

are held the first Thursday of each month. Commissioner Moore thanked the group for their report and stated that we are planning on having a Commission Meeting in Chaparral sometime this summer.

Presentation: Commissioner Moore presented a Dedicated Service Award from the New Mexico Association of Counties to Dan Bryant. The Association felt it best for Dan to receive this award at home.

Proclamation: Juneteenth Celebration.

Commissioner McGinn read the Juneteenth Celebration Proclamation into the records.

Commissioner McGinn made a motion to ratify the Juneteenth Celebration as read in the Proclamation.

The motion was seconded by Commissioner Moore. A vote was taken and the motion passed unanimously. See page

1.Consent Agenda:

Commissioner Nivison made a motion to approve A1 through G17 on the Consent Agenda.

Commissioner McGinn stated that there are a couple of items she would like to pull for discussion within the Consent Agenda. Item E7., Contract for County Legal Services and F14. the Solid Waste Collections between Otero County and Lincoln County Solid Waste Authority.

Commissioner Nivison amended his motion to approve A1 Minutes, B2 Bills Lists #51, #52, #53, C2 Health Care Service Sole Provider for June 2006, D4 Personnel, E6 Purchasing, F8-13 Resolutions, Contracts and Agreements, G15-17, Elected Officials. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

a. Commissioner Nivison made a motion to approve the renewal of contract for County Legal Services between Daniel A. Bryant, P.A. and Otero County. The motion was seconded by Commissioner Moore for discussion.

Commissioner McGinn stated that during the budgetary process she didn't agree to a salary increase for the County Attorney, so that is why she will not be consenting to the contract.

John Turney approached the Board and stated that he is opposed to the proposed contract for Mr. Bryant. With first amendment protection, I ask that my remarks be accompanied by the spirit. After doing recent research the last few days I have been able to confirm to the best of my ability, that if this contract is approved for Mr. Bryant, which is an eight year contract of \$1,300,000.00 which is approximately \$12,000.00 per month and another \$1,000.00 for sale taxes. It is to the best of my knowledge the highest paid in the inter mountain west. Not only in New Mexico, Arizona, Colorado and Utah. In the couple of days that I have learned about this I haven't been able to get to Idaho, Montana and Nevada. I did this by calling County Attorneys and Human Resources Directors in New Mexico and other states. The highest paid in the whole State of New Mexico is \$128,000.00 for full time work. This is a part-time contract, the best I can tell from the documents on the internet. I understand Mr. Bryant has a practice in Ruidoso, NM and spends just as much time with other clients with is perfectly fine. The Bernalillo County Attorney makes \$55.29 an hour. I was a Finance Major in college but that doesn't mean that I know numbers all that well, but the ranges I found is \$80,000.00 to \$128,000.00 for full time work in the four corner states. I think this contract is not with the market values and not consistent with what other County Attorneys make in other states. Also in this contract, the back-up attorney if Mr. Bryant isn't available is Alan Morrell. He is also the Lincoln County Attorney. I raise the question, if there is a potential conflict of interest given certain business dealings that are about to transpire. Those things need to be looked at. Furthermore, all of you ran as Republicans, and I voted for one of you but not all Republicans agree on all things. Keeping with you campaign promises as Republicans, I wonder if a contract that is by multiples of two, three and four

times worthy of the taxpayers to have to bear the cost. This very well maybe the most expensive lawyer in the west, outside of California and the pacific coast. Competition would be a good thing here. He believes people are shocked that this contract isn't going up for bid. Mr. Bryant's experience is great and he may deserve to be at the upper end of what other attorneys make, but this seems way out of line.

Mr. Turner believes that to pass this contract would be cronyism and looks to me like pure creed.

The time being 6:30 p.m. Commissioner Moore recessed the Regular Meeting and called the Health Care Services Board for review of other providers to order and recessed the Health Care Services Board.

The Chairman called the Public Hearing to order, to name a road in the La Luz Fire District to Old Mill Road and recessed the Public Hearing.

