

Regular Meeting

August 13, 2002

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 9:00 AM, August 13, 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
Bill Parker	County Road Superintendent
LaDonna Adams	Department Assistant
Robyn Silva	Deputy Clerk

The Chairman called the meeting to order and gave the invocation.

Commissioner McGinn led the Pledge of Allegiance and Commissioner Nivison led those assembled in the Salute to the flag of the State of New Mexico.

1. Discussion was held on the Consent Agenda, Item C under Personnel Items. Commissioner Zierlein stated that he just finished talking with the Sheriff. Commissioner Zierlein stated that his concern was that he has a vacant sergeant position and he just had a

Deputy that resigned from the Sheriff's Office. Sheriff Lee stated that what he really wants to do is to hire two Deputy II's. Commissioner Zierlein stated that he asked the Sheriff to hire two Deputy I's but the Sheriff stated with the training involved with Deputy I's, he would be short staffed for too long a time frame. The Sheriff agreed not to hire a sergeant, unless there is a promotion that is done within the office. Commissioner Zierlein asked that the Consent Agenda be amended under Personnel.

Commissioner Nivison made a motion to approve Items A - D on the Consent Agenda with the amendment of two Deputy II's instead of a sergeant. Commissioner McGinn seconded the motion. A vote was taken and the motion passed unanimously. SEE BOOK 110

2. Discussion was held on Mr. Morris Calkin's request for the Commission to open the public road Dulce which is off of Highway 54. Commissioner Zierlein stated that he has pulled this Item from the agenda for lack of information and documentation. He stated that there are a lot of steps that have to be taken before the Commission can act on it.

Commissioner McGinn questioned why this Item was pulled? Commissioner Nivison stated that this also has some Board Department issues that need to be cleared up, not to mention Sheriff Department issues. Commissioner McGinn stated that the Sheriff's Office won't do anything about it. Commissioner McGinn stated that before it goes too far and bad things happen out there between parties, if it is a County issue, he would like to hear what the issue is. Commissioner Zierlein stated that we have to have all of the information before we can hear the issue.

3. Ms. Judy Hilem, Executive Director of the Mental Health Intervention Consortium and Mr. Les Olsen, Director of Programs Development for Rio Grande Behavioral Health Services Inc. approached the Board to request that the Commission submit an application

for a Jail Diversion Program funded by the Federal Department of Health and Human Services. Mr. Olsen stated that his group is a Consortium of ten counseling centers in Southern New Mexico and are assisting the local Otero County Intervention Council for the mentally ill. He stated that they are developing a grant application which will seek funding at the Federal level to provide expansion services here in Otero County to assist the mentally ill who happen to come in to contact with the Criminal Justice System. He stated that there is no alternative treatment in place other than the Detention Center. These are folks that have encountered with the Criminal Justice System who are not in factory activity. These are basically infractions, misdemeanors, and episodes due to their mental illness. The National Mental Health Center, which is the Federal Government is providing ten Grants per year. He stated that it is a very competitive Grant and that the funding application will provide for the expansion of services to provide beds or alternative places for those that might be detained or held in protective custody. Mr. Olsen stated that the grant can be used to increase case management or to increase education and training of officers, and what ever other types of services the local County feels is most important to their community.

Mr. Olsen stated that the application is due by September 10, 2002. He stated that with the Commission's support and approval to sponsor the Grant, they will finish it. The County would be the recipient of the Grant and would sub-contract through the State Purchasing Agreement probably to the local Counseling Center.

Commissioner Zierlein stated that he feels that it is fantastic that we are pursuing this and that it is something that he has supported for years. He stated that the mentally ill do not deserve and should not be put in the Detention Center. He stated there should be alternatives and that he has looked for an alternative for the last 12 years and that this will benefit the County and

everybody.

Commissioner Nivison asked Mrs. Virginia Blansett, Detention Administrator, how she feels about this program?

Mrs. Blansett stated that she does support the program, and in fact, she is on the Board of Directors. She stated that she thinks this will be a great asset to the facility.

