

COUNTY OF LINCOLN

New Mexico Regular Meeting Board of County Commissioners

Preston Stone, Chair
Dallas Draper, Vice Chair

Thomas F. Stewart, Member
Elaine Allen, Member
Lynn Willard, Member

Minutes Tuesday, June 23, 2015

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on June 23, 2015 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

1. Call to Order

Chair Stone called the Regular Meeting of the Board of County Commissioners to order at 8:30:27 AM.

2. Roll Call

Roll Call.

Present: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

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

3. Invocation

The invocation was presented by Commissioner Stewart.

4. Pledge of Allegiance

- a. Pledge – US Flag
- b. Salute – NM Flag

5. Approval of Agenda

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

Action: Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

6. Approval of Minutes

- a. May 05, 2015 - Special Commission Meeting
- b. May 19, 2015 - Regular Commission Meeting

Motion: Approve the minutes of the May 5, 2015 Special Meeting and the May 19, 2015 Regular Commission Meeting, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Willard.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Treasurer's Financial Report for the Month ending March 31, 2015
- c. The Alpine Village Sanitation District Mill Levy Tax Rate Approval
- d. Road Name Request

Commissioner Stewart requested a separate vote for each item presented on the consent agenda.

Motion: Approve Payroll, Accounts Payable, Budget, and Expenditures as presented, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Willard.

Commissioner Stewart questioned if the County had received the annual distribution for Payment in Lieu of Taxes (PILT). Nita Taylor, Manager and Beverly Calaway, Treasurer anticipated receipt of the PILT funds within the next few days. Commissioner Stewart requested a list of overtime payments to employees during the past year for analysis.

Vote: Motion passed (**summary:** Yes = 4, No = 1, Abstain = 0).
Yes: Chair Stone, Commissioner Allen, Commissioner Draper, Commissioner Willard.
No: Commissioner Stewart.

Motion: Approve the Treasurer's Financial Report for the Month ending March 31, 2015, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Draper.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).
Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Motion: Approve the Alpine Village Sanitation District Mill Levy Tax Rate, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Stewart.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).
Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Motion: Approve the Road Name Requests as presented, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Stewart.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).
Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

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

8. Acknowledgment of Preliminary Budget Approval by DFA

Nita Taylor, Manager provided copy of the letter from the Department of Finance and Administration's (DFA) Local Government Division approving the Preliminary Budget for Fiscal Year 2015-2016. Ms. Taylor reminded of the New Mexico State requirement for the Board of County Commissioners to acknowledge this budget approval in an open meeting.

Motion: Acknowledge receipt of the letter of approval of the FY 2015-2016 Preliminary Budget from DFA, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).
Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

9. Introduction of Senator Ted Barela - Governor's Appointee to Senate District 39

Ms. Taylor reminded Senator Ted Barela was appointed by Governor Susana Martinez to fill the vacancy in New Mexico Senate District 39 following the resignation of Senator Phil Griego. Ms. Taylor informed Senator Barela previously served as Mayor for the Town of Estancia for five years and also as a Trustee for ten years. Ms. Taylor commented Senator Barela began his official duties during the recent Special Session of the NM Legislature to approve the disbursement of Capital Outlay funds.

Senator Barela discussed his history of public service and commented on the recent Special Session where he worked to support capital outlay requests for District 39 as initiated by Senator Griego during the 2014 Regular Session. Senator Barela stated while the Capital Outlay process requires learning and thought, as a former Mayor he understood the challenges of small communities. Senator Barela discussed the need for collaboration between communities and

counties in identify capital outlay requests. Senator Barela stated he was looking forward to learning more about Lincoln County to better serve the constituents within his district.

10. Discussion – Factors Impacting Grazing and Property Rights in Otero County – Gary Stone, President, Otero County Cattleman's Association

Gary Stone, President of the Otero County Cattleman's Association expressed belief the actions of special interest groups were threatening the industry, custom and culture of agriculture in both Otero and Lincoln County. Mr. Stone stated the discontinuation of grazing allotments on the Lincoln National Forest was currently on the agenda of many such groups. Mr. Stone discussed the economic impact of the loss of grazing allotments and reminded of the economic impact on the lumber industry in New Mexico when the Spotted Owl was listed as an endangered species. Mr. Stone requested the Lincoln County Commission revisit and refine the County's Public Land Use Plan in order to provide a tool for the County to request input on land issues.

Mr. Stone also requested Lincoln County join other counties to petition the department of Game and Fish and demand a voting seat on the Sikes Funds Habitat Committee. Mr. Stone informed this committee had decision make authority about funding projects for wildlife habitat maintenance which critically impact both water rights and grazing allotments. Mr. Stone stated belief there were plans to begin fencing off water holes on the Lincoln National Forest. Mr. Stone discussed his efforts to research the filing of multiple water rights transfer applications by the US Forest Service in New Mexico. Mr. Stone stated these transfers could restrict or impair water critical to ranchers and other agricultural users.

Representative Yvette Herrell expressed support for Mr. Stone's concerns. Representative Herrell stated the issues raised by Mr. Stone were related to the fundamental question of who should manage public lands. Ms. Harrell informed legislation was introduced during the recent session to study the impact of the State of New Mexico assuming management of all public lands within the state. Representative Herrell discussed the costs and revenues associated with state and federal land management. Representative Herrell suggested the State of New Mexico could move away from reliance on Federal Payment in Lieu of Taxes (PILT) payments by assuming management of all public lands.

11. Forest, Land & Natural Resources Matters

a. Smokey Bear Ranger District

Loretta Benavides, Acting District Ranger informed Ranger David Warnack would return to the District on July 27th. Acting Ranger Benavides stated the District had approved helicopter operations during the next week to assess the feral hog populations. Acting Ranger Benavides stated the next Assessment Phase Meeting for the Lincoln National Forest Plan revision was set for July 7, 2015 at Eastern New Mexico University. Acting Ranger Benavides further reported the current fire danger as low and stated as a result the District would conduct several more prescribed fire operations.

b. Cibola National Forest – MOU

Ms. Taylor returned the approved Memorandum of Understanding for Lincoln County's participation as a cooperating agency in the revision of the Cibola Forest Plan. Ms. Taylor stated the MOU language was revised as discussed at the Regular Meeting of May 19, 2015 and she was awaiting a response from the District Ranger.

c. Forest Health - Community Forester

Ms. Taylor reported Laura Doth, Executive Director of South Central Mountain Resource Conservation District (SCMRCD) was working with the County to develop the 2016 Wildland Urban Interface grant application due in July.

