

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 11:00 AM, June 17, 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
- Ray Backstrom Administrative Office Manager
- Dan Bryant County Attorney
- LaDonna Adams Department Assistant
- Robyn Silva Deputy Clerk

The time being 11:00 AM, The Chairman called the meeting to order and opened the Public Hearing. He then recessed the Public Hearing for 10 minutes until all of the necessary people arrive.

The Chairman then gave the invocation and led those assembled in the Pledge of Allegiance and the Salute to the flag of the State of New Mexico.

1. Commissioner McGinn made a motion to approve Item No. 3 (A, B, and C) and Item No. 6. Commissioner Nivison seconded the motion. A vote was taken and the motion

passed unanimously. SEE BOOK

2. Commissioner McGinn then requested information on Item No. 5. Mrs. Hooser stated that Item No. 5 is to accept a concrete pad for the Alamo West VFD. She explained that Mr. Bryant has looked at the pad to make sure that it was done correctly because there were questions about the people who laid the pad and if they could legally do it. She stated that they have everything cleared up. Mrs. Hooser stated that the pad is for a metal storage building.

Commissioner McGinn made a motion to approve Item No 5 which is to accept a concrete pad for the Alamo West VFD. Commissioner Nivison seconded the motion. A vote was taken and the motion passed unanimously. SEE BOOK

3. Discussion was held on Ordinance No. 02-01/06-17-02 regarding authorizing the issuance of Otero County, New Mexico Jail Project Revenue Bonds, Series 2002 in an aggregate principal amount not exceeding \$28,000,000 for the purpose of defraying the cost of constructing, acquiring and equipping a jail facility.

Mr. Bryant approached the Board and stated that they are hoping that this is the final step in a transaction that the Board has been working on for about 22 months. He stated that they went before the Board in April with a proposed form of this Ordinance. He stated that the basic difference between to days Ordinance and that Ordinance is, that Ordinance set up under the Revenue Bonding Act, a Lease Purchase Agreement was the financing tool for the Project. Mr. Bryant stated that, by using that process, it had certain advantages to the County, and to the Operator, and to the Investors because of the way rules work within the Federal Government in terms of how they will calculate the overhead costs of running a Detention Center. The rules are different when you are calculating overhead for running a Detention Center when you are using Bonds or another financing mechanism that does not include a Lease. Mr.

Bryant stated that they got that Project through and they went to Santa Fe to get approval on the Operations Agreement with Management Training Corporation to actually run the Detention Center. In the course of that process, the Attorney General's Office and DFA, who are required to approve the Operations Agreement, examined the underlying financing structure. They concluded, inappropriately, incorrectly, and outside of the law, in Mr. Bryant's opinion, that if they were going to use the Lease Purchase Agreement, we were limited to a fifteen year amortization on the financing package. Whether they are right or wrong, is really not material today because that was a **DRAFT** **COPY** obstacle we couldn't get past. In order to get the project rolling, we had to step back, redo the financing package, set it up with Bonds so that we could get a long enough amortization package that the transaction will work. It will cash flow and it will actually pay the operational cost and the underlying Bonds that are going to be used to purchase the land, build the site, and get everything up and rolling. Mr. Bryant stated that the Ordinance that is in front of the Commission today, makes those changes. He stated that the Board considered a form of this Ordinance last August and another form in April, and this form today, and the basic difference is that the form that we are looking at today sets up Revenue Bonds to be issued. The balance of the Project is going to work in substantially similar ways to the way it was going to work under the Lease Purchase Agreement, except that instead of making payments on a Lease Purchase, the operations of the facility will make payments on the Bonds. We are still going to use a Trustee. Mr. Bryant stated that the Trustee is still going to collect from the operator the funds necessary to make the underlying payment on the Bonds. They are the same other than, they won't be called Lease Payments, they will be called Bond Payments. That gets us out from under one sentence in the New Mexico Statute that limits Lease Purchases to fifteen years.