Commissioner Nivison made a motion to support the application and submittal of the application for a Jail Diversion Program funded by the Federal Department of Health and Human Services. Commissioner Zierlein seconded the motion. Discussion was held. Mr. Posey stated that with any Federal money, there is always strings attached. He stated that he is curious what strings are attached to this and how the County might be affected? Commissioner Zierlein stated that, at this point in time, he doesn't see how there would be any negative impact. He stated that this would help alleviate and get some of the people out of jail that shouldn't be there. It will free up some beds for the real criminals and help people that, right now, there is not an alternative to help. A vote was taken and the motion passed unanimously. SEE BOOK 110 PAGES

4. Ms Lynn Smith approached the Board and addressed the Commission with concerns that she has for the contamination of the Rio Tularosa and for the need of more deputies in the Bent area. SEE BOOK 110 PAGE .

5. Ms Ginger Herndon, Purchasing Agent and Mrs. Virginia Blansett, Detention Administrator approached the Board to notify them that the contract for food services with the jail will be terminated as of August 29, 2002. Mrs. Blansett stated that the reason for this is because they had requested a 3 per cent increase for the food service or to substitute the breakfast meal with a sack breakfast. She stated that the Board then approved the sack breakfast,

but no 3 pre cent increase. She stated that when she went back to them, they stated that they wanted the 3 per cent increase plus the sack breakfast. Mrs. Blansett then directed them to send a cancellation notice because Otero County will not support this. Mrs. Blansett stated that we need to quickly find a substitute food service company. She stated that, because we don't have enough time to go out to bid, we will go into a contract with Compass Group USA, Inc. for the same rate that we were paying. They have also stated that after 90 days, they will reconsider our cost to see if they can lower it.

Mr. Bryant stated that he would like to paraphrase, for the record, what he understands has happened. Mr. Bryant stated that the circumstances that he understands are that we had a request for an increase from our existing provider. We countered with an alteration of the menu in the form of a sack breakfast. They rejected that and stated that they wanted the sack breakfast and a three percent increase and without that, they were going to terminate the contract. Then we got notice that on August 29, 2002 they are going to terminate the contract which means, we are essentially facing an emergency. He stated that we have less than 30 days to find a food service provider, get them on board, in the facility and providing meals. Mr. Bryant stated that it is not possible to get the bidding done within that time frame. He stated that in order to fix this emergency, we need to do a one year contract and get this company in. At the end of one year, we will have the bid process setup, and go through the whole process 12 months from today. Mrs. Blansett and Mrs. Herndon stated that is accurate.

Mr. Bryant stated that it is his opinion, under the Purchasing Act, that we have an appropriate emergency, and that we have defined an appropriate method to manage that emergency and to comply with the Procurement Code within a reasonable time frame.

Commissioner Nivison made a motion to approve the Inter-Departmental Items.

Commissioner McGinn seconded the motion. Discussion was held. Mr. Doug Moore questioned if we know these people? Mrs. Blansett stated that they did have our food service once before. Mr. Moore questioned if they are going to provide the food service at the old contract price without the three percent increase? Mrs. Blansett stated that they are. Mr. Moore then asked if there was a termination clause in the contract. Mrs. Blansett stated that there was. Mr. Bryant stated that he will recommend in the future on contracts with food service that the termination period equal the bid period, so that when we get the notice we can start the bid process and complete it. A vote was taken and the motion passed unanimously. SEE BOOK 110

6. Mr. Jim Wagner approached the Board to request that the County Commission consider removing the stop sign at the intersection of Laborcita Canyon Road and Cottonwood Canyon Road. He stated that the stop sign is across from the Burro Flats Fire Station. Mr. Wagner drew a diagram on the chalk board to explain why he feels that the stop sign should be removed.

Commissioner McGinn stated that he has read a report from the Otero County Road Shop that is dated January 1, 2002 through July 29, 2002 and it states that during that time, the stop sign at that location was put up and taken down 20 times.

