

COUNTY OF LINCOLN

New Mexico Regular Meeting Board of County Commissioners

Jackie Powell, Chair
Preston Stone, Vice Chair

Kathryn Minter, Member
Dallas Draper, Member
Mark Doth, Member

Minutes Tuesday, December 17, 2013

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on December 17, 2013 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

1. Call to Order

Chair Powell called the Regular Meeting of the Board of County Commissioners to order at 8:35:11 AM.

2. Roll Call

Roll Call.

Present: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

Others present included Nita Taylor, County Manager; Alan Morel, County Attorney; and Rhonda Burrows, County Clerk.

3. Invocation

The invocation was presented by Pastor Hayden Smith.

4. Pledge of Allegiance

- a. Pledge – U.S. A. Flag – Commissioner Powell
- b. Salute – N.M. Flag – Commissioner Doth

5. Approval of Agenda

Motion: Acceptance of the Agenda and authorized the Chair to move items as necessary.

Action: Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Minter.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

6. Approval of Minutes

November 19, 2013 - Regular Commission Meeting

Motion: Approve the minutes of the November 19, 2013 Regular Commission Meeting,

Action: Approve, **Moved by** Commissioner Minter, **Seconded by** Commissioner Doth.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Treasurer's Financial Report for the Month ending November 30, 2013
- c. Quay County Joint Powers Agreement for Housing Prisoners

Motion: Approval of Consent items as presented, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Commissioner Doth.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

SEE EXHIBIT A: Copies of Consent Items are attached hereto in reference thereto made a part hereof.

8. DFA Acknowledgement of Mid-Year Budget Adjustments

Ms. Taylor reminded NM State Statute required the Board of County Commissioners acknowledge receipt of the NM Department of Finance and Administration's (DFA) approval of the mid-year budget adjustments for Fiscal Year 2013-2014.

Motion: Acknowledge receipt of DFA approval of FY 2013-2014 mid-year budget adjustments, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Doth.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

9. Greentree Solid Waste Authority (GSWA) Update

Ms. Taylor provided copy of the Notice of Intent of the County of Lincoln to withdraw from Greentree Solid Waste Authority (GSWA) dated December 6, 2013. Ms. Taylor stated notice was given to the Village of Capitan, the Town of Carrizozo, the Village of Corona, the Village of Ruidoso and the City of Ruidoso Downs. Ms. Taylor stated several of the municipalities had shown interest in holding additional discussions after receipt of the County's notice.

Ms. Taylor stated Attorney Morel had informed the New Mexico Finance Authority (NMFA) of the County's intent to withdraw and had requested a meeting to discuss potential issues and options related to the withdrawal. Attorney Morel stated he had received no response from NMFA as of this date.

Commissioner Minter volunteered to attend the next GSWA meeting along with the Manager. Commissioner Doth requested GSWA provide a full and complete inventory of all assets including dumpsters, roll-offs, and poly carts. Ms. Taylor stated she would initiate a public information request for the information.

11. Consideration and Action on Bid Award 13-14-003 Annual Base Course Supply

Ms. Taylor informed bids were solicited to secure sources of aggregate material at various locations to be used for construction projects in all parts of the County. Ms. Taylor stated bids were due December 16, 2013 with one bid being received from Southwest Paving and Grading d/b/a Ruidoso Sand and Gravel as follows:

- \$11.50 per ton to be picked up at supplier's site by County personnel
- \$15.50 per ton to be delivered to County Road Yard in Capitan

Motion: Award Bid 13-14-003 to Ruidoso Sand and Gravel, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Commissioner Doth.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

12. Manager's Report

1. Hats Off: The Manager stated high praise was received for Whitney Whitaker, Bureau of Elections Clerk from Ms. Charlotte Clements for her assistance in researching declarations for a condominium association.

2. Lincoln County Medical Center:

a. Lease Agreement: The Manager stated the County and LCMC were finalizing the LCMC lease agreement and anticipated presentation to the Commission for consideration and approval at the next meeting. The Manager reminded once the lease agreement and DFA review of the market appraisal were final the County would request State Board of Finance approval.

b. The Manager stated the Village of Ruidoso (VOR) notified LCMC the parking requirements for the LCMC professional office building were not in compliance with

municipal code. According to the VOR Municipal Code, the site must include 96 spaces with 3 spaces being designated as accessible. The Manager stated the Village and LCMC had scheduled a meeting to discuss a possible solution.