The Chairman called the Public Hearing to order to vacate Lot 14 of Cooper Subdivision and relocate an easement, recessed the Public Hearing and returned to the Regular Meeting.

Commissioner Moore returned to the approval of contract renewal for County Legal Services.

A vote was taken and the motion passed 2-1 with Commissioner McGinn voting no.

b. Request approval of the agreement for Solid Waste Collections Services between the County of Otero and The Lincoln County Solid Waste Authority.

Commissioner Nivison made a motion to approve the agreement for Solid Waste Collections Services between the County of Otero and The Lincoln County Solid Waste Authority subject to discussion. The motion was seconded by Commissioner Moore.

Commissioner McGinn stated that our last work session, staff had provided some figures on the cost for Solid Waste with the County Manager. Commissioner McGinn asked Dr. Moore if he had done his further research on the budget and what it will cost the County. Dr. Moore stated that the estimated

cost, and included in the cost is the transfer of the funds under the Joint Powers Agreement to the City of Alamogordo. In addition we have added in the cost of the clean ups that have been mandated by the New Mexico Environment Department. We are looking at the estimated cost of \$980, 731.00. Under the approved budget we had budgeted \$733,909.00. What we have estimated to pay this year, with budget adjustment increases is \$821,501.45 which is the operating cost and the payment of \$220,000.00 to the City of Alamogordo. Commissioner Nivison stated that we are talking about continuing on at the level we are on or fixing the problems that we have. This would also allow us to get our violations taken care of. Commissioner McGinn stated that when we looked at this several years ago at the Otero County site, our goal was to get things organized and look at the back log of tasks of chipping, metal and the tires. We talked to staff and purchased several pieces of equipment over the years to help accomplish these tasks. Our operation now has the equipment, but we can't focus on the back log and take care of the day to day operations. Commissioner McGinn would like to bid these projects of wood chipping, tire baling, and metals to allow the staff to focus on other projects and take care of our violations. This way we would keep the business within Otero County. With the right plan we can continue to run the center with our employees at an efficient rate.

A vote was taken and the motion passed 2-1 with Commissioner McGinn voting no.

2. Public Hearings:

The time being 6:45 p.m. the Chairman called the Health Care Services Board to order.

Commissioner Nivison made a motion to approve as submitted the claims from other providers. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

Commissioner Moore closed the Health Care Services Board and opened the Public Hearing for naming

of a road in the La Luz Fire District to Old Mill Road.

Commission Nivison made a motion to name a road in the La Luz Fire District to Old Mill Road. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

Commissioner Moore closed the Public Hearing for naming a road and opened the Public Hearing to consider the request by Mr. & Mrs. Lee Johnson to vacate Lot 14 of Cooper Subdivision and relocate an easement.

Commissioner Nivison made a motion to approve to vacate lot 14 of Cooper Subdivision and relocate an easement. The motion was seconded by Commissioner McGinn for discussion.

Mr. Gerald Lindley, attorney representing Cassie Tyler. When Ms. Tyler purchased the property that's located adjacent to the north boundary of the Cooper Subdivision, she recognized that her property would be land locked at the time. She contracted with Mr. John B. Cooper for an easement giving right of ingress and egress to Derbyshire Road along the western boundaries of lot 14. It was dedicated to the use of not only Ms. Tyler, but also to the public. The dedication was designed to eliminate future questions as to who would be allowed to use the easement, thus, it is an expressed public easement. In New Mexico public highways are defined by statutes, 67-2-1. It says all roads and highways, except private roads, established in pursuant for any law in New Mexico, and roads dedicated to public use that have not been vacated or abandoned, and such other roads that are recognized and maintained by the corporate authority of any County of New Mexico are hereby declared public highways. The easement for which Ms. Tyler contracted across lot 14 of the Cooper Subdivision does not meet any of these elements of a public road. They were not established pursuant to any law pertaining to roads and it is not a dedicated road. It has not been recognized or maintained by corporate authorities of any county in

