

Regular Meeting

July 18, 2006

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., July 18, 2006; 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:

- | | |
|------------------|---------------------|
| Doug Moore | Chairman |
| Clarissa McGinn | Vice-Chair person |
| Michael Nivison | Absent |
| Dr. Martin Moore | County Manager |
| Dan Bryant | County Attorney |
| Sue Ellen Cox | Executive Secretary |
| Bill Lee Parker | Road Superintendent |
| Lynn Estrada | Deputy Clerk |

DRAFT

John Blansett gave the invocation. Commissioner McGinn 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 A. Minutes, B. Bills List #54, #55, #56, C. Health Care Services sole provider monthly report for July 2006, D4-D8, Personnel, and E9-E11, Purchasing, F12-F18, Resolutions, Contracts and Agreements, and G19-G23, Elected Officials, Department Heads requests. The motion was seconded by Commissioner Moore.

Commissioner Moore would like to thank the retired senior volunteers, item 18 on the consent agenda, for all that they do for Otero County.

Commissioner Moore also would like to recognize The Friends of Upper Cox Canyon VFD for donating \$5,529.78 and four 3,000 gallon black water tanks to the Upper Cox Canyon VFD. He would like to present a Certificate of Appreciation to this organization for their support in the Volunteer Fire Department.

Commissioner Moore stated that Commissioner Nivison had surgery today and is doing fine. A vote was taken and the motion passed unanimously. See pages

2. Citizen Communications:

a. Dave Venebal, Major of Cloudcroft, approached the Board to discuss a co-op project for Cloudcroft with the Road Department. Mr. Venebal stated that about tow years ago the Village of Cloudcroft and the Road Department entered into a co-op agreement where the Road Department paved 2/12 miles inside the Village. The Village doesn't have the equipment or expertise to do this work. Mr. Venebal is requesting the same type of assistance to chip seal the north side of the Village. They have received a grant to allow them to chip seal 1.6 miles. Commissioner Moore stated that they would be happy to consider this request within our co-op program. Bill Parker will look at the scheduling and the timing and consider the request as any co-op project. Mr. Venebal thanked the Board for their consideration.

b. Hans Steinhoff approached the Board to speak on behalf of the Planning Commission about an issue that has come before them. A sub-divider from Great Britain came before the Planning Commission that has property in the Weed area. He wants to set up sites for telescopes on his property. He doesn't want to subdivide the land, he is talking about leasing spaces of land of either 10x10 or

20x20 where people can build there telescopes and will more than likely be operated by remote control.

The Planning Commission didn't know how to handle this issue so that is why Mr. Steinhoff brought it before the Board.

Dan Bryant stated that there are two or three provisions in New Mexico law that fit this kind of situation. One is the subdivision act, because subdividing applies to sell, lease or other conveyance. This would fit in the other conveyance. Dan asked Mr. Steinhoff to get the gentlemen's name and phone number and he will contact him to get him the information he will need to put together a proposal to present to the Planning Commission.

c. Hans Steinhoff is also there tonight representing the Friends of Upper Cox Canyon Volunteer Fire Department. Commissioner McGinn read the Certificate of Appreciation and presented to Mr. Steinhoff for their appreciation of their generous donation.

3. Public Hearing:

The time being 6:30 p.m. the Chairman called the Public Hearing on the preliminary approval of a liquor license transfer of location for John R. Secrest and Olga M. Secrest, doing business as Secrest Market, 419 County Line Road, Chaparral, NM to order.

John Secrest stated that this is a simple liquor license transfer from their Alamogordo establishment, the Golden Spur to their new location in Chaparral, NM. The mini market will be along the lines of a J & J and Allsup's, but no sell of gasoline. All preliminaries have been met.

Dan Bryant stated that the way the process works, the applicant files a series of statutorily and administrative rules required documents with the department. The department reviews those, and if the department grants preliminary approval to the application they then send it to the local entity for a hearing. Mr. Secrest has received preliminary approval from the department and he is here for the local

public hearing on the transfer. Commissioner Moore asked what the reasons would be for denial. Dan stated that the statute allows essentially three things. The first item is if the establishment is located at a location where the sale of liquor is prohibited by New Mexico law. That statute refers to the requirement that liquor establishments be at least 300 feet distance from any church or school and be 1 ½ miles from an Air Base if it's in an un-incorporated part of the County and 200 yards from an Air Base if it's within an incorporated municipality. This particular application is not located in a place where a liquor establishment is prohibited by New Mexico law, so that reason won't apply. The application reflects that it is greater than those distances and in response to the Commission request at the Work Session, the Sheriff has submitted a report verifying that the distances are all appropriate. The second basis that the local governing body can disapprove an application is if the local zoning code prohibits liquor establishments or regulates where they can be located and the location is not in one of those places. Otero County does not have any zoning so item two does not apply. The third one is a catch all phrase that says, if the locally governing body finds that the approval of the issuance of the license or the transfer at that location to that individual would be contrary to the health, safety or morals of the community. That is the provision of the statute that has been subject to the most dispute and the most lawsuits. Frankly, there are five or six appellate court decisions that have worked their way through that part of the code. When we discussed this issue at the Work Session, I expressed the opinion to the Commission that essentially if the establishment is located outside the 300 ft. requirement, the mile and a half or 200 yards for an Air Base, the Commission is basically deprived of discretion by the statute from being able to deny the transfer. The reason I expressed that opinion is based on those cases. The Supreme Court has ruled that unless you are presented with specific factual information about the applicant that would disqualify him from operating the facility, and or specific

factual information about the location that would make the sale of liquor there contrary to the health, safety and morals of the community, you are not entitled to deny the application.