Commissioner Doth questioned why the code violation was just now identified as the VOR had reviewed the master plan prior to construction. Ms. Taylor explained several of the parking spaces indicated on the master plan were situated on an adjacent property for which the County and Presbyterian terminated the purchase agreement thus leading to a reduced number of available parking spaces.

3. FEMA Updates

a. Hazard Mitigation Grant – 4047: The Manager informed on ongoing work with the NM Department of Homeland Security and FEMA on the application for the \$3.5 million Hazard Mitigation Grant. The Manager stated FEMA directed the County to split the single multi-phased application into two separate applications: 1) for education and outreach including the purchase of the SIMS table and public education about fire hazards and 2) for implementation and treatment of approximately 1800 acres per year for two years. The Manager anticipated the amended application would be submitted to NMDHS and FEMA by the end of January.

Commissioner Minter questioned the expected grant amount for education. The Manager estimated approximately \$200,000 of the \$3.5 million would be for education.

Curt Temple, Planning Director explained the grant funds must be used on private land and a collaborative group worked to identify large tracts of private land which would provide maximum fire protection to other more populated areas. Commissioner Doth commented on the advantage of treating larger areas with a single owner rather than seeking agreement from multiple owners of small lots. Mr. Temple stated it was hoped the treatment of these larger areas would help educate small tract owners about the benefits of thinning.

b. FEMA Disaster 4152: The Manager stated the formal kick-off meeting for FEMA Declaration 4152 was held December 10, 2013 starting the 60-day timeline under which all projects to remedy damage from September rain events must be identified and turned into FEMA.

Carl Palmer, Road Superintendent stated his department identified approximately \$120,000 in damage to Skeen Road, Picacho Road, and Alamo Canyon. Mr. Palmer stated there was also some damage to Cora Dutton and Bonito Road. Mr. Palmer noted approximately 60 -70% of the damage was repaired and the County was seeking to recover repair costs.

4. Legislative Initiatives.

a. Lincoln County Legislators' Panel for Capital Outlay Requests. The Manager reported Representative Zach Cook, Representative Nora Espinoza and Senator Bill Burt attended the Capital Outlay and "Meet Your Legislators" event in Ruidoso on December 12, 2013. The Manager and Commissioner Draper presented the top five Lincoln County project requests as identified on the ICIP.

b. The Manager stated the Legislative Health and Human Services Committee would meet on December 19th and 20th. The Manager anticipated discussion regarding Hospital Funding and County Indigent Fund.

Scott Annala, IHC Administrator expressed belief the NM Department of Human Services would be successful in initiating legislation to intercept at least 1/16th of the Indigent GRT tax.

There was a general consensus to continue to oppose the intercept. The Manager stated she would send a letter to Lincoln County legislators regarding the County's position.

c. The Manager provided copy of the announcement for Lincoln County Day in Santa Fe, sponsored by the Ruidoso Valley Chamber of Commerce on February 5, 2014.

5. Registering on State Website of County Chief Procurement Officer.

The Manager stated NM State law passed in 2013 required each county to register a Chief Procurement Officer responsible for the control of procurement of items or tangible personal property, services or construction. The law requires that, on or before January

1, 2015, a certification program shall be established that includes initial certification and recertification every two years; and that the chief procurement officer shall pass a recertification examination approved by the secretary of general services. The Manager noted Orlando Samora currently serves as the County Procurement Officer with updates to be provided as requirements were identified.

10. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS

Commissioner Minter informed Corona was awarded funding through the Southeast Regional Planning Organization (SERPO) to plan and complete work on sidewalks in the municipality to accommodate changes after the Highway 54 renovations.