Rick Merrick, Community Forester with SCMRCD reported on current mitigation efforts including prescribed burns and review of applications for the Lincoln County Cost Share program for the upcoming fiscal year. Mr. Merrick reported the Ranches of Sonterra received official recognition as a Firewise Community and residents of Black Forest were working towards the designation.

Ms. Taylor reported two recent bear attacks in Lincoln County.

d. Office of State Engineer – Water Issues

Lower Pecos Regional Water Plan Update: The Steering Committee met in May and June to discuss modifications to the Regional Water Plan Update. Revisions included a current list of water projects, programs and policies for the region for submission to the New Mexico Interstate Stream Commission for inclusion in the statewide plan.

e. Predator Control Activities

Ms. Taylor reported aerial operations by the New Mexico Department of Agriculture for predator control resulted in a plane crash on June 5, 2015. The crash took the lives of Pilot Kelly Hobbs of Lincoln County and Wildlife Specialist Shannon "Bubba" Tunnel.

13. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS

Commissioner Draper commented on his recent attendance of the New Mexico Association of Counties Conference in Bernalillo County. Commissioner Draper discussed the financial challenges the NMAC Multi-Line Insurance Pool faced and the effect on counties.

Commissioner Draper reported he and Commissioner Allen also attended a workshop on detention center issues and the challenges presented by mental health issues.

Commissioner Stewart reported on his attendance of the Joint Land Use Study Committee and stated preliminary implementation plans were in progress. Commissioner Stewart stated the committee would reconvene in August.

Jeremy Jordan of Lincoln reminded the public the annual Lincoln Days and Billy the Kid Pageant was set for the first weekend in August. Mr. Jordan stated in addition to regular activities the Sierra Blanca Amateur Radio Club would establish a special event radio station in Lincoln utilizing the call sign K5B. Mr. Jordan stated those wishing to participate could utilize the radio system and reminded of the importance of amateur radio operations when all other communication methods fail.

Ron Stitt, resident of 109 Woodpine Court in Alto expressed concern about the condition of this road. Mr. Stitt expressed belief Woodpine was paved with asphalt when the County originally accepted the road for maintenance but had since deteriorated significantly. Mr. Stitt stated the road had received only minimal attention from the County Road Department in the last seven to eight years and provided pictures of current conditions. Mr. Stitt stated it was reasonable to expect the County to maintain the road to the original condition of acceptance.

Julie Claeys, also a resident of Woodpine Court stated she contacted her County Commissioner several years ago and subsequently the County Road Department applied some base material to the road. Ms. Claeys stated currently large amounts of gravel from that application had now eroded on to her property.

12. Consideration of Lincoln County Joining Otero and Socorro Counties in Submitting SET (Stronger Economies Together) Regional Application

Ms. Taylor presented a request from Greg Corey, the Village of Ruidoso Community Development Director for the County to participate in a county wide collaborative effort to submit a regional application for a "Strong Economies Together" (SET) grant. Ms. Taylor noted Lincoln County's commitment would help ensure the region was eligible to submit an application.

Motion: Approve Lincoln County support of the SET grant application, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Stewart.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

14. Manager's Report

1. **Retirement Celebration for the Honorable Karen L. Parsons** was scheduled for June 25, 2015 in the Twelfth Judicial District Court. Judge Parsons served Lincoln County as District Court Judge, Division III beginning in March 14, 1997. Judge Parsons extended a personal invitation to the Commissioners, other Public Officials and Lincoln County employees to join her at her retirement celebration.
2. **NMAC Annual Conference** was held in Albuquerque June 16th – 18th. A number of County Public Officials and employees attended training classes, affiliate meetings, and

general sessions. This year for the first time, workshops were open to all attendees. Topics included:

- a. **Gross Receipts Tax Reform-** A crucial step toward economic development. The panel addressed how to broaden the GRT base, lower rates and protect local government revenue;
 - b. **Miracle at Bernalillo County Metropolitan Detention Center!** A discussion of how counties can reduce jail low risk population and provide meaningful programs to those in need. Last year statewide Counties spent over \$35 million to house probation violators;
 - c. **To Preempt or not to Preempt?** Why local government is best positioned to protect the health, safety and welfare of its citizens. A number of bills were introduced during this past legislative session that would preempt local authority over a variety of issues, such as oil and gas, mining, agriculture and minimum wage. These bills would have eroded local authority over important health, safety and welfare concerns and would set a dangerous precedent.
 - d. **How to jumpstart your Local Economy – Who are You Going to Call? Economic Development Busters!** This panel addressed the need to catapult economic development projects to offset high unemployment, low income, or economic distress.
3. **Worker's Compensation Pool Membership Meeting.** The Manager serving as alternate to Commissioner Stewart on the Pool Board attended the membership meeting. A key topic was the Loss Analysis Reports for the individual counties, and the Pool as a whole. The Manager reported the departments incurring the most Worker's Compensation claims were the Sheriff's and Road Departments with the highest number of incidents in the categories of: Struck or injured by animal or insect and fall or slip. The Manager stated weekly safety meetings for each department were ongoing in an attempt to bring awareness to safety practices, as well as a knowledge of the costs associated with accidents and injuries.
3. **Secure Rural Schools (SRS) and PILT.** The Manager reported notification was received on June 15, 2015 of funding distributions based on the formula in the SRS Act. Lincoln County received \$167,848.48 with additional amounts distributed to school districts. The Manager reported distribution of Fiscal Year 2015 PILT payments to counties were expected by June 24, 2015.
4. **Building Projects**
- a. **Public Officials Building.** Final work was being completed on the HVAC units with final invoices submitted for payment prior to the fiscal year end pending final inspections.
 - b. **Annex Building.** The first floor remodel currently complete with the exception of the security doors for the District Attorney's office. The District Attorney was in the process of installing data lines and the County hired a moving company to assist with moving on June 24, 2015. The District Attorney will also have assigned office space on the second floor for additional storage.
 - c. **Carrizozo Senior Center.** The mandatory pre-bid conference was scheduled for June 30, 2015 with bids due by July 9, 2015. The Manager anticipated a bid award at the July 21, 2015 Regular Commission Meeting.
5. **Departmental Updates:**
- a. **Punkin Schlarb, Finance Director** reported fiscal year end closing procedures continued with closeout of payroll, payables, purchase orders, and other actions to help define ending cash balances. Ms. Schlarb reported the Finance Affiliate met with the new State Auditor and the Department of Finance and Administration during the recent NMAC meeting and received updated guidelines and information.
 - b. **Curt Temple, Planning Director** reported the final revisions for the Lincoln County map books were submitted to the printer this week.
 - c. **Carl Palmer, Road Superintendent** stated the CAP/Co-op chip seal projects for this fiscal year were completed and received a positive public response. Mr. Palmer, speaking to the previous comment regarding Woodpine Court, stated to his knowledge the road was never an asphalt road but rather a chip seal road. Mr. Palmer further stated Woodpine Court was on the Road Department's planning list for future work.