Mr. Bryant stated that the down side of that process is this. Because of the way

the rules work, the amount of revenue that will flow from the project is going to be slightly less than it would have been under the Lease Purchase. This is because you are not entitled to put those mortgage payments, you will, or the Bond Payments, into the operational process for calculation of the per diem rate the same way in a bonding process as you are under a Lease Purchase Agreement. Mr. Bryant stated that we would have gotten a better return on per diem under the Lease Purchase Agreement than we will get under the Bonds. The project will still cash flow, and pay for itself, and will be an economic development tool for the Chaparral area. The first phase is still planned to be 500 beds as it was from the beginning. Mr. Bryant stated that all of the things that we have been talking about for all of these months remain constant.

Mr. Bryant stated that Mr. Benningstick and Mr. Harley are here and happy to answer any questions there may be.

Commissioner Nivison questioned what the difference on the per diem payment will be and if it will be significant?

Mr. Harley stated that what Mr. Bryant has laid out is correct. He stated that they believe, at this point, after conversations with the US Marshall's Service, the prime tenant for this facility, that with this revenue based obligation, we feel we can still achieve what our original goal was. He stated in terms of treating it as a Lease, although it isn't a Lease, primarily because it is not a debt instrument and that it is a revenue based obligation, just like a Lease would be, the difference is about \$3 to \$4 per day. The reimbursement from the Marshall's Service would be based on a depreciation schedule as opposed to an amortization schedule. He stated that they feel, ninety percent confident, that they can get back to where they were originally.

Mr. Bryant stated that there is a wealth of misunderstanding about this project.

He stated that the Board needs to understand that they are not obligating the General Fund Revenues of the County of Otero in this Project. The Board is not obligating any Gross Receipts Tax Revenues or any Special Fund Revenues of the County in this Project. This Project is structured so that the following will occur: The transaction will close sometime in the next few weeks; construction will start; it will get completed; the facility will open; and the revenues of the facility are what are obligated to paying off the Bonds that will be approved with this Ordinance. Mr. Bryant stated that if something occurs and that doesn't happen, the facility will go into default, and the investors on the Bonds have recourse against the real property and improvements that are being constructed on the site. He stated that if this Project goes south, what happens is the investors end up owning the facility and the real property that it's on and, they will then try and find an operator or some way to turn that in to debt service on the remaining Bonds that are outstanding at that time. He stated that they do not have the ability to come against the Commission for the General Fund Revenues or any other revenues of the County.

Mr. Bryant stated that as recently as Thursday or Friday of this past week, he stated that he was not sure that DFA, Local Government Division, and the Attorney General's Office understood that part of this.

Mr. Bryant told the Board that the one cautionary thing that he wants them to know before they take action is this: He cannot guarantee them that they will not be sued if the Project goes south. He stated that he has worked for this County for 22 years, and the one thing that he has learned is that anybody that has an idiot for a lawyer and a \$100 filing fee can sue. He stated that he doesn't think they can win or prevail against the County. Mr. Bryant stated that he feels that they have done the best that they can under the legal environment and the factual

environment to protect the County within the framework of the transaction, and the documentation and the Operational Agreement.

Commissioner Nivison asked Mr. Bryant, after all of this, if DFA has approved this.

Mr. Bryant stated that DFA, with the re-structuring of the financial end of the package, and the removal of the Lease Purchase Aspect, has agreed to review the Operations Agreement. They sent us a letter requesting certain changes in the Operational Agreement, and he stated that he and Mr. Youngblood made the necessary adjustments.

Mr. Bryant stated that the Operational Agreement and the approval of the Operational Agreement is independent of the setting up of the Bond transaction and the closing of the Bond transaction, and getting the Project rolling. They are not tied together anymore because we went with Revenue Bonds instead of a Lease Purchase Agreement.

Mr. Bryant stated that the short answer to Commissioner Nivison's question is this: He stated that he thinks they have their approval on the Operational Agreement, it's not signed off or in writing, but we are close. He stated that it is not tied to approving the Ordinance and getting the Project rolling from here forward.

Commissioner McGinn told Mr. Bryant that he appreciates him studying all of this and making it easier on the Commission to understand.

Mr. Bryant stated that this is an important Project for the Chaparral area. He stated that, for the first time, there will finally be, in the history of this County, an economic engine, located in proximity to that community from which we hope, other economic growth and development can occur. He reminded the Commission about the statistics about Chaparral, and how low the medium income is there. This County, to the extent it can, is taking a vital step in

rehabilitating that part of the County.