Commissioner Stone reported on his meeting with Gary Caruthers, President of NMSU regarding funding for County 4-H extension agents. Commissioner Stone reminded ten counties experience funding cuts in the prior year resulting in the need for five counties including Lincoln to provide additional funding to sustain the positions within their county and with five other counties losing their agent positions for lack of funding. Commissioner Stone reported NMSU requested an additional \$674,000 for funding in the next year. Commissioner Stone expressed disappointment with apparent USDA staff recommendations for expending of the additional funding and expressed frustration with the lack of clarity as to the final budget administration. Commissioner Stone stated he had hoped some of the additional funds would alleviate the additional cost to the counties. There was a general consensus to send a letter of request for any additional funding to be distributed to 4H programs. Ms. Taylor agreed to research appropriate contacts.

Commissioner Draper stated the Ruidoso Chamber of Commerce had provided some funding to local 4H programs as part of their community support efforts.

Rhonda Burrows, Clerk; Paul Baca, Assessor, and Glenna Robbins, Treasurer acknowledged the efforts of all County staff who continued to assist the public during inconveniences associated with the ongoing courthouse renovations.

Ms. Taylor provided copy of Warden Arthur Anderson's monthly report regarding the Detention Center as he was unavailable to present the monthly report.

Chair Powell recessed the Regular Meeting at 9:48:45 AM and reconvened at 10:04:48 AM.

13. Consideration and Potential Action on Tower Site Contract with Trans World Network

Ms. Taylor stated the Office of Emergency Services (OES) had to relocate two-way radio equipment located on Gallinas Peak due to the destruction of the existing tower during inclement weather. Ms. Taylor stated the proposed agreement with Trans World Network Corporation would provide for location of the equipment on an existing tower on site. Ms. Taylor stated the tower might also be utilized in the future for additional communications equipment. Ms. Taylor stated the proposed agreement was reviewed by the County Attorney.

Motion: Approve the tower site contract with Trans World Network; **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Doth.

Joe Kenmore, Director of the Office of Emergency Services (OES) explained the tower, located ten miles southwest of Corona, blew over during a wind event last week causing a loss of emergency radio services in the area. Mr. Kenmore stated with the assistance of Spencer Baldwin of OES and others the two antennas were relocated and services were restored by the following day.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

14. Consideration and Potential Action on new FEMA Grant Application Supported by Lincoln County OES to Equip and Gear the new All Hazard Incident Management Team

Ms. Taylor informed OES submitted a grant application to FEMA for equipment and gear required sustaining the County's All Hazards Mitigation Team for several days in the event of an emergency. Ms. Taylor stated the grant amount was \$19,220 with FEMA providing 90% of the funding and necessitating a 10% or \$1,925 match from the County.

Spencer Baldwin, OES Emergency Coordinator explained the funds were for purchase of personal protective equipment and additional equipment which would allow the team to stay on scene for several days.

Motion: Approve \$1,925 funding for FEMA grant match, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Minter.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

15. Consideration and Action of Indigent Health Care Claims

Scott Annala, IHC Administrator presented the Sole Community Provider/Lincoln County Medical Center claims for approval. Mr. Annala processed 55 claims with 52 recommended for approval and 3 recommended for disapproval for a total authorization of \$105,899 and a year to date authorization of \$637,351. Mr. Annala noted the average monthly hospital claims to date was \$106,225 with a projected annual approval for FY 2013-2024 of approximately \$1.27 million.

Mr. Annala presented the Indigent Health Care Payments request for the month. Mr. Annala processed 55 claims with 52 recommended for approval and 3 recommended for disapproval. Mr. Annala stated the total of claims recommended for payment this month was \$27,965 for a year to date total of \$128,585. Mr. Annala noted the average monthly indigent claims to date were \$21,431 with a projected annual expenditure of \$257,172. Mr. Annala reminded the FY 2013 - 2014 budget for Indigent claims was \$393,278.

Mr. Annala discussed the expansion of Medicaid beginning January 1, 2014 and anticipated a slowdown in the number of Indigent claims after the transition. Mr. Annala provided charts and graphs for comparison of current payments to prior fiscal years.

Motion: Approval and denial of the claims as indicated for Sole Community Provider and Indigent Health Care Program payments as recommended, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Minter.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

SEE EXHIBIT B: Copies of the Sole Community Provider and Indigent Health Care Payments are attached hereto in reference thereto made a part hereof.

