

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 Chair person at 6:00 p.m., September 27, 2005; and she announced that reasonable notice for this meeting was given to the Alamogordo Daily News and to Radio Stations, KPSA, KINN and KYEE.

Present:

Clarissa McGinn	Chair person
Doug Moore	Vice-Chairman
Michael Nivison	Member
Ruth Hooser	County Manager
Ray Backstrom	Assistant County Manager
Dan Bryant	County Attorney
Bobbie Reyes	Department Assistant
Bill Lee Parker	Road Superintendent
Lynn Estrada	Deputy Clerk

DRAFT

Michael Shinaberry gave the invocation. Commissioner Nivison led the Pledge of Allegiance and the Salute to the Flag of the State of New Mexico.

1. New Business:

- a. Consider approval of a Proclamation for the “Otero County 4-H Week” and “National 4-H

Week”.

Commissioner Nivison read the proclamation for National 4-H Week and Commissioner Moore read the proclamation for Otero County 4-H Week.

Commissioner Nivison made a motion to approve the proclamations for October 2-8 2005. The motion was seconded by Commissioner Moore. A vote was taken and the motion passed unanimously.

See pages

b. Consider approval of a Proclamation for “Family Day a day to eat with your children”, September 26, 2005.

Commissioner Nivison made a motion to approve the Proclamation for Family Day, September 25, 2005. The motion was seconded by Commissioner Moore. A vote was taken and the motion passed unanimously. See pages

2. Consent Agenda:

Commissioner Moore made a motion to approve by consent items A, Minutes, B, Bills Lists #6, #7, #8, #9, #10, #11,, C, Health Care Services monthly report for September, D, Personnel, E, Purchasing, F8-F16, Resolutions, Contracts and Agreements. The motion was seconded by Commissioner Nivison. Commissioner Moore amended his motion to exclude E7. The amended motion was seconded by Commissioner Nivison. A vote was taken and the motion was passed unanimously. See pages

Commissioner Nivison made a motion to approve item E7, Otero County Road Shop Building re-bid. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed 2-1 with Commissioner Moore abstaining. See pages

3. Elected Officials/Department Heads:

a. Consider approval of Capital Cooperative Agreement for \$125,000.00 for the 2005 Legislative

Appropriations for Otero County to construct improvements at the Timberon Airport.

Commissioner Moore made a motion to approve the Capital Cooperative Agreement. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

b. Consider approval of Capital Cooperative Agreement for \$100,000.00 for the 2005 Legislative Appropriations for Otero County to purchase and install culverts at arroyo crossings on Riata Road.

Commissioner Moore made a motion to approve the Capital Cooperative Agreement for culverts. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

c. Consider approval of Village of Tularosa's representative to the Otero County Planning Commission. Candidates are Walt Hisenberg and Tomas McKean.

Commissioner Moore made a motion to approve Tomas McKean to the Otero County Planning Commission. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

d. Consider approval of land for the Timberon Fire Department Substation from the Timberon Development Council Inc.

Commissioner Moore made a motion to approve the land for the Timberon Fire Department Substation. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

e. Consider approving the selection for the Community Development Block Grant Project. Commissioner Moore made a motion to award grant for discussion. The motion was seconded by Commissioner Nivison. Commissioner McGinn stated that there were 3 applicants. La Luz Domestic,

Twin Forks and Red Brick School House. Otero County has an opportunity for 1 selection for the CDBG Project. Commissioner Moore asked staff that when all applicants were reviewed, 2 were lacking something except La Luz Domestic Water. Ruth stated that this was correct.

Commissioner Nivison stated that he would make the commitment to go to the Legislature this year for Twin Forks. Red Brick is ineligible for the grant because the building is not fully functional and operational.

Commissioner Moore amended his motion to award the CBDG approval to La Luz Water Association this year and put Twin Forks on number one Legislative priority for next year. The amended motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

f. Consider approval of Final Plat for Rhino Acres Subdivision.

Dale Palkki, Sub-divider Coordinator, stated that there has been some changes in the ponding for the subdivision. From the last meeting we talked about a subsequent subdivision coming into State Line Subdivision. When we reviewed the State Line Subdivision we looked at the ponding situation there and came up with a better plan. The subdivider agreed to where there will be ponding on each lot, rather than the way it was originally designated. We didn't catch that on Rhino. Rhino mirrors the State Line Subdivision, so the sub-divider went back and made those changes to reflect that they are the same as State Line. Dale stated that the ponding areas will show in the disclosure statement not on the plat which is typical.

Commissioner Moore made a motion to approve the Final Plat for Rhino Acres Subdivision. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

g. Consider approval of the Tire Recycling Grant.

Commissioner Moore made a motion to approve the Tire Recycling Grant. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

h. Consider approval of the Otero County Comprehensive Plan.