Mr. Wagner stated that the State Highway Department did a study in the recent past on this intersection, and they determined that this stop sign is not needed there and should be removed. He stated that there are two other similar intersections on down the road where La Luz Canyon Road intersects Laborcita Canyon Road, and where Fresnel Canyon Road intersects Laborcita Road, and yet, they do not have stop signs on Laborcita Canyon Road.

Mr. Wagner then stated that he has visited with the County Road Superintendent,

Mr. Bill Parker, and that Mr. Parker concurred with Mr. Wagner on the removal of the stop sign. Mr. Parker then informed Mr. Wagner that the only way they can remove it is with prior approval from the County Commission.

Commissioner Zierlein stated that everything that Mr. Wagner said is all true. He stated that he was on the Commission in 1991 when the County was in the middle of a lawsuit and rebuilt the intersection. The reason that was done was because there was a complaint from a County resident that it was a safety issue. The lawsuit was eventually dismissed.

Commissioner Zierlein stated that originally there were going to be three stop signs at that intersection, but two were decided upon because the one going up hill could present a safety issue. In the winter, often times that road is iced over, and it is almost impossible to start a vehicle going up hill on the ice. There were several reasons for the other two stop signs, one being to slow the traffic that drives by the fire station. Very few people actually stop at the stop sign, but they usually slow down, which undoubtedly prevents accidents. Part of the negotiations with getting the law suit dropped was to have the stop sign there to control the traffic.

Commissioner Zierlein stated that since the intersection was built, the population up the canyon has dramatically increased, which means the number of cars going through that intersection is dramatically more today than there was twelve years ago. He stated that it took them nine months to design the intersection, and complete the agreements, and that the justifications and reasons still hold. Commissioner Zierlein stated that he feels that the Commission should maintain the sign there because of the safety issues and the traffic flow. He stated that the intersection was originally designed with a turning lane, which we can have the Road Shop repaint.

Mr. Wagner stated that he understands the Chairman's reasoning on the speed control, but stated that we cannot let people violating the speed control cause us to put redundant stop signs in.

Commissioner Zierlein stated that, at the time, the Commission agreed, in the negotiations on the dismissal of the lawsuit, that the stop sign would be there, and he stated that we should live up to what the Commission decided back then.

Mr. Wagner asked Commissioner Zierlein if what he is saying is that the Commission made a binding agreement to install a stop sign as a result to settling the lawsuit? Commissioner Zierlein stated that the Commission, in 1991, voted to accept the stop sign because of the lawsuit.

Commissioner McGinn told Mr. Bryant that he has heard the argument over this lawsuit for eight years and nobody has ever produced the documents to show where the stop sign has to be placed. He stated that he has heard conjecture, that there was a verbal agreement and he is wondering in which set of County Commission Minutes it is in. He asked Mr. Bryant how long it is suppose to last because he thought that they were not suppose to bind the next Commission to anything.

Mr. Bryant stated that his recollection and that of Commissioner Zierlein's, differ, in respect to what happened in the lawsuit. He stated that we had a presentation to this Board about two months ago, at that time he was told that Mr. Kurtz from Roswell had driven up there and looked around and rendered an informal opinion that said, that stop sign can come down. Mr. Bryant stated that is what his understanding of what the State Highway Department did. He stated that they didn't do a traffic count, or an engineering survey, or a study or anything that we are entitled to rely on to regulate traffic.

Mr. Bryant stated that sometime between 1989 and 1991, the County hired an engineer, paid them public funds, sent them up to redesign what was then a "Y" intersection. He stated that we had a letter from a school bus driver, complaining that her bus had nearly been hit 2 or 3 times, and requesting that we get that intersection fixed so that she could safely transport kids out of those canyons.

Mr. Bryant stated that if the Commission wants to change this intersection, the only way to do that without creating liability for the County is to have a new engineering study done. If the County takes the sign down from that intersection today, and somebody has an accident tomorrow, and we have not done a new engineering study, we will be liable. It won't matter whose fault the wreck is, the County will end up paying for it.