16. Water Issues/Forest/Wildlife Health Programs/Land and Natural Resources Issues

1. Water Right Notices: Ms. Taylor stated no new water rights notices were posted on the State Engineer's website since November. Ms. Taylor reported on a meeting attended by herself and Chair Powell with the District II State Engineer's staff. Ms. Taylor inquired about the agency's publication requirements and the process by which applications filed under "Emergency Status" were processed. Ms. Taylor stated based on the discussion the County might wish to formally request documents through the Inspection of Public Records Act (IPRA). Ms. Taylor noted none of the notices posted in November were as yet published in the Ruidoso News. Ms. Taylor stated the application seeking to divert water from the Bonito River to the Rio Ruidoso was withdrawn and the other applications were amended since initial posting.

Chair Powell discussed plans by the State Engineer to consider the posted applications for transfers by the Village of Ruidoso under the "Lease Act" rather than as Emergency transfers and without public input. Chair Powell presented photos of multiple sites along the Rio Ruidoso documenting "impairment" of the stream and stated under current State Engineer rules such transfers should not be approved if a stream is "impaired". Chair Powell stated the State Engineer would not acknowledge her claims of "impairment" and maintained "conditions varied" along the stream. Chair Powell expressed concern about the disregard for senior water right holders and quoted language from the State Engineer's Administrative Rules which defined the duties of the office including the duty to protect senior water right holders. Chair Powell stated the proposed transfers amounted to "impairment" with significant impact to other water right holders.

Chair Powell suggested the Board of Commissioners send a letter of objection to the State Engineer requesting a review of the transfers in light of apparent impairment. Chair Powell also discussed proposals to "pool" all water rights in the watershed and opined this plan would not work with three separate streambeds.

Commissioner Doth questioned Attorney Morel as to existing State court cases defining "impairment". Attorney Morel stated he believed case law existed related to "impairment" and stated he would research and provide information for future discussion.

Chair Powell further requested the County initiate an IPRA request for information to the State Engineer's office for documentation related to the impairment decision.

There was a general consensus to send a formal letter of complaint to the State Engineer objecting to transfers under the Leasing Act, to request consideration of the current "impairment" conditions, and to object to any plan to pool the water rights on streambeds with copies to the Governor and local state representation.

2. EPA Wetlands Guidance Process: Ms. Taylor reminded comments were submitted on behalf of the County regarding the EPA's draft scientific report titled "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of Scientific Evidence." Ms. Taylor informed excerpts from the County's submission were picked up and reported by Fox News. Ms. Taylor stated she would update as to next steps at the next meeting.

3. Mexican Wolf Environment Impact Study: Ms. Taylor reported on the formal hearing held on November 20, 2013 which she attended on behalf of the County. Ms. Taylor noted a large attendance with the vast majority of comments favoring the protection of wolves. Ms. Taylor stated Commissioner Stone attended a Cooperating Agency IPT Meeting on December 10, 2014.

Ms. Taylor reminded Lincoln County along with Luna, Hidalgo, McKinley, Sierra and San Miguel counties had signed Memorandums of Understanding (MOUs) along with the Arizona/New Mexico Coalition of Counties to participate in the ongoing process. Ms. Taylor stated she would provide updates after upcoming meetings.

Commissioner Stone stated belief the wolves were "going to be here" and suggested the County should work through the MOU process to deal with issues.

16a. Consideration and Potential Action on NRCS Matching Fund Obligation

Ms. Taylor reminded of the discussion during the November 17, 2013 Regular Commission Meeting regarding utilization of an NRCS Emergency Watershed Protection Grant to take corrective action in four area of the County which were damaged by the Little Bear Fire.

Ms. Taylor stated the Eagle Creek and Villa Madonna project would protect public infrastructure with the installation of jersey barriers and the excavation and restoration of local channel capacity. Ms. Taylor stated because this particular project of \$94,500 would also protect downstream public infrastructure she requested approval for the 25% match to be provided by the County.