New Mexico. It is merely a easement for ingress and egress that is open to public use. It is not a road or a highway. Additionally, New Mexico Statute 67-4-1 shall be acquired by the Board of County Commissioners by donation of the owner, by payment of a price agreed on by the owner and the Board of County Commissioners, but by the exercise of power of eminent domain in the manner provided by law for acquiring property for public use. Ms. Tyler's easement does not meet the elements of this statute. The right has not been acquired by donation of the owner by payment of a price agreed upon by the owner and the Board County Commissioner's or the County's exercise of its power of eminent domain. In conclusion, the easement for which Ms. Tyler contracted with Mr. John Cooper, gives to her and the public the right of ingress and egress along the western boundary of lot 14 of the Cooper Subdivision. It is a public easement, therefore the public has the right of egress and ingress. There is no statutory common law authority for this Commission to interfere with the location of the right of ingress and egress over the easement unless they take it by eminent domain.

Mark Reeves, attorney representing Mr. and Mrs. Johnson, stated that the Johnson's have petitioned for the vacation of lot 14, which is located in the Cooper Subdivision out of the Cooper Subdivision. The Commission is well aware of the easement that exists in lot 14 of this tract of land. The Johnson's are requesting again that this lot 14 be vacated and that the easement that sits in lot 14 be re-located. This current 20 ft. easement basically would have to extend to a 50 ft. easement, which the Johnson's have extended to this County not for its taking but a donation to the County. This current easement is a public easement. You have heard arguments presented that there was a contract. I challenge this Commission to present any type of written agreement between the public and Mr. Cooper that would establish that there is a contract between him and Ms. Tyler under the statute of fraud that would evidence this fact. There is not. There is in fact a recorded easement that the County should be aware

of. This public easement is found in the public records. There is no language set forth for this particular easement that would prohibit the relocation of the easement in lot 14. The re-location of this easement would benefit not only Ms. Tyler, but would benefit the public also. If we accept this offer from the Johnson's to extend the 20 ft. easement to a 50 ft. easement, this would allow for utilities to be brought in and connect 3 parcels of land to this easement. It would benefit everyone all the way around. The particular 20 ft. easement is not in use. I understand that Mr. Lindley has stated that this easement is for ingress and egress for the public use. I would invite the Commission to take a look at this particular land. There is no way that this particular easement can be used for egress and ingress. I would urge the Commission to grant the petition as sought forth by the Johnson's to vacate lot 14 in the Cooper Subdivision and to extend and re-locate the easement from 20 ft. to 50 ft. to benefit the citizens of this County.

Dale Palkki, County Assessor, pointed out on the map for the audience where the current easement is and where the proposed re-location would be.

Mr. Lindley stated that the Commission needs to address the results of vacating the subdivision. At this time there are covenants established for this subdivision relating to the number of animals that are allowed and other requirements. Once this is vacated then those covenants will be vacated and other lots subject to the covenants might also be vacated. Utilities were mentioned to be placed on the 50 ft. easement they could also be placed on the 20 ft. easement and the 20 ft. easement is on the quarter section line which would be advantageous for future roads.

Mr. Johnson, owner of Lot 14 stated that all we are proposing to do is abandon the 20 ft. easement and re-locate it to the 50 ft. for the benefit of the public. My wife and I are not looking for any compensation, this is our gift to Otero County.

Ms. Tyler approached the Board to ask the Commission to deny the request from the Johnson's. Ms. Tyler read the restrictive covenants for the subdivision. She believes that the Johnson's will use lot 14 for livestock, which she is not looking forward to.

Commissioner Moore asked Dan Bryant if the 20 ft. easement, which is a public easement, does it allow for anyone to come in and blade it? The property actually belongs to lot 14, there is an easement over their property and the dirt belongs to the owner of the lot. Dan stated what is the extent of the burden that is permitted by the easement. It's the amount of the burden that defines what you can do on the easement. In this case, what we have is an easement drawn on a plat map and we have subdivision dedication language that doesn't say anything other than all of the easements and rights-of-way are dedicated to the use and benefit of the public.