Commissioner Nivison stated that what we are doing is authorizing notice of the acceptance of the Bond Package.

Mr. Bryant stated that the Ordinance authorizes the issuance and the sale, all of the steps necessary to put in place, a Revenue Bonding structure that will generate something on the order of \$28,000,000 to get the land purchased and the facility constructed.

Commissioner Nivison made a motion to move forward on the Ordinance which enables us to sell approximately \$28,000,000 worth of Bonds to build a prison in the Chaparral area, which he agrees with Mr. Bryant wholeheartedly, will present opportunity to several communities, here and there. In this Ordinance, which is No. 02-01/06-17-02, we direct Mr. Bryant to move forward with the package with the DFA, as far as getting them to sign off on that part. Mr. Bryant asked Commissioner Nivison if the motion is to adopt Ordinance No. 02-01/06-17-02 for issuing the Revenue Bonds. Commissioner Nivison stated it was. Commissioner McGinn seconded the motion. Discussion was held. Mr. Ed Carr questioned if this is a Taxery Bond or a Non-Taxery Bond; will there be property taxes assessed on this or not. Mr. Bryant stated that the Project will be tax free from property tax as a result of the local IRB process. A vote was taken and the motion passed unanimously. SEE BOOK

4. Commissioner Nivison made a motion to approve Resolution No. 06-17-02/90-64 which is approving the forms of the Bond Purchase Agreement. Commissioner McGinn seconded the motion. A vote was taken and the motion passed unanimously.

5. Mr. Bryant stated that in April or May, the Board approved an Operational Agreement with MTC that authorized the Chairman to sign, it was finalized and the Chairman signed it and it was sent to Santa Fe. It has gone through a number of iterations and changes

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since then, which have largely been to put in place in the Agreement, the provisions that the DFA and the Attorney General's Office wanted. In addition to those two entities, the statute also requires that Risk Management sign off on the Operational Agreement. Risk Management signed off immediately upon its submission to them. They did that because they no longer insure Counties anymore. Counties are either insured privately or through the NM County Insurance Authority. Mr. Bryant stated that what he is asking the Board to do today, with the Operations Agreement, is to reiterate that approval that the Chairman was given, and authorize him to execute the Operations, Management, and Maintenance Agreements anew. He stated that the prior draft that was approved in April or May, was a draft agreement that was tied very extensively to the Lease Purchase process and there were numerous provisions and paragraphs in that agreement that caused it to work hand and glove with a Lease Purchase Program. Since changing the structure of the transaction, we have had to rewrite the Operations Agreement so that we are referring to a Revenue Bonding Financing Structure instead of a Lease Purchase Financing Structure. In addition to that, we have incorporated a number of provisions that the AG and the DFA have asked for. Except for that, it is the same Operational Agreement that we considered before.

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Mr. Bryant stated that there is one difference in this agreement that the Board needs to be acutely aware of. Initially, the Operations Agreement provided that no County prisoners would be housed in this facility. The AG's Office and the DFA objected to that. He stated that it was included in the Agreement initially because, prior pronouncements that had come out of the AG's Office appeared to make it a requirement that we not put County prisoners in there or expend General Fund Revenues to house prisoners in that facility, because, were we to do that, it would kick it out of its protected status as a Revenue Bonding Project. Through the

course of extensive discussions with the AG's Office, we worked out all of those issues and they want us to be able to put County prisoners in there in order for the facility to qualify as a County Jail, and once it qualifies, then the employees are clothed with the law enforcement authority that is granted to detention officers under New Mexico Statute. In the course of this process, we did a study of the local jail. We looked at the fact that we are running at and above capacity, on a number of occasions. This will give us a facility that is only about 50 miles away that can house prisoners for us when we need to do that. Mr. Bryant stated that it is still his opinion that we need to be working diligently on incarceration alternatives in this County and he will continue those efforts with the District and Magistrate Judges.