Commissioner Minter questioned the scope of the project. Ms. Taylor noted the full scope of work was not complete but timing was critical to complete projects by mid-January. Curt Temple, Planning Director clarified the project would be conducted on private land to protect public infrastructure. Ms. Taylor stated the original costs associated with the grant had changed and the current anticipated total EWP grant was \$194,947 with the request being for the match of 25% of \$94,500 for this particular project.

Commissioner Minter expressed concern about providing matching funds for work on private land. Ms. Taylor stated attempts would continue to get landowner agreements to cover portions of the match but noted there was uncertainty if this could be accomplished within the time frame. Commissioner Minter suggested seeking funding from Village of Ruidoso to assist with the project. Commissioner Doth clarified the request was for approval of a "funding guarantee".

Motion: Approve funding the 25% match based on the need for a guarantee to meet time requirements but continue to pursue landowner funding for the match, **Action:** Approve, **Moved by Commissioner Doth, Seconded by Commissioner Draper.**

Commissioner Stone questioned if the NRCS had committed to defining the scope of work and the work itself within the timeline. Ms. Taylor confirmed NRCS was committed to the timeline.

Attorney Morel expressed concern about the possibility of extending the benefit of government funding to particular landowners but not to others which might give rise to questions of differential treatment. Commissioner Stone stated belief landowner's who benefited from governmental funded improvements should contribute as owners.

Vote: Motion passed (**summary:** Yes = 3, No = 2, Abstain = 0).

Yes: Chair Powell, Commissioner Doth, Commissioner Draper.

No: Commissioner Minter, Commissioner Stone.

16b. Consideration and Potential Action to Initiate an Investigation Re: Cibola National Forest – Mountalnair District's Suspension or Reduction of Active Grazing Allotments for limited periods of time.

Ms. Taylor discussed prior actions related to the suspension or reduction of active grazing of allotments on the Cibola National Forest. Ms. Taylor reminded of pertinent information obtained by Commissioner Stone and of discussions in prior Commission Meetings which resulted in the Board of Commissioner's instruction to Attorney Morel to file a request for a Congressional Investigation.

Ms. Taylor stated since that time Elaine Kohrman the Cibola National Forest Supervisor, other Cibola Forest personnel, a representative from Congressman Pearce's office, and members of the Range Task Force participated in a teleconference. Ms. Taylor stated Supervisor Kohrman had provided copy of a notice dated December 2, 2014 which rescinded the prior notice of June 2013. Ms. Taylor stated the letter further authorized stocking to the full permitted number of livestock allotted for the permit. Ms. Taylor stated Supervisor Kohrman expressed an interest in meeting with the Commission to address issues and concerns.

Ms. Taylor stated she, Attorney Morel and Commissioner Stone agreed concerns remained about past and possible future actions by the Cibola Ranger District and they recommended the Attorney continue to initiate an investigation of the Mountalnair Ranger District's June 2013 de-stocking and removal of livestock notice.

Motion: Continue to initiate an investigation into actions taken by the Cibola National Forest,
Action: Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Draper.

Commissioner Doth questioned the goal of the proposed investigation. Attorney Morel stated because allotment holders and others affected by similar decisions agreed science did not support this past decision to remove grazing livestock, they were concerned the USFS might take similar action utilizing other administrative tools. Attorney Morel stated the County could seek assurance that the USFS would consider recommendations from the Range Task Force before taking any similar action. Commissioner Stone stated the precedent set by initiating an investigation might serve to thwart ongoing efforts by the USFS to reduce the rights of grazing allotment holders in this and other Ranger Districts.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

17. Consideration of Vacation of Subdivision Plat for Pollard Tracts located within Sections 29 and 30, Township 1 South, Range 12 East, Fred and Cheryl Haller

Curt Temple, Planning Director presented the request for consideration of the vacation of the Pollard Tracts Subdivision. Mr. Temple stated the current owners had recombined the original multiple tracts into one tract and at this time wished to formally remove the subdivision name and restrictive covenants.

Attorney Morel questioned how the property was currently assessed. Paul Baca, Assessor informed the 360 acres were assessed as agriculture land.