Commissioner Stewart requested copies of any correspondence related to Woodpine Court and Stag Loop. Commissioner Stewart also questioned whether the Road Department was monitoring road damage associated project work by Alto Lakes Water Association. Mr. Palmer

reported he was monitoring the road conditions and stated the Association planned to repair the road damage.

- d. **Joe Kenmore, Emergency Services Director** reported the Nogal Fire Department ISO rating review was completed and anticipated a revised ISO rating in 60 to 90 days. Mr. Kenmore stated the Capital Outlay funding for the Hondo Fire Station was well received and construction plans were completed. Mr. Kenmore stated as a result of recent legislation background checks were required for all Emergency Medical Technicians (EMTs). Mr. Kenmore reported a recent test of the Code Red system revealed a large number of nonworking numbers. Mr. Kenmore requested the public update their information and reminded information was now available through email and text.
- e. **Billie Joe Guevara, Administrative Assistant/Human Resources** reported the State of New Mexico medical insurance premiums increased by 3% for employees effective July 1, 2015. Ms. Guevara stated several Sexual Harassment Training sessions were scheduled for attendance by all County employees.
- f. **Renee Montes, Senior Program Director** informed New Mexico rated second in the nation in senior hunger. Ms. Montes stated her department was working with the Road Runner Food Bank to provide food distributions at sites in Ruidoso, Ruidoso Downs, and Hondo on the fourth Tuesday of each month.

15. GSWA Request to File Property Liens

Attorney Morel reported on June 9, 2015 the Lincoln County Clerk forward copies of fifteen liens presented by Greentree Solid Waste Authority for signature and recording through the authority of the Lincoln County Board of Commissioners. Attorney Morel stated the liens in question were submitted as a result of delinquency in payment for solid waste services rendered by GSWA. Attorney Morel noted twelve of the fifteen liens were previously submitted by GSWA in June of 2014.

Attorney Morel stated the current Lincoln County Solid Waste Ordinance 2014-07 provides for the filing of liens due to delinquency of payment but reminded Ordinance 2014-07 superseded seven earlier Ordinances. Attorney Morel reminded he provided a detailed review of the liens submitted by GSWA in 2014 and identified a number of errors and inconsistencies. Attorney Morel stated in 2014 the Board of County Commissioners declined to approve the filing of the liens as presented and requested GSWA make the necessary corrections.

Attorney Morel stated the 2015 liens presented today contained errors and inconsistencies nearly identical to those found in the 2014 GSWA liens and provided a detailed review of those errors and inconsistencies. Attorney Morel suggested he work GSWA to correct these issues as GSWA was legally entitled to collect money due.

Commissioner Willard questioned if the County might correct and then record the liens without returning them to GSWA. Attorney Morel expressed concern about altering GSWA billing accounts and expressed a preference to work with GSWA's Attorney to correct the liens.

Chair Stone reminded of the prior direction by the Board of Commissioners in 2014 to GSWA to make the corrections.

Motion: Direct Lincoln County Attorney Morel to assist the GSWA Attorney to correct rates, late fees, and references for the liens presented, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Stewart.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

16. Solid Waste Collection Exemption per Ordinance No. 2014-07

Attorney Morel presented an application prepared as per direction from the Board of County Commissioners for an exemption from solid waste billing. Attorney Morel reminded the exemption was only for landowners with a minimum of 300 acres of contiguous land with adequate disposal sites in compliance with all other related State requirements for disposal of waste on private property.

Ms. Taylor provided a summary of requests for seven other exemptions along with proposed solutions for further consideration.

Motion: Adopt the Application for Waiver of Solid Waste Collection Fee for Landowners with 300 Contiguous Acres of Land as to form and grant authority for minor modifications to the County Manager, **Action:** Approve, **Moved by** Chair Stone, **Seconded by** Commissioner Draper.

Commissioner Willard questioned if the granting of this exemption would result in any conflict with current State Statute. Attorney Morel stated there were a number of state requirements which the application required the landowner to attest to compliance.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Commissioner Willard questioned if there was a need to modify the County's current Solid Waste Ordinance. Attorney Morel stated the exemption discussed today was currently identified in the Ordinance however there were other issues identified which might necessitate a revision of the Ordinance. Attorney Morel suggested these be visited after the County developed a Request for Proposal (RFP) for solid waste services. Attorney Morel stated the RFP would identify specific services to be provided by the County and potentially necessitate other revisions.