Commissioner Moore made a motion to approve the Otero County Comprehensive Plan. The motion was seconded by Commissioner Nivison. Mr. Colquitt asked if we were going to change the Commission to a 5 member Board. Commissioner McGinn stated that there is nothing in the draft that is up for approval tonight that would be a 5 member Commission.

Commissioner Moore received a typographical type edit that needs to take place on page 8-11, under the Inn of the Mountains Golf Course, strike Lincoln County and change to Otero, on page 8-8 strike the word Lincoln.

Commissioner Moore amended his motion to reflect these changes. The amended motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

4. Public Hearing:

The time being 6:30 p.m. the Chair person called the Public Hearing to order for the Preliminary Plat for State Line Subdivision in Chaparral, New Mexico.

The Planning Commission, Dale Palkki and Mr. Colquitt approached the Board. Mr. Curtis, Planning Commission, recommends approval. Everything is in order. Dale stated that all the concerns have been satisfied and recommends approval.

Commissioner Moore made a motion to approve the Preliminary Plat for State Line Subdivision. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

The Chair person adjourned the Public Hearing and returned to Regular Session.

5. Citizen Communications:

a. Request permission to publish draft for the Franchise Ordinance of Otero County and Chaparral Cablevision Inc.

Commissioner Moore made a motion to publish for a Public Hearing on the draft for the Franchise Ordinance of Otero County and Chaparral Cablevision Inc. The motion was seconded by Commissioner Nivison. Dan Bryant stated that the request that came from Chaparral was to change their name in the various provisions of the ordinance to Chaparral Cablevision Inc. to extend the ordinance to an additional 10 year time frame. They are requesting that the territory be expanded, so the north boundary will move north from Wicker Road which intersects the Dona Ana, Otero County line, and goes east to highway 54 and move it north to McGregor Range Road, which is the road that is on the immediate north end of the Otero County Prison. The geographic area is moving north. So we need to publish it, hold a Public Hearing, act on the Ordinance, and then publish again. A vote was taken and the motion passed unanimously. See pages

b. Gary Stallings requesting county maintenance of roads in Rosa Del Sol Subdivision and Rosa Del La Tierra Subdivision.

Commissioner Moore made a motion to approve county maintenance of roads in Rosa Del Sol Subdivision and Rosa Del La Tierra Subdivision. The motion was seconded by Commissioner Nivison. Bill Parker stated that the roads are up to county standard and everything is in place. A vote was taken and the motion passed unanimously. See pages

c. Ernest Martinez requesting Co-op effort with the County to pave Poindexter Street, 2 miles south of Tularosa off Riata Rd.

Commissioner Nivison made a motion to approve the Co-op effort subject to the approval of our Road Superintendent, Bill Parker. The motion was seconded by Commissioner Moore. Bill stated that he has met with Ernest and everything looks good. If the weather holds he will try to get it done this year, if not it will be next spring. A vote was taken and the motion passed unanimously. See pages

5. Commission Discussions:

a. Doug Moore-Discussion on ditches in Boles Acres.

Commissioner Moore stated that from the recent rains Boles Acres was subject to flooding. There has been a lot of debate and some fact finding on who is responsible for the maintenance of the ditches. Commissioner Moore would like to give the residents of Boles Acres an opportunity to address the Commission. The following residents of Boles Acres spoke:

1. George Anderson-Spoke on behalf of his mother-in-law. The ditch has busted 3 times already on her property. Last month he called the Road Shop and asked them to come and clean the ditch. There is a culvert in the ditch and trash and weeds have collected and backed up the water. The Road Shop told Mr. Anderson that the residents were responsible for cleaning the ditch and building the banks up.

2 Sabina Bloom-Her garage was flooded but not her manufactured home. Is this a drainage ditch or a catch all. Please help us.

3. Tom Burns-He agrees that the ditch needs to be cleaned. This is a major flood control ditch. Southern Pacific Railroad, their railroad acts as a damn for all the water that flows from Alamo Canyon down. One of the major crossings is the ditch in question. He didn't measure the culvert that goes under the railroad tracks, but he did measure the culvert at the highway and it measures 52ft 6in. wide and about 54 in. deep and it feeds directly into the drainage ditch. This is a major drainage into Boles Acres. Are we going to have to come to the Commission every time this happens? The plan to have the County clean it

one time for the health, safety and welfare for the residents is fine but what about long term? The acceptance certificate for the roads and drainage that he has provided to the Commission, was signed Pearl Harbor Day, 1987. Has the attorney figured out what this document is? The way Mr. Burns reads it, it is drainage and road maintenance. There has been many interpretations of this document. Commissioner Moore stated that we have found more documentation. We have found letters from a local engineering firm that talks about the roads and drainages, specifically about lots 6, 7 and 8 being prone to floods. It mentions the dips in the road being concreted. The language that we think we are seeing here was that the subdivider was doing these works. Mr. Burns is asking for something positive from the Commission so they won't have to keep coming back asking for help. Commissioner Moore stated that his understanding of the way these ditches exist today is, if that channel crosses your property, it is your responsibility to clean and maintain that flow. Dan Bryant stated that this is a correct statement of the law. As a County we need to do one of two things. We need to inspect them and if they are not cleaned annually, we need to site the property owner and clean it for him and send him the bill. Or we need to relieve the citizens of any obligations and get in the ditch business. Commissioner Moore would like to create a flood district and put it to the public on a ballot. But for right now we either enforce the law which says the property owner is responsible or we clean them ourselves and site the people.