Commissioner Nivison made a motion to approve the Amended Operations Management Agreement and authorize Mr. Bryant to move forward with DFA. Also, to authorize the Chairman, after he has conferenced with the other two Commissioners, to sign the Agreement. Commissioner McGinn seconded the motion. Discussion was held. Mr. Carr asked if the wage scale of the employees will be affected by the opening of the door for using the facility for County prisoners. Mr. Bryant stated that it will not be affected. Based on our conversations with the Marshall's Service, we don't believe that the Federal Wage Scale is going to apply to this facility. This is one of those issues that the Federal Government would be taking money out of one pocket and putting into another, if they impose the wage scale. Mr. Bryant stated that our understanding of their view of the transaction, is that they don't consider it to be subject to that scale. Mr. Bryant stated that the local prevailing job market will dictate the wage scale. He stated that it should be governed by the prevailing local market as opposed to the Federal Scale. A vote was taken and the motion passed unanimously. SEE BOOK PAGES

6. Discussion was held on the Amended Professional Services Agreement for the

County/City Partnership in the Lincoln National Forest Restoration Program.

Commissioner Nivison stated that there are a few language changes. Mr. Bryant stated that his Office is trying to incorporate the changes that Mr. Jose Martinez from the Forest Service, has requested, into the draft agreement so that we can bring it back for approval. Mr. Bryant stated that he is asking the Board to approve the agreement, subject to getting the changes inputted into the agreement and e-mailing it down here for the Chairman to sign. That way, we can move forward today and not lose anymore time. Mr. Bryant stated that this has to do with the part of the work that has to be done, and funds encumbered prior to October 1, 2002, so we need to move quickly to get the process rolling.

Commissioner Nivison made a motion to approve the Amended Professional Services Agreement for the County/City Partnership in the Lincoln National Forest Restoration Program, subject to the changes being agreeable by both parties and after notification of the Commission, the Chairman being allowed to sign the Agreement on behalf of the County. Commissioner McGinn seconded the motion. A vote was taken and the motion passed unanimously. SEE BOOK PAGE

7. Commissioner McGinn made a motion to approve the Amended Participating Agreement between USDA Forest Service, Lincoln National Forest Service, and the Board of County Commissioners of Otero County. This approval is subject to the changes being made that are agreeable by all parties involved and after notification of the Commission, the Chairman being allowed to sign the Agreement on behalf of Otero County. Commissioner Nivison seconded the motion. A vote was taken and the motion passed unanimously. SEE BOOK PAGES

8. Discussion was held on Resolution No. 06-17-02/90-63 regarding the Otero

County Disaster Declaration for emergency fires. Discussion was held.

Commissioner Nivison stated that the Governor has been asked to ban the sale of fireworks for the whole State. He stated that he understands that the County does not have that authority.

Mr. Bryant stated that the County's existing disaster resolution includes within it, a ban on fireworks use that bans everything that a County Commission can ban under the State Statute. He stated that the NMA is circulating some questionnaires to all of the Counties, on behalf of the Governor's Office, so that the Governor can make a decision about whether he needs to do something that is more extensive than that with respect to other kinds of fireworks.

Mr. Bryant stated that as we sit today, both drought idiocies continue to reflect significant portions of Otero County within the severe drought classifications. All of the criteria that existed 2 months ago, when this Resolution was first past, are still in effect today. The short term weather forecast for the next 8 -10 days is a high pressure ridge settling in over the Southwestern part of the Country and no moisture of any icreciable content is expected for at least 10 days from today. We are in a severe drought and we will continue to be in a severe drought for at least 10 days.

Commissioner Nivison made a motion to approve Resolution No. 06-17-02/90-63 regarding the Otero County Disaster Declaration for emergency fires. Commissioner McGinn seconded the motion. Commissioner McGinn questioned Mr. Bryant if this Declaration is just a continuation of the Resolution that was previously passed. He asked if there are still fireworks for sale. Mr. Bryant stated that the Commissioners have no power as a matter of law to prohibit the sale of fireworks. We can only ban certain types of fireworks and the vast majority of available fireworks that are on the market are eligible for purchase. A vote was taken and the

motion passed 2-1 with Commissioner Zierlein voting against.

The time being 11:50 AM, the Chairman adjourned the meeting.

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Chairman

ATTEST:

Otero County Clerk

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Special Meeting of June 17, 2002.