Motion: Approve the vacation of the one tract Pollard subdivision and the associated Restrictive Covenants and Disclosure Statement. **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Minter.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

18. Authorization to Schedule Public Hearing to Consider Other Outdated or New Lincoln County Ordinance

Commissioner Minter questioned if Attorney Morel had an opportunity to review State Statute related to the Lodger's Tax Ordinance and the funding of events based in other counties. Attorney Morel stated in reviewing the current ordinance, he found it to be in compliance with

State Statute. Attorney Morel opined while Lincoln County Lodger's Tax could not be used to fund events in other counties, the previously discussed motorcycle rally based in Otero County had multiple associated events within Lincoln County which could justify expenditure of funds for promotion.

Chair Powell requested the Sheriff be provided a copy of the 2007 Wolf Ordinance for his review.

19. Consideration of Appointments and Removals from Boards /Commissioners/ Committees:

a. Planning Commission

No action was taken.

b. Chaves County Community Action Program

Motion: Appoint Chair Powell, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Doth.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

c. Joint Municipal-County Zoning Authority-City of Ruidoso Downs

Motion: Appoint Commissioner Doth and Commissioner Draper, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Draper.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

d. Lincoln Historic Preservation Board

Motion: Reappoint Bill Strausser, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Doth.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

e. Senior Citizens Olympic Committee

Motion: Reappoint Jim Clements and Gene Nitz, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Doth.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

20. Consideration of Attorney Contract Renewal (contract ends December 31, 2013)

Attorney Morel provided an itemized comparison of actual billable time of work as compared to contractual fee reimbursement. Attorney Morel noted in 2012 the County benefited from the flat fee payment for services in the amount of \$66,652 and commented for the first eleven months of 2013 the benefit was \$53,063. Attorney Morel reminded there was no request for an increase last year and requested a \$500 per month increase for the new contract year.

Motion: Approve the contract as presented, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Chair Powell.

Commissioner Minter questioned the genesis of the additional work. Attorney Morel explained the requested increase would narrow the gap between the actual work hours and work reimbursed under the flat fee. Commissioner Minter questioned when a bid for services would be reissued. Attorney Morel explained bids were solicited two years ago and this was the third year of a four year contract. Commissioner Minter requested the County Manager research what other similar sized counties pay for legal services whether in house or out.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

21. **Executive Session Pursuant to the Open Meetings Act: Discussion of all Threatened and/or Pending Litigation Section 10-15-1, Sub-Paragraph H.(7); and Discussion of the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8).**