Commissioner Moore stated that he did go look at the property in question. As it currently exists there has never been travel on the easement, except maybe by horseback. While the easement exists it has never been traveled. The 20 ft. easement is not in the best interest of the public from the documents that I have been provided, I believe that this easement is a public easement for public use.

Commissioner Moore believes that the public is better served with a 50 ft. easement re-located that at least meets county standards and if that property beyond there is ever subdivided there will be a possibility that this road could be a County road.

Commissioner McGinn stated that the public is being provided access either way and that access is going to go to that property that is owned by Ms. Tyler. Her opinion is that the 20 ft. easement needs to stay where it is.

Commissioner Moore stated that we have a motion on the floor to approve the request from the Johnson's to vacate the lot line on lot 14 and re-locate the easement.

A vote was taken and the motion passed 2-1 with Commissioner McGinn voting no. See pages
Commissioner Moore closed the Public Hearing and returned to Regular Session.

3. Commissioner Moore stated that during the recent flood in Alamogordo our Emergency Service Coordinator, Paul Quairoli, gave a brief report on the damage and clean-up efforts. On June 22, 2006 a storm centered over Marble Canyon dropping 4" of rain in an hour. As a result flooding occurred down Scenic Ave, the Sun Streets, Tenth Street, and Abbott. The county fire departments were in the city helping with rescues and clearing debris from the culverts. On June 27, 2006, the county road shop helped with the clean-up on Scenic. Commissioner Moore stated that they will be meeting with the city to evaluate how we responded with this crisis because there were some things that we could have done better.

Bill Parker stated that he had spoke with the supervisor from the Department of Transportation, to inform him about the box culverts being plugged. He will have someone come out to clean them once the mud has dried some. Bill has tried contacting John Tripp from Union Pacific Railroad and has had no answer from him yet. Commissioner McGinn requested that Bill follow up weekly with all the entities that are involved.

4. Unscheduled Citizen Communications:

a. Steven Gray, a resident on Calles De Suenos, addressed the flood issue. On June 1, 2006 we suffered a flood that flooded his whole property. All the landscaping that he had done is all gone. He contacted Bill Parker to request him to at least come and look at the area. We were flooded again on June 22, 2006. Mr. Gray thanked Commissioner Moore and Bill Parker for coming to look at the area to help make some decisions of addressing this problem.

b. Bill Mayton, a resident on Calles De Suenos had a question about the definition of a 100 year

flood. Does this mean it happens every 100 years? Bill Parker stated that you have a 1 percent chance every year of getting the 100 year flood. Commissioner Nivison stated that the encroachment of the trees in the forest takes away all the detention so the water comes down the mountain instead of soaking into the ground.

c. Gerald Matherly, asked Bill Parker when he is planning on cleaning out the culvert near his home. Bill stated that he had no major chip seal projects going on right now. He is waiting for the letter from Mr. Hooser and once he receives that he will be able to start.

Commissioner Moore wanted to clarify that the work that we are planning on doing is on our infrastructure. We have 3, 4ft. culverts that are 80 to 90 percent blocked located on Hamilton Road. These are the county's culverts that go under this road and we are trying to fix the blockages that occurred during the rain storm.

5. Executive Session:

Commissioner McGinn made a motion to go into Executive Session to discuss items under pending and threatening litigation, personnel issues, probationary employees and organizational restructuring and under contracts, the Cloudcroft Joint Powers Agreement. 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 pending threatening litigation, personnel issues and the Cloudcroft Joint Powers Agreement under contract, 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 9:25 p.m.

APPROVED:

Doug Moore, Chairman

ATTEST:

Robyn Silva, County Clerk

Regular Meeting June 27, 2006