Mr. Bill Parker requested to the Commission, due to the increase of traffic in Laborcita Canyon, that a new engineering survey be done.

Mr. Bryant stated that, although he does not recall a binding settlement agreement, he will research the minutes of 1990 and 1991 for it. He stated that he recalls the lawsuit as being dismissed because he went to the Legislature and repealed an old archaic provision in the law that said we had to have a road plan by June 6. Once that was done, the alleged statutory violation that was the basis of the lawsuit was moved and the case was simply dismissed on our motion. Mr. Bryant stated that he simply does not recall a settlement agreement.

Mrs. Cathe Prather stated that there are seven people in her household that drive Laborcita Canyon Road daily. She stated that the road that is past the stop sign on the west does not have a stop sign. She stated that because they are close to that intersection, she thinks that they feel they are part of it and they never stop. Mrs. Prather stated that everyone in her family

has almost hit someone at that intersection because they don't stop coming off of Orchard Road.

Commissioner Nivison stated that he feels the only way that we can resolve this issue is through a new engineering study.

Commissioner Nivison made a motion to direct the County Administrator to start the process of ordering a new engineering study. Commissioner McGinn seconded the motion. Discussion was held. Commissioner McGinn stated that he feels that it is important enough, because there is such a large population in that area, that we know whether or not a stop sign should be at that location. Commissioner Nivison amended his motion to authorize the County Administrator to handle this study up to \$3,000. Commissioner McGinn seconded the amendment. Mr. Moore questioned if this study will just include a rubber hose? Commissioner Zierlein stated that there will be someone up there counting cars and checking speed limits. Mr. Wagner stated that we cannot install stop signs to control traffic. Deputy John Blansett stated that in the past, when they were trying to get speed limits set, they would bring in the state police and they would do a survey. He suggested that might save the County some money.

Commissioner Zierlein stated that the engineer will have to do the engineering along with the study. Ms Debbie Brute asked that if the engineering study shows that a stop sign should be at that intersection, if a camera could be put up at the Burro Flats Fire Station to catch whoever is removing the stop signs. Commissioner Zierlein stated that it would be cheaper to put a Deputy up there in a position that they can't be seen. Mrs. Virginia Blansett stated that they had a sign for Detention that was always being taken and so they had them tack it permanently and they haven't taken it since. Mrs. Ruth Hooser stated that we have to have a break away stop sign that is not cemented. Mr. Wagner stated that he wanted to publicly thank everyone for their time along with Mr. Parker and his crew at the Road Shop. He stated that the Road Crew is doing a

fantastic job and they respond promptly and they help the residents out any way they can. A vote was taken and the motion passed unanimously.

7. Commissioner Nivison stated that because of the Penasco Fire, the Village of Cloudcroft has put a 650,000 gallon tank and lined it so that all of the fire protection equipment from the County and the Village could get in there. He stated that in last two fires we have used over a million gallons of that. Because of the heavy rains that we have had, the tank has overfilled and almost lost the outer bank on the highway side. The Village will pay for the barriers but is just requesting help from the County in moving the barriers to the location by the tank. Commissioner Nivison stated by doing this we can prevent this from happening and losing our fire protection.

Commissioner McGinn made a motion to allow the Road Shop to assist the Village of Cloudcroft in setting up the jersey barriers. Commissioner Zierlein seconded the motion. A vote was taken and the motion passed 2-0 with Commissioner Nivison abstaining.

8. Discussion was held on the Administrator's Report.

A. Commissioner Zierlein stated that Item B looks like a new agreement that he is unclear on. Mrs. Hooser stated that this agreement was suppose to be included in the big packet that they send the Commission every year, but Alan May inadvertently left it out.