17. Safety Net Care Pool & Indigent Health Care Claims

Scott Annala, Indigent Health Care Administrator presented the Safety Net Care Provider Pool claims for approval. Mr. Annala processed 31 claims with 31 recommended for approval and none recommended for disapproval for a monthly authorization of \$27,995. Mr. Annala stated the total approval for SCP/SNCP claims for Fiscal Year 2014-2015 to date was \$254,747 with a monthly average of \$21,229.

Mr. Annala presented the Indigent Health Care Payments request for the month and stated he processed 6 claims with 5 claims recommended for approval and 1 for disapproval for a total payment this month of \$1,301.61. Mr. Annala stated the total expenditure for IHC claims for Fiscal Year 2014-2015 to date was \$63,642.16 for an average monthly indigent claims payment of \$5,303.51. Mr. Annala stated average monthly indigent claims payments of \$5,303.51 resulted in a total expenditure for the Fiscal Year ending June 30, 2015 of \$63,642.16 of a budgeted \$393,278. Mr. Annala additionally reported a refund received of \$70.84 from a claim processed in 2005.

Mr. Annala suggested expansion of the Indigent Health Care provider base to include reimbursement for services by the Presbyterian Physician Group to utilize Indigent Health Care Funds. Commissioner Draper questioned if separate contracts were required for each physician. Mr. Annala stated each billing entity would require a separate Indigent Health Care Provider Agreement.

Commissioner Stewart questioned the status of Indigent Health Care programs in other counties. Mr. Annala stated there were numerous counties which no longer provided Indigent Health Care funding for services to residents but have redirected the program towards reimbursement of health care costs for prisoners.

Motion: Approval and denial of the claims as indicated for SCP/SNCP and Indigent Health Care as recommended, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Stewart.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

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

18. Update on MOU with the VOR Concerning Building Permits and Inspections

Mr. Temple discussed the intent of the Memorandum of Understanding (MOU) to extend construction inspections by the Village of Ruidoso outside of the municipality to defined areas within the County which were better served by the Village. Mr. Temple stated the MOU required the Village of Ruidoso to retain a full staff of inspectors but noted the Village was without an Electrical Inspector for the past four months.

Mr. Temple provided an analysis of permits issued within the municipal limits and those issued in the County. Mr. Temple reminded the prior NM State Secretary of the Construction Industries Division (CID) had agreed to investigate any violations reported by the Village of Ruidoso building inspectors. Mr. Temple stated the new Secretary of CID was not as amenable to adopting jurisdiction for noncompliance. Mr. Temple stated enforcement might become problematic if a Village of Ruidoso Inspector found violations outside of the municipal limits.

19. Agreement with Curry County to House Inmates in Lincoln County Detention Center

Ms. Taylor informed weather related damages to the Curry County Detention Center necessitated relocation of inmates during building repair. Ms. Taylor stated she received a request from Curry County for Lincoln County to enter into an agreement to house some of these inmates.

Ms. Taylor stated Warden Arthur Anderson confirmed adequate space was available at the Lincoln County Detention Center and they were agreeable to housing adult male inmates with no history of mental illness.

Ms. Taylor stated Attorney Morel prepared an Agreement acceptable to Curry County to house inmates at the daily rate of \$72 per inmate consistent with agreements with other counties.

Motion: Approve the agreement with Curry County to house inmates at the Lincoln County Detention Center, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Draper.

Attorney Morel informed the agreement was limited to housing no more than twenty male inmates with Curry County to retain responsibility for health care and other associated services.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

20. Tower Lease Agreement with the Capitan Municipal Schools

Ms. Taylor presented the agreement to formalize the prior approval of the request from the Capitan Municipal School District to collocate communication equipment on towers.

Joe Kenmore, Director of the Office of Emergency Services expressed approval of the agreement stating adequate tower space was available and the appropriate coordination of frequency use with the Federal Communications Commission was in process.

Commissioner Stewart noted the agreement stated the County would provide internet and electrical service and questioned the associated costs. Attorney Morel stated no internet service was available at the sites and electrical costs were minimal.

Motion: Approve the Tower Lease Agreement with the Capitan Municipal Schools, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Draper.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

21. Award Bid 14-05-010 Resurface Old Fort Stanton Road

Ms. Taylor informed bids to resurface Old Fort Stanton Road were opened on June 9, 2015 with four bids received. Ms. Taylor detailed the bids as follows:

Mesa Verde Enterprises, Inc	\$160,200.00
MP Chavez Enterprises, Inc.	\$151,764.00
Renegade Construction, LLC	\$165,320.00
Star Paving Company	\$245,006.40

Commissioner Draper questioned if the Board of Commissioners was obligated to award to the low bidder. Attorney Morel stated the Commissioners could only consider the criteria defined in the bid packet.

Orlando Samora, Purchasing Agent discussed the definition of the New Mexico resident preference as a 5% credit for contractors previously qualified with the State of New Mexico. Mr.

Samora stated the standard bid process resulted in the award to the lowest bidder while the Request for Proposal or RFP process allowed for consideration of other criteria.

Attorney Morel reminded all contractors were required to provide performance bonds.

Motion: Award Bid 14-05-010 to MP Chavez Enterprises, Inc. for \$151,764.00, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Stewart.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

22. Preliminary Infrastructure Capital Improvement Plan (ICIP) – Direction and Prioritization

Ms. Taylor discussed the evolution of the Infrastructure Capital Improvement Plan (ICIP) to reflect current capital outlay awards and to encompass newly identified projects. Ms. Taylor reported the Manager's staff and Elected Officials met in June to identify additional or new ICIP projects and presented a list reflecting some of those suggestions as follows:

1. New Hondo Fire Station
2. Expansion White Oaks Fire Station
3. Expansion Lincoln County Detention Center
4. Renovations New Horizons Facility
5. ADA Upgrades to Senior Centers
6. ADA Upgrades to Courthouse parking lots
7. Repair of Courthouse sidewalks
8. Heating/Cooling Unit for Ruidoso Public Health Office
9. Sheriff's Department vehicles
10. Road Department vehicles and equipment
11. Fleet Management software

Ms. Taylor stated total project costs were being identified with prioritization scheduled for the July Regular Meeting and final approval scheduled for the August Regular meeting.