4. Jerry Harold-The last rain flooded my property. There is garbage in the ditch and until cleaned this will continue. What are we supposed to do? Commissioner Moore stated that the law says the people who have the communal ditch across their property are responsible to clean it. Mr. Harold stated that BLM and Sally Walker own half of the ditch, put some responsibility on them. Commissioner Moore agreed, but before we do anything the County will have to request permission from every property owner up and down the ditch to come on their property. In so doing, there have been some concerns in the past that when we

make those improvements we may be in violation of the anti donation clause where we have improved private property.

5. Chris Teski- Mr. Teski stated that he is on that ditch and he can't believe the lawyer is going to tell him that he has to take care of the ditch when the liability will fall back on him. If he improves the ditch and it floods the neighbor is he liable. Commissioner McGinn stated that the ditches themselves are all different property owners along the way. Mr. Teski agreed and that includes the easements and he stated that Commissioner Moore said that the County owns the easements. Commissioner Moore has an easement but doesn't own the easement. Mr. Teski believes that the County doesn't have to ask the property owners permission to come on their property if the County owns the easement. Commissioner Moore stated that this is incorrect. Dan Bryant stated that he isn't sure if the County has an easement. The Dedication from the Plat on Western Subdivision doesn't grant an easement to the County. An easement for utilities, alley and drainage only. Dan believes what the law will do with this situation, that language means that it's reserved to the benefit of the subdivision owners. Each person in the subdivision who's on one of these easements, is both the benefited party, who is to benefit from the easement and the burdened party, the party on who's land the easement exist. The maintenance of easements is the responsibility of the grantee of the easement. The way the law would interrupt it, each person maintains the easement on their property for the benefit of the person next to them and so on. That's why Dan thinks the maintenance responsibility is on each of the lot owners and yes sir it comes with a liability if you don't do the job the way a prudent person would do it.

Commissioner McGinn stated that if we are going back to the solutions, talking about cleaning the ditch as a short term effort, all the people with easements along the ditch will have to provide written permission. Dan stated that this Board has the power in the exercise of your police powers, health, life, safety to instruct

your staff to go clean and fix the ditch on a one time basis to help out the residents. The residents need to grant us permission to go onto their property and do the work. The long term solution is to find out if our constituents want us as their government to get into a flood control business. The statute is set up where the Commission can go through an election process. We would identify each major drainage, identify the property owner and do a mail ballot election to create a drainage district. The district then has taxing authority to gather revenues to start building the infrastructure necessary. Construction would begin at the lower elevations for obvious reasons. Once the construction is done then the district goes into the maintenance business.

Commissioner McGinn instructed staff to have all the correspondence on Western Subdivision available in the Administration Office for the public. But for now what do we do? Dan stated step one, life, health and safety, get in their, get permission and clean up the mess. Step 2, put together an appropriate election question, identify the right people within the drainage and do a mail ballot election to find out whether the residents are interested in creating a public entity to handle the drainage issues in that area.

Commissioner Moore stated here is what we can do tonight. Get the ditch cleaned out working with the Road Department and your volunteer Fire Fighters. With the way the law is written today, if the ditch crosses the people's property it is there responsibility to keep it clean. If everyone that had the ditch on their property would make an annual event of maintaining it, we wouldn't be having this discussion tonight.

6. Matthew Harris- Mr. Harris asked if we keep up the maintenance on the ditch on our property and it floods the next neighbor down are we liable for the damage. Dan stated that the standard is reasonable prudence. As long as you exercise the care of a reasonable prudent person in maintaining your portion of the ditch you don't create liability.

Commissioner Moore stated that our intention is to clean out the ditches, fix where it was breached by the

Commissioner Moore yes

Commissioner McGinn yes

Commissioner Moore made a motion to cone out of Executive Session and stated all that was discussed was pending and threatening litigation and no decisions were made. The motion was seconded by Commissioner Nivison. Roll call was taken as follows:

Commissioner Moore yes

Commissioner Nivison yes

Commissioner McGinn yes

There being no further business before the Board the Chair person adjourned the meeting at 8:10 p.m.

APPROVED:

Clarissa McGinn, Chair person

ATTEST:

Robyn Silva, County Clerk

Regular Meeting, Sept. 27, 2005