B. Discussion was held on Item F concerning the lease that the County has with Buggies to Bikes Day Care for the rental of the building that the County owns located at Texas and Third Street. The County bought this building in 1993 so that the City could have someplace to house themselves while they were building their new building. Commissioner Zierlein stated that we are spending about \$20,000 a year to keep it up and we are leasing it for \$12,000 per year and it just doesn't make since. He stated that we either need to raise the rent or

we need to tear it down and sell the land. Commissioner Zierlein stated that we have had that building on the market to sell since 1994.

Commissioner Nivison questioned what maintenance does the Buggies to Bikes pay? Commissioner Zierlein stated that they pay the daily maintenance and the County pays the major. He stated that the County spent about \$30,000 last year by putting a new roof on the building. Mrs. Hooser stated that the reason the County put a new roof on was because it was bad when we rented it to her to begin with. If we wouldn't have put a new roof on, we would have lost the building.

Commissioner Zierlein stated that we need to raise the rent to at least \$1,500 per month or we need to do something different with the building.

Commissioner McGinn questioned how much the last Commission paid for this building? Commissioner Zierlein stated that they paid \$325,000 with the intent to put the DA's Office in there after the City moved out in a year. Commissioner McGinn asked how long Mrs. Harshey has been renting the building? Mrs. Hooser stated that she has been in there at least 3 years. She further stated that if we move her out and close it down, then it is going to fall down. She stated that the County and Mrs. Harshey have both paid for repairs.

Mr. Bryant stated that prior to the County purchasing the building, the neighbors approached the City and stated that it was fine to sell this to the County, but that they wanted a negative covenant in the deed so that law enforcement or the detention center could not be housed here. What their concern was that they didn't want juvenile detention or criminals coming and going.

Commissioner McGinn stated that it will cost us a lot to have it torn down and he doesn't think that is a viable option. He stated that he feels we should continue to rent it out

until we can find another use for it.

Mrs Cathe Prather, Otero County Treasurer questioned who is responsible for the payment from Theda Harshey for Buggies to Bike's rent? Mrs. Hooser stated that she is handling it.

Commissioner Nivison stated that he would like to have a run down on where the finances are before we make a decision and take a look at the building.

Commissioner Nivison made a motion to postpone Item F on the Administrator's Report until the next Regular Meeting. Commissioner McGinn seconded the motion. A vote was taken and the motion passed unanimously.

Commissioner Nivison made a motion to approve Items A - E on the Administrator's Report. Commissioner McGinn seconded the motion. A vote was taken and the motion passed unanimously. SEE BOOK 110

9. Commissioner Nivison stated that he attended the Coalition of Counties Meeting and Under Secretary Ray was there from the Department of Agriculture, who is in charge of the Forest Service sending in our CS. Also, Jim Hughes who used to be in Congressman Skeen's Office who is now the Deputy Director of Planning for BLM. He stated that they were trying to give us some insight as to what is happening as far as changes go from the National viewpoint. He stated that it was very encouraging to everybody and they feel there is going to be some changes coming as early as a couple of weeks on National Forest Policy. He stated that also the grazing issue which has been a big concern to us, they are going to start defining some very innovative ways to take the move issues around so that we don't keep getting into these battles about taking the cattle and the elk off. He stated that it looks like there is some hope in the future.

10. Mr. Bryant stated that he apologized that Items G and H were placed on the Agenda under Administrative Reports because they have already been approved at the June 17, 2002 meeting.

11. Commissioner Nivison made a motion to go into Executive Session and stated that the only thing that will be discussed will be Items on the Agenda, Collective Bargaining, and Personnel items. Commissioner McGinn seconded the motion. Roll call was taken as follows:

Commissioner Zierlein - Aye

Commissioner McGinn - Yes

Commissioner Nivison - Aye

12. Commissioner Nivison made a motion to return to Regular Session and stated that the only thing discussed was Items on the Agenda, Collective Bargaining, and Personnel Items. Commissioner McGinn seconded the motion. Roll call was taken as follows:

Commissioner Zierlein - Aye

Commissioner McGinn - Aye

Commissioner Nivison - Aye

The time being 11:30 AM, the Chairman recessed the meeting until Friday, August 16, 2002 at 8:00 AM.