, as soon as the County received a letter of complaint, the first action that the County took was to send him a letter of condemnation from the County Attorney. Mr. Hinkle stated that nobody questioned or checked if the accusation was true.

Commissioner Zierlein stated that concerning the letter, he feels like it is the interpretation of the reader. He stated that the letter just states that the County has received a complaint and that they need a response within a certain amount of time.

Mr. Hinkle stated that it was a letter of condemnation, and if he didn't respond, then the County would take action.

Commissioner Zierlein stated that the letter is written according to statute.

Commissioner Nivison read the letter that Mr. Hinkle received from Mr. Bryant. He stated that it has to do with intent. He stated that the letter is asking Mr. Hinkle what condition he feels the building is in. Commissioner Nivison stated that he feels that Mr. Hinkle has given the Commission his answer, that the building is fine and sound. He stated that the Commission also feels, at this point, that the building is fine.

Mr. Hinkle stated that he agreed to have a building inspector come in and inspect it, and he wants to know if that is the last step that will be taken.

The Commission stated that they are satisfied.

Mr. Hinkle stated that there may be a harassment suit filed against some people.

The Commission thanked Mr. Hinkle for his cooperation.

Mr. Hinkle stated that he just wished that they would have sent him a nice letter rather than a condemnation letter.

Commissioner Nivison stated that they have learned that the most important thing is to always have the documents to fall back on. He stated that it appears that the letter was more offensive to Mr. Hinkle than it was intended to be. He stated that the issue was to make sure that the County had done their duty. By Mr. Hinkle responding, that allows the Commission to make their decision and Commissioner Nivison stated that they are no longer interested in this issue.

Mr. Hinkle stated that he feels that it is only fair to place a cost on the people that complain because someone has to pay the fee for an inspector.

Mr. Bryant stated that he has been beaten to death by the other side that feels that the letter he wrote to Mr. Hinkle was too nice, and didn't demand enough, and didn't put him on notice about what was going on. He also stated that Mr. Hinkle has beaten him to death because his letter was too mean.

Mr. Hinkle stated that he feels there should be a means that they should have to be held accountable to pay a fee to have an inspector come out.

Commissioner Zierlein stated that the County will look into the possibility of charging some kind of fee.

Commissioner McGinn asked Mr. Bryant if there can be a fee set even though it is a State Statute. Mr. Bryant stated that, on behalf of County Government over the years, they have tried a number of times, through the ordinance process, to create a fee structure that would help defray the cost of some of the mandates that come down from the State level. The State Supreme Court has stated that Counties are creatures of Statutes and only the State Legislature has the power to give the Counties the power to raise revenues from sources that are not otherwise out there in the Statutory scheme. Needless to say, they probably cannot validly do this.

Mr. Dewitt stated that he has another question. He stated that this Gentleman is telling people that they have the law on their side. He asked who has given him this authority?

Commissioner McGinn stated that nobody has given this person police power.

Mr. Dewitt stated that these people are picking on senior citizens and not on people that can take care of themselves.

Mr. Don Fisk from Tularosa approached the Board to state that he is surprised that one complaint can cause all of this, and at the same time, Old Mescalero Road is a rough road that is always complained about but nothing is done. He stated that there are talepipes, mufflers and shocks all over the place, and yet nobody will repair the road.

Commissioner Zierlein stated that the County's maintenance begins at the end of the city limits. He stated that the County resealed that road in the last six or seven years.

Mr. Robert Calkins suggested that the County hold a swap meet to rid the County of the old junk cars.

Commissioner McGinn stated that he was surprised that nobody from Keep Otero Beautiful was present for the meeting tonight.

Mr. Ted Dyer stated that he thinks the County should consider one thing. He stated that he feels there is a small fraction of people that are with Keep Otero Beautiful, that are taking examples and going to the extreme. He suggested that we should qualify the complaint before the attorney sends an intimidating letter, to otherwise, law abiding citizens. We are talking about the life and respect of individuals. They make accusations and then take it to the extreme. He stated that we should validate the complaints before any action is taken.

Commissioner Nivison stated that, as he read the letter, he felt it was just to ask if there was a problem with the building. He stated that it is a good thing to have an inspector look

at it because then you have proof. He stated that the County does not have anyone in that position that has the expertise to determine, whether or not, the building is in a sound state.

Mr. Dyer stated that the County should consider the source.

Commissioner Nivison stated that if there is a question asked to the Commission by ordinance, we are required by law, to respond. The way that it is written, it has to be from the County Attorney.

Commissioner Zierlein stated that the bottom line is, any complaint that the County gets, no matter who it is from, whether it is justified or unjustified, the County has the duty to follow through and use the same procedure on every complaint. He stated that the County can't pick and chose how we administer, we have to use the same procedure for everyone. That way the liability won't fall back on the County.

Commissioner Nivison stated that, if it was offensive, we apologize. Maybe we can come up with a better method of doing this. It all boils down to, What is junk? There is no threshold on that, one man's trash is another man's treasure. He stated that there is not much that can be done on this.

Mr. Hinkle stated that this should be taken care of before a complaint was filed. Most people would let someone come on their property to look if they did it nicely and not behind their back.

Mr. Hinkle stated that he spoke with Mr. Bryant and explained that it was a structurally sound building. He stated that Mr. Bryant stated that they would have to have someone check it out, and Mr. Hinkle agreed to that.

Mr. Bryant stated that he thought that he was a lot nicer than what Mr. Hinkle is saying. Mr. Bryant stated that he remembers in their conversation that he asked Mr. Hinkle if he

would mind if, they could find someone with some engineering capabilities, they could come out and take a look. He stated that Mr. Hinkle responded by saying he would not mind a bit. Mr. Bryant then stated that they made an agreement and provided for advance notice, and provided that the inspector would give Mr. Hinkle his report before he left his property. Mr. Bryant stated that he found Mr. Hinkle to be incredibly polite, and deferential, and decent through the whole process. Mr. Bryant further stated that he thought, until tonight, that Mr. Hinkle found him that way also. Mr. Bryant apologized that Mr. Hinkle found him unprofessional.

The time being 6:45 pm, the Chairman adjourned the Public Hearing.

Chairman

ATTEST:

Otero County Clerk

Special Meeting of June 7, 2002.