Mr. Secrest stated that he spoke with the fine gentleman that is present today and he told him that his building was despicable. Mr. Secrest stated that all he can say is that we all do the best we can to make a living. He apologized for not being able to put a brand new building up in that community at this time. Mr. Secrest stated that this gentleman has done an excellent job in the community. He has made it available for poor people to find a good home and I applaud his efforts and don't want any harsh feelings with this gentleman and would like to tell him publicly.

Mr. John Colquitt approached the Board with some pictures of the Secrest Market. One of my real objections is, the State of New Mexico says you can not run a business out of a mobile home. You can run a business from a modular building but not a mobile home. I resent people trying to circumvent the law and work their way around it. Here is a picture of an old broken down mobile home with a modular next to it. Mr. Secrest is trying to tell me that the mobile home is part of the modular deal, when the State of New Mexico specifically says, you can not run a business out of a mobile home and this is a mobile home. The building has already been red tagged and there are numerous violations in it.

Mr. Secrest stated that the building was brought off of Holloman Air Force Base Test Tract. It states that it is a commercial modular building. My contractor has been meeting with Construction Industry Division for the last three days to find the problems that were red tagged. I didn't know where the problems were coming from but I do know now. The mobile building in the back will be used as an office and storage facility, it is not attached to the modular. If CID says that this building is not appropriate, I will simply pull it off and build a metal building there. Commissioner Moore stated that you are not operational yet, you are not moving this license into a market that is already there. Mr.

Secrest stated no it's not there yet, I have to have the building approved.

Commissioner McGinn asked if Santa Fe has approved the building as the market? Mr. Secrest stated that the site location has been approved. All the blueprints and plans have been submitted and he was told that within about three weeks he should be operational as a grocery store.

Several Chaparral residents approached the Board to voice their concerns of another establishment coming to Chaparral that sells liquor. There are enough problems with vandalism, drunk driving and domestic violence to have another business come in and sell liquor.

Commissioner Moore asked for any more comments from the audience.

Commissioner McGinn made a motion to approve the liquor license transfer of location for John R. Secrest and Olga M. Secrest, doing business as Secrest Market, 419 County Line Road, Chaparral, from it's current premises address is 7336 Hwy 70 and 54. The motion was seconded by Commissioner Moore for discussion. Commissioner Moore stated that he hasn't talked to anyone in Chaparral that wants this. I think it is your right to have it, but I am very divided about this. The residents that will be your neighbors have called me and told me that they don't want a liquor store on their street. My difficulty is do I make my decision with my heart or my mind. Commissioner McGinn stated that the law says that if anybody wants to operate a retail liquor outlet, they have to follow these certain standards and those have been met. I understand what people in Chaparral are saying and many others have said about alcohol, but the fact remains that other place have been given permission to operate per the law in Chaparral and Otero County, so I have to follow what the people's right is to operate a business.

A vote was taken and the motion failed with Commissioner McGinn voting yes and Commissioner Moore voting no. See pages

The Chairman closed the Public Hearing and returned to regular session.

4. Unscheduled Citizen Communications:

a. Henry Gonzales, a Chaparral resident, discussed the Rhino Soil Farm and their proposed Solid Waste Facility.

Dan Bryant stated that there are two operations in Chaparral under the moniker, Rhino. The first one is a soils contamination abatement facility. They take soil that has been contaminated with hydrocarbons and they spread it on the ground and turn it over time and allow those hydrocarbons to evaporate out of the soils. When it reaches a certain level of clean, then that soil is disposed of on site in a waterproof cell and maintained on site. There are a series of permits on the same location but on separate properties that are part of the 360 acres, there is another proposal about a landfill site that is basically on hold with the New Mexico Environment Department. This is the facility that the Supreme Court has sent back for additional public hearings by the Environment Department and some are ongoing in the community.

The residents are asking the Commission to submit to the Environment Department their position on the landfill. Commissioner Moore stated that he believes that we have enjoined CDC in a legal challenge to oppose the renewal of Rhino/Waste Managements renewal of the New Mexico Environment Department to construct 151 acre solid waste landfill facility in Otero County adjacent to US 54. Dan Bryant stated that we are working on the terms of the settlement on the Land Farm side of the issue. The agreement will have the effect of moving the soil remediation process further away from the community. Dan is hoping to have the final language of a settlement agreement ready in the week or so and available for the August 8 meeting agenda. Commissioner Moore stated that we will get a community position paper of Otero County for the residents to present to Waste Connections at the next

scoping meeting.

5. Executive Session:

Commissioner McGinn made a motion to go into Executive Session to discuss land- marketing of county property, road status and contracts PSAP JPA (Alamogordo, Cloudcroft). The motion was seconded by Commissioner Moore. Roll call was taken as follows:

Commissioner McGinn yes

Commissioner Moore yes

Commissioner McGinn made a motion to come out of Executive Session having discussed land- marketing of county property, road status and contracts under PSAP JPA. The motion was seconded by Commissioner Moore having made no decisions. Roll call was taken as follows:

Commissioner McGinn yes

Commissioner Moore yes

There being no further business before the Board the Chairman adjourned the meeting at 8:09 p.m.

APPROVED:

Doug Moore, Chairman

ATTEST:

Robyn Silva, County Clerk

Regular Meeting July 18, 2006