New or Updated Matters since last report = *

1. Lodger=s Tax Issue B Casa del Cocinero B making regular payments
2. *Cooper, Gale and DeBaca County News v. County of Lincoln, Sheriff of Lincoln County, et al.* D-1329-CV-200701364. Suit filed: October 15, 2007. Verified Complaint for Declaratory Judgment Ordering Production of Certain Records and Information. Hearing to rule on plaintiff=s motions for cost, sanctions and production of records was scheduled Dec. 13, 2013.
3. *Michael Wheaton v Paul F. Baca, Lincoln County Assessor, et al.* D-1226-CV-2011-00341. Suit filed October 18, 2011. Notice of Appeal of Final Order of the Lincoln County Valuation Protests Board.-Attorney has agreed to stay the case pending the decision from the Court of Appeals.
4. *Coble Constructors, LLC, et al v Carl Kelley Construction Ltd. Co, et al.* D-1226-CV-2012-00003. Suit filed January 15, 2012. Complaint to Foreclose Mechanic=s Lien. Order granting motion for resetting 4/17/13. Waiting on court date.
5. *Alto Lakes Golf & Country Club, Inc. v. Barbara Fleming, and Jesus and Maria Guardiola, et al.* D-1226-CV-2011-00044. Suit filed February 18, 2011. Complaint to Foreclose Lien. Counterclaim and Crossclaim suit filed by Washington Federal Savings on September 21, 2012 naming Board of Commissioners of Lincoln County and Lincoln County Solid Waste Authority. *Stipulated and Default Judgment, Decree for Foreclosure, Order of Sale, and Appointment of Special Master, entered by the Court on 8-12-13. L.C.=s lien was not extinguished and is still a valid lien against the subject property. Order approving sale and Special Master=s Report filed Oct. 23, 2013
6. *Johnathan Warren v. Lincoln County Detention Center, Emerald Healthcare Systems, et al.* 2:12-CV-01086-CG-LAM. Suit filed October 19, 2012. Complaint for the Recovery of Damages Caused by the Deprivation of Civil Rights.
- *7. *Greentree Solid Waste Authority v. Lincoln County, et. al.* D-0101-CV-2013-00104. Suit filed January 9, 2013. Petition for Declaratory Judgment; Preliminary and Permanent Injunction. *Order Granting ALW&SD=s Motion for Judgment on the Pleadings and for Summary Judgment entered by the court on 6-15-13. Mediation with Mr. Walker Nov. 11, 2013 was unsuccessful. Hearing for plaintiff=s Motion to Reconsider scheduled with Judge Singleton Jan. 24, 2013.
- *8. *Rio Grande-Alameda, Ltd. v Paul Baca, Lincoln County Assessor* D-1226-CV-2013-00005. Suit filed January 9, 2013. Complaint for Refund of Taxes Paid. Defendant=s first motion to dismiss or Summary Judgment filed August 29, 2013, with plaintiff=s response filed Oct. 4, 2013. Defendant=s Reply to Motion to Dismiss or for Summary Judgment filed Oct. 21, 2013 Hearing scheduled Jan. 6, 2014.
- *9. *Washington Federal Savings v. Timothy Rose, Chanda Rose, and Lincoln County* D-1226-CV-2013-00105. Suit filed April 15, 2013. Complaint for Foreclosure. July 29, 2013 Ltr to Bishop, White, Marshall & Weibel, P.S. advising of payoff amount through Aug. 5, 2013. Lots 139, 169, 170 paid in full. Stipulated and Default Judgment ordering foreclosure filed Nov. 22, 2013
10. *Wells Fargo Bank, NA, et al v. Jerry Turner, Board of County Commissioners of the County of Lincoln, New Mexico, et al.* D-1226-CV-2013-00129. Suit filed May 6, 2013. First Amended Complaint for Foreclosure filed by Morel on June 21, 2013.
- *11. *State of New Mexico (Lincoln County) v. Stephen Gore M-30-MR-2013-00113.* Citation filed June 17, 2013. Lincoln County Solid Waste Ordinance 2009-03 Violation. Notice of Sentencing Hearing scheduled for Dec. 4, 2013. Documentation was supplied showing Mr. Gore in in compliance. Dismissal filed Dec. 4, 2013.
- *12. *Steven Miller, et al. v. State Forestry Division, NM Energy, Minerals, and Natural Resources Department, County of Lincoln, et al.* D-1226-CV-2013-00160. Suit filed June 15, 2013. Lincoln County Manager and Commissioners served July 9, 2013. Complaint for Negligence, Injury and Damages. On August 2, 2013, NMAC advised Attorney Bryan Evans has been assigned as counsel for Lincoln County. Peremptory challenge of Judge Angie Schneider filed by Commission Chair Jackie Powell. Judge Waylon Courts has been assigned the case Oct. 25, 2013. Hearing requested Nov. 25, 2013 for state=s motion to dismiss
13. *Barbara Diane Latham, et al v. Neal Cox, Ben Hazen, Lincoln County Sheriff=s Department and the County of Lincoln.* D-1226-CV-2013-00191. Suit filed July 19, 2013. Complaint for Violation of Civil Rights, Wrongful Death and Damages by Attorney Gary Mitchell. LCSO and LC Manager were served on August 5, 2013. Tort Claim Notice was filed on October 27, 2011. Advised NMAC has assigned the case to Brennan and Sullivan Law Firm 9/5/13. Case has been moved to Federal Court August 30, 2013.

Tort Claims Notices Received or Threatened

2013

Allen, Katherine Elizabeth- Notice of Tort Claim against Lincoln County Detention Center for alleged injuries sustained during transport.

Borrego, Albert - Tort Claim Notice received from attorney Gary Mitchell on June 14, 2013, alleging continued harassment to Albert G. Borrego by police while responding to a noise complaint at Mr. Borrego's residence on February 28, 2013, and a separate incident resulting in Mr. Borrego's arrest on March 5, 2013, due to an outstanding warrant, during which Mr. Borrego allegedly sustained injuries while in custody due to an existing broken back injury.