Commissioner Draper commented the new additions were appropriate but reminded prioritization was critical to receive appropriate funding.

Commissioner Stewart suggested projected costs and detail would assist with prioritization for Capital Outlay requests but also for budgeting for projects the County might wish to fund.

Commissioner Allen suggested the renovation of the Lincoln County Medical Center be added to the ICIP plan.

23. Resolution 2014-46 to Dispose of County Property by Auction

Ms. Taylor presented the Resolution for approval of County assets to be auctioned through the Public Surplus website.

Motion: Adopt Resolution 2014-16, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Commissioner Draper, Clerk Burrows, and Sheriff Shepperd volunteered to review items prior to auction.

SEE EXHIBIT C: Copy of Resolution 2014-16 is attached hereto in reference thereto made a part hereof.

26. Change Sheriff Department's Narcotics Enforcement Unit Clerk from part time to a full time position

Ms. Taylor presented the request from Sheriff Robert Shepperd to reclassify the Narcotics Enforcement Unit Clerk from a part time to full time position. Ms. Taylor stated there was sufficient work to reclassify the position and grant funding would completely offset the additional payroll expense.

3600

Motion: Approve the reclassification of the Sheriff's Department Narcotics Enforcement Unit Clerk from a part time to full time position, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Draper.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

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

a. Final Budget FY 2015-2016

Motion: Schedule a public hearing to consider the Final Budget for Fiscal Year 2015-2016 at the July 21, 2015 Regular Meeting, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Allen.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

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

a. Lincoln Historic Preservation Board

Motion: Reappoint L.M. Smith to the Lincoln Historic Preservation Board, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Allen.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

b. Planning Commission

No action taken.

c. Senior Citizens Olympic Committee

No action taken.

29. Liability Insurance for Lincoln County Juvenile Justice Board

Ms. Taylor stated the annual agreement with NM Children Youth and Families (CYFD) which provides grant funding for the Lincoln County Juvenile Justice Board included a new requirement for liability insurance. Ms. Taylor reminded the Juvenile Justice Board, a 501-C3 entity, was a subcontractor for services and Lincoln County served as the grant recipient. Ms. Taylor stated this was a rather unique arrangement with only Los Alamos County similarly structured.

Ms. Taylor stated she was working with the New Mexico Association of Counties in conjunction with Los Alamos County to obtain the requested liability insurance. Ms. Taylor estimated the cost of this insurance as \$1,500 to \$3,000 per year. Ms. Taylor suggested the value of the program which helps keep juvenile offenders out of the courts and detention center was well worth the additional cost.

Motion: Approve the expenditure of up to \$3000 for the purchase of liability insurance for the Lincoln County Juvenile Justice Board, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Allen.

Commissioner Draper suggested the LCJJB include the additional cost of the requested liability insurance in their annual request to Lincoln County for external agency funding.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Chair Stone recessed the Regular Meeting at 11:48:55 and reconvened at 1:00:37 PM.

30. 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).

Motion: To close the meeting for the purposes of an Executive Session to discuss Threatened and/or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1, Sub Paragraph H.(7) and the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8) and as follows:

New or Updated Matters since last report = *

1. *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 took place Dec. 18, 2013, and Stipulated Judgment was entered June 4, 2014 in favor of Ms. Cooper. Ms. Cooper filed an appeal June 10, 2014, and Judge John F. Davis was assigned Aug. 3, 2014.
2. *Greentree Solid Waste Authority v. Lincoln County D-1226-CV-2014-00095.* Suit filed May 1, 2014. Verified Petition for Declaratory and Supplemental Relief: Injunction. County was served May 14, 2014. Mr. Paul Melendres has been retained by the County. Hearing on All Pending Motions took place Nov. 20 before Judge Ritter, who found Mr. Beauvais had a conflict of interest and was disqualified from representing GSWA. GSWA has retained Robert Doughty as new counsel Dec. 13, 2014. GSWA filed its Withdrawal of Plaintiff's Original and First Amended Verified Emergency Motion Seeking Further Relief on Plaintiff's Request for Preliminary Injunction Concerning Rate at which County Will Bill May 7, 2015. Lincoln County filed its Motion to Continue its Motion for Sanctions May 8, 2015 and the Order of Continuance was filed May 11, 2015.
3. *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. Mr. Beauvais filed an appeal Feb. 27, 2014. Ruling on Reconsidering Stay denied by Judge Singleton June 11, 2014. GSWA's Brief in Chief filed Sept. 9, 2014. Record Proper was filed Sept. 25, 2014. Alto Lakes Water and Sanitation District's and Lincoln County's Joint Response Brief was filed with the Court of Appeals Oct. 24, 2014. GSWA filed its Reply Brief Dec. 1, 2014. The case has been submitted to a panel of judges for decision and the County received Notice of Submission from the Court of Appeals Jan. 2, 2015. Mr. Beauvais' Attorney Charging Lien was filed April 29, 2015.
4. *Water Rights Protests: New Mexico State Engineer Hearing Numbers: 14-039 and 14-041.* Protests of Applications 01300-1, 01300-2, 01300-3, 0826-2 into 0275 *et. al.* and H-272 *et. al.* (T) and H-50-1 into H-272 *et. al.* (T) filed July 15, 2013 pertaining to movement / transfer of water rights from the Hondo Valley to the Village of Ruidoso and the City of Ruidoso Downs. Docketing Order filed Sept. 18, 2014. Kelly Cassels/Sanders, Bruin, Coll & Worley, P.A. has been retained by the County, entered his appearance Sept. 22, 2014 and has responded in behalf of the County.
5. *Wesmax, Ltd. V. Paul Baca, Lincoln County Assessor D-1226-CV-2014-00188* Appeal of the Final Order from Lincoln County Valuation Protest Board. Appeal filed Oct. 8, 2014. Case assigned to Basham & Basham/Dwyer. Record of Appeal and Transcript of Proceedings was filed Oct. 23, 2014.
- *6. *Edward Rider/Brennon Moorhead v. The Board of County Commissioners, Brack Rains, Matt Christian, Robert Shepperd D 1226 CV 2015-00103* Complaint for Damages and Summons received June 15, 2015.

Tort Claims Notices Received or Threatened

2015

Cherry, Doris – Tort Claim Notice posted in Lincoln County News Jan. 1, 2015 stating possible Civil Rights Violation lawsuits regarding alleged Americans with Disabilities Act non-compliance in remodeling the Lincoln County Courthouse buildings.

McDaniel, Carl – Tort Claim Notice received Jan. 23, 2015 alleging violation of the Unfair Trade Practices Act and engaging in unfair or deceptive trade practices and/or unconscionable trade practices by GSWA.

UNM Hospital-Prins, Chad – Tort Claim Notice received Feb. 26, 2015 in which UNM Hospital seeks reimbursement of expenses incurred while Lincoln County Detention Center inmate Prins was on furlough.

Sehorn, Sean M. – Tort claim Notice received March 2, 2015 alleging Lincoln County Detention Center failed to provide adequate medical treatment during inmate Sehorn's incarceration.

Lavin, Erica L. and Rathgeber, Jack – Tort Claim Notice received March 2, 2015 alleging Constitutional Rights were violated resulting in wrongful termination.

Hanley, Constance – Tort Claim Notice received March 20, 2015 from attorney John Sugg alleging violations of 42 USC section 1983, malicious prosecution, failure to investigate, defamation of character, libel and abuse of process.

Capitan Iron Mine through A. Blair Dunn – Threatened Litigation on April 1, 2015 against the County of Lincoln should Lincoln County require Capitan Iron Mine comply with Lincoln County Mine Ordinance 2009-01.

Chavez, Billy – Ordinance Violation: 2009-03 Regulating Refuse, Solid Waste and Litter in the County. March 10, 2015 certified letter mailed to Mr. Chavez giving him 30 days to dispose of debris on his property at 142 White Cat Road, San Patricio (Section 26, Township-10S, Range 16E, tract of land lying in the NE 4SE4). April 10, 2015 the property was inspected and noted no progress had been made.

Preston, DeAnna – Lincoln County Sheriff's Deputy – Threatened Litigation on April 22, 2015 through attorney J. Robert Beauvais against the County of Lincoln in reference to Dep. Preston's Disciplinary Action Dispute.

Michael Barela and Jude Renney v. Brack Rains, Lincoln County Sheriff's Deputy, Lincoln County Sheriff Robert Shepperd, and the County of Lincoln – Tort Claim Notice received May 4, 2015 from Manuel Garcia/Hakanson Firm, alleging violation of defendants' 4th Amendment rights.

Culp, Susan v. LCMC/Lincoln County: Tort Claim Notice received May 4, 2015 by Katherine Channing Roehl/Roehl Law Firm alleging medical malpractice, negligent supervision, negligent credentialing by staff, administrators and doctors at LCMC on or about March 3, 2015 during Ms. Culp's gall bladder removal surgery.

***Torres, Leopoldo:** Tort Claim Notice received June 4, 2015 from inmate Torres alleging inmate-initiated attack on inmate Torres at Lincoln County Detention Center.

***Wallace, Stephen:** Tort Claim Notice received June 11, 2015 from Attorney Gary Mitchell alleging deprivation of Constitutional rights due to false incarceration at Lincoln County Detention Center without proceeding with a timely extradition.

2014

Ramos, Aaron – Tort Claim Notice received from Mr. Ramos March 18, 2014 alleging his rights were violated during incarceration at Lincoln County Detention Center. Mr. Ramos alleges damages by not being granted detainee to detainee correspondence.

Millerden, Kenneth and Anita – Tort Claim Notice received May 9, 2014 alleging negligence from staff at Lincoln County Medical Center during prepartum care for their infant son.

Ogden, John D – Tort Claim Notice received May 26, 2014 alleging mistreatment while incarcerated at Lincoln County Detention Center on March 11, 2014.

Rounds, Christopher – Tort Claim Notice received June 4, 2014 alleging being held in Lincoln County Detention Center without being advised of his charges.

Herbert, Crystal – Tort Claim Notice received June 23, 2014 alleging false imprisonment, due process violations, unlawful detention of a minor, emotional distress.

Class Action – Tort Claim Notice received June 23, 2014 alleging false imprisonment, false arrest, deprivation of rights at Lincoln County Detention Center that arise with Immigration and Customs Enforcement charges.

Atwell, Stacey – Tort Claim Notice received June 25, 2014 alleging unlawful seizure of her two minor children during a request for a deputy to assist in keeping the peace.

McGarry, Sean – Tort Claim Notice received July 25, 2014 alleging wrongful arrest, false imprisonment, malicious prosecution, intentional or negligent infliction of emotional distress, abuse of process, wrongful termination and retaliatory discharge regarding discharge from the Capitan Police Department.

Ramos, Aaron – Tort Claim Notice received August 7, 2014 alleging lack of Due Process for inmates at Lincoln County Detention Center.

Lambert, David and Bonnie - Tort Claim Notice received Sept. 8, 2014 by attorney W. Chris Nedbalek alleging damage to Lambert property due to Mr. Rodney Bunsen using his own equipment to alter a platted County right of way without the authorization or knowledge of the County.

Rider, Edward Allen and Moorhead, Brennon – Tort Claim Notice received Oct. 20, 2014 by attorney W. Chris Nedbalek alleging Lincoln County Narcotics Enforcement Unit officers destroyed items in a home.

Caughron, Brittany and Anderson, Amie – Tort Claim Notice received Oct. 24, 2014 by attorney W. Chris Nedbalek alleging overcrowding of Lincoln County Detention Center as a violation of 8th Amendment Rights.

Ryen, Allen- Tort Claim Notice received Oct. 27, 2014 by attorney W. Chris Nedbalek alleging Mr. Ryen was exposed to unsanitary conditions at Lincoln County Detention Center.

Inmate Group – Tort Claim Notice received Oct. 27, 2014 by attorney W. Chris Nedbalek alleging overcrowding and unsanitary conditions at Lincoln County Detention Center.

McMurray, Cody – Tort Claim Notice received Nov. 6, 2014 by attorney W. Chris Nedbalek alleging lack of adequate medical care at Lincoln County Detention Center.

Caughron, Brittany and Anderson, Amie – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging inadequate medical care and overcrowding at Lincoln County Detention Center.

Inmate Group – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek

alleging overcrowding and unsanitary conditions at Lincoln County Detention Center.

Long, Cameron – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging mistreatment by an Officer with Adult Probation and Parole.

McClarnon, Brian – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging violations of U.S. Constitutional Amendment rights.

Diana Martwick, 12th Judicial District Attorney – Tort Claim Notice received Nov. 25, 2014 alleging lack of adequate office space provided by the County of Lincoln.

Inmate Group – Tort Claim Notice received Dec. Dec. 22, 2014 by attorney W. Chris Nedbalek alleging inmates were mistreated at Lincoln County Detention Center.

2013

Allen, Katherine Elizabeth- Notice of Tort Claim received Sept. 12, 2013 from Katherine Allen against Lincoln County Detention Center for alleged injuries sustained during transport.

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.

Silva, Elmo - 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 filed on July 3, 1990.

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

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Chair Stone recessed the Regular Meeting and convened the Closed Session at 1:01:16 PM.

Chair Stone adjourned the Closed Session and reconvened the Regular Meeting at 1:43:37 PM.

Commissioner Allen attested that matters discussed in the closed meeting were limited to those specified in the motion for closure or in the notice of separate closed meeting.

31. Greentree Solid Waste Authority items for consideration/action:

- a. Re-negotiation of the current Joint Powers Agreement should the County of Lincoln elect to remain a full member of Greentree Solid Waste Authority. **Tabled**
- b. Potential Action on Rates for Solid Waste Collection Services in Lincoln County outside municipalities and Alto Lakes Water and Sanitation District by Resolution 2014-40 – **Tabled**
- c. Consideration of Options:
 - i. Issue Third party Request for Proposal (RFP) for County of Lincoln Solid Waste Services. – **Tabled**

Motion: Remove from the item from the table, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Willard.

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

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Ms. Taylor reminded Lincoln County hired Charles Fiedler of Gordon Environmental to assist with the development of a Request for Proposal (RFP) for solid waste services. Ms. Taylor stated Mr. Fiedler recently conducted a survey of current services provided, service sites, and status of equipment. Ms. Taylor reported Mr. Fiedler suggested development of an initial RFP containing a menu of services for consideration by the Board of County Commissioners.

Commissioner Draper expressed a desire to keep all options open and questioned if Mr. Fiedler might seek feedback about services from potential vendors

Commissioner Stewart also requested the RFP be developed in a broad and flexible manner to provide opportunity for vendors to respond based on their own recommendations and solutions.

- ii. Negotiation of Joint Powers Agreement and the status of the County of Lincoln should an RFP for a Third Party Contract for Services be sought.
- d. Identification and Valuation of GSWA Assets to Serve Lincoln County residents

Ms. Taylor informed she requested from GSWA an identification and valuation of GSWA Assets currently allocated to services for Lincoln County residents. Ms. Taylor stated the purpose of the request for a specific list of assets was to assist with development of the RFP. Ms. Taylor stated GSWA provided an "Asset Allocation Plan" with replacement costs but stated this plan did not fulfill the request for specific assets utilized by County residents.

Commissioner Stewart requested the Manager continue to seek the information for development of the RFP.

- e. Any and all other items pertaining to Greentree Solid Waste Authority and the County of Lincoln.

24. 2:00 p.m. Public Hearing: Lincoln County Historic Preservation Ordinance No. 2004-04: Section VII (G):

Attorney Morel provided background for the two appeals of separate decisions rendered by the Lincoln Historic Preservation Board. Attorney Morel noted both appeals involved the appropriateness of the utilization of flags within the Lincoln Historic Preservation District for commercial advertising purposes.

Attorney Morel stated the Dickinson appeal was considered as a "Request for Variance" to utilize a "Pizza" flag as indicated by the application presented to the Lincoln Historic Preservation Board. Attorney Morel stated the Dougherty appeal was based on an application for use of an "Open" flag as signage.

Attorney Morel stated the Public Hearing was a quasi-judicial hearing with each party afforded an opportunity to present their view. Attorney Morel provided copies of all related correspondence, applications, memorandums and minutes related to the decisions for consideration and inclusion in the record.

Attorney Morel suggested Commissioner Allen recuse herself from these proceedings due to a potential conflict of interest as a resident of and business owner flying flags in the Lincoln Historic Preservation District.

Chair Stone recessed the Regular Meeting and convened the Public Hearing at 2:00:08 PM.

Rhonda Burrows, County Clerk administered the oath to individuals giving testimony.

- a. Appeal of the Lincoln Historic Preservation Board's denial of the Dickinson Gallery/Northside Pizza's Application for Variance to display a "Pizza" flag in the Lincoln Historic Preservation District.

Sarah Dockery speaking for Dickinson Gallery/Northside Pizza provided a history of the business and the addition of Northside Pizza to the existing Gallery in late 2014. Ms. Dockery stated originally the business flew an American Flag and then changed to a simple tri-colored flag with the word "Pizza".

Ms. Dockery stated after the business began using the "Pizza" flag they were contacted by Samantha Mendez, Lincoln County Ordinance Administrator advising of an Ordinance requirement to make application to the Historic Preservation Board for a variance. Ms. Dockery expressed belief the initial application was submitted incorrectly as a request for variance based on the advice of the Ordinance Administrator. Ms. Dockery stated an application for approval of signage was the proper request. Ms. Dockery stated the application was subsequently denied by the Historic Preservation Board and as per the Ordinance an appeal was initiated.

Ms. Dockery detailed the timeline of events which resulted in a removal of the "Pizza" flag for six months. Ms. Dockery testified this change was detrimental to business and stated the use of the flag in question increased business by two fold.

Ms. Cille Dickenson testified she was a resident of the Lincoln Historic Preservation District for forty four years and discussed the business's geographical location to other historic buildings in the area.

L. M. Smith, Chairman of the Historic Preservation Board testified a majority of district residents who had contacted him objected to the use of the "Pizza" flag as historically inappropriate.

Ginger Moore, Vice Chair of the Historic Preservation Board expressed belief the Board viewed the use of flags as signage not historically appropriate for use within the District. Ms. Moore stated the duty of the Historic Preservation Board as defined in the Ordinance included the "intent to curb the creation of non-conforming uses or structures". Ms. Moore stated research indicated while some Historic Districts permitted the use of such flags, a similar number did not. Ms. Moore requested the Board of County Commissioners uphold the authority of the Historic Preservation Board to make these decisions.

Herb Marsh, resident of Lincoln noted typically the Historical Preservation Board approved approximately 99% of applications presented as in compliance with the County Ordinance. Mr. Marsh noted the Ordinance as adopted required the County Ordinance Administrator to report violations for consideration by the Historic Preservation Board. Mr. Marsh suggested the Board was not acting arbitrarily when denying the application for a flag as flags do not conform to the requirements of the Ordinance. Mr. Marsh objected to the argument that a lack of specific reference to flags within the Ordinance exempted them from regulation and maintained that "legally speaking" the Ordinance was very specific as to what signage was permitted including a list of all exceptions. Mr. Marsh opined the omission of any references to flags, banners or pennants was not one of oversight but rather one of intentional omission.

Mr. Marsh noted the Ordinance identified specific materials, colors, and various details approved for signage. Mr. Marsh stated those appealing the ruling were not denied the right to signage but simply being held to the same standard as others who conformed to the Ordinance. Mr. Marsh requested no variance which nullifies the intent of the Ordinance be approved. Mr. Marsh stated a ruling to allow a flag for signage would not suit the character of Lincoln.

Jeremy Jordon, resident and business owner within the Historic District suggested flags if considered as "signage" were then still subject to restrictions including requirements for particular materials, colors, and fonts as defined in the Ordinance. Mr. Jordon presented two petition pages titled "Objection to Dickinson Flag Variance" containing a total of sixteen signatures from residents of Zone A and B within the Lincoln Historic District. Mr. Jordon read from the petition pages stating "the variance policy expressly states under no circumstances should a variance be granted that significantly conflicts with or nullifies the objective spirit and intent of the ordinance". Additionally, the petition reads "granting a variance to allow the nylon flag clearly violates the spirit and intent of the Ordinance".

Reginald Ritchie, prior Chair of the Historic District Preservation Board reminded the Historic Preservation Board continually provided guidance to assist homeowners and businesses within the District with Ordinance compliance. Mr. Ritchie asserted the Ordinance clearly defines appropriate variances and objected to the possibility of setting a precedent which would lead to a large number of flag signage within the Historic District.

Cleis Jordan, resident of Lincoln provided a brief history and background of the creation of the Lincoln Historic District beginning in the 1930s and the organization of the Lincoln County Memorial Commission in 1949. Ms. Jordan commented on the adoption of the original Lincoln County Historical District Ordinance in 1972. Ms. Jordan discussed the acquisition of properties by various entities with subsequent donation to the State of New Mexico in 2006. Ms. Jordan noted over half of the properties within Lincoln were still privately owned, restored and maintained to conform to the historic period of 1860 to 1920. Ms. Jordan stated belief flags and banners were not utilized during this period and were therefore not appropriate for the community.

Ms. Dickinson expressed concern about a "double standard" being applied to those seeking an appeal of the Historic District Preservations Board decision before the Board of Commissioners. Ms. Dickinson reminded the flag in question was red, green, and white and asserted there were at least six other signs in Lincoln with the same colors.

Attorney Morel questioned Ms. Dickinson as to whether the request was for permission to fly a flag or whether the request was also for a variance from the colors and fonts required by the Ordinance for signage. After discussion, Ms. Dickinson concurred the intent of the request was for permission or variance to fly the flag with current colors and font.

Randy Dougherty, resident and business owner for twenty years in Lincoln reminded he recently appeared before the Board of Commissioners on a prior appeal related to fencing. Mr. Dougherty objected to the assertion that only property owners were permitted to apply for variances in the Historic District and also objected to what he termed as "selective enforcement". Mr. Dougherty discussed improvements made to the three business locations he rented in Lincoln and stated he had flown an "Open" sign for most of those twenty years. Mr. Dougherty asserted he possessed historic pictures of cloth signs from the 1800s.

Attorney Morel stated the placement of a sign or flag was clearly subject to the Ordinance. Attorney Morel directed attention to Section 7 G 6 of the Ordinance which provides detail regarding signage requirements. Attorney Morel opined the Board of Commissioners may consider a cloth flag as "signage" and disputed Mr. Marsh's opinion that a lack of reference to flags precluded this consideration. Attorney Morel noted the Historic Preservation District Ordinance defined colors and fonts acceptable for signage but did not specifically limit signs to wood construction. Attorney Morel stated the decision before the Board of Commissioners was whether cloth signs were permitted as signage and therefore subject to Ordinance requirements as to acceptable colors and font.

Attorney Morel stated for the record the appeal was timely filed, acting as the County Attorney he spent several months trying to resolve the issue, and therefore the appeal shall proceed to the Board of County Commissioners. Attorney Morel stated the Board of Commissioners could issue a reversal of the Historic Preservation Board's decision, uphold the decision, or make changes to decision. Attorney Morel reminded the appeal was conducted during a Public Hearing and after key finding of facts and conclusions of law were approved