Espinoza, Robert B Tort Claim Notice received from Robert Espinoza on June 4, 2013, alleging property damage from vehicle accident while Linda Mullins, driving the LC Senior Center meal delivery van ran off road hitting chain link fence, poles and railroad ties.

***Harrisburg Documents**- Attempts to recover Lincoln County documents illegally taken from the county. County Clerk Rhonda Burrows has been in contact with Harrisburg, PA in recovery efforts.

Montoya, Emilia L. - Tort Claim Notice received by attorney Freda Howard McSwane on April 23, 2013, alleging injuries sustained by Ms. Montoya when a physical altercation took place at the LCDC.

Ramos, Aaron - Tort Claim Notice received by attorney Robert J. Beauvais on April 18, 2013, (correspondence dated September 13, 2011) alleging concerns about Mr. Ramos' safety and welfare and violation of his U.S. Constitutional rights.

Silva, Elmo B Tort Claim Notice received from attorney Richard Marquez November 6, 2013. Alleges false imprisonment for Mr. Silva, who was sentenced in the 12th Judicial District Court to 38 years notice filed on July 3, 1990.

***Prins, Chad** – Tort Claim Notice received from attorney Anne-Kathryn Ziehe on Nov. 15, 2013. Alleges negligence, great bodily harm and damages by the employees of Lincoln County Detention Center during Mr. Prins' incarceration. This case was not accepted for filing with NIMAC due to the Detention Center's private management, and has been passed to a private attorney.

2012

Cathy and Steve Altstatt Telephone conference with Cathy Altstatt on April 19, 2012, concerning their unbuildable and unsellable Deer Park Valley lot due to lot size, septic tank set back requirements, and an easement granted to Alto Lakes Water & Sanitation District for a water well.

Riordan, J.T. B Correspondence received from Theresa Riordan on March 28, 2012, concerning her son's treatment and detention conditions while being held in LCDC.

Sheridan, Michael B Tort Claim Notice received from Attorney, Jennifer Burrill on February 21, 2012, claiming the Lincoln County Sheriff's Department forced him to register as a sex offender when he did not meet the requirements.

Biggs, M. Jolene B Tort Claim Notice received from Attorney, Adam Rafkin on February 6, 2012, claiming liability by the County of Lincoln by failing to maintain the surface of the parking lot across from the Lincoln County Courthouse in Carrizozo, NM.

Action: Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Draper.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Doth, Commissioner Draper, Commissioner Minter, Commissioner Stone.

Chair Powell recessed the Regular Meeting and convened the Closed Session at 11:33:43 AM.

Chair Powell adjourned the Closed Session and reconvened the Regular Meeting at 1:06:13 PM.

Commissioner Doth attested that no action was taken during the closed session and items discussed were limited to those as stated in the motion for closure.

22. Consideration and Potential Action on Lincoln County Medical Center Lease Agreement

No action was taken.

23. Signing of Official Documents

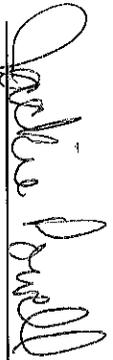
24. Next meeting:

January 2, 2014 – Special Commission Meeting
January 14, 2014 - Regular Commission Meeting

25. Adjournment

There being no further business to come before the Board of County Commissioners, Chair Powell adjourned the meeting at 1:06:47 PM.

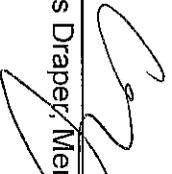
County of Lincoln
Board of County Commissioners



Jackie Powell, Chair

Preston Stone, Vice Chair

Mark Dotn, Member

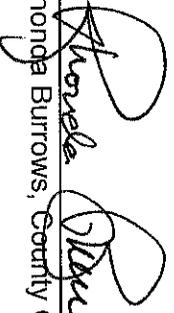


Dallas Draper, Member



Kathryn Mintel, Member

ATTEST:



Rhonda Burrows, County Clerk

January 14, 2014
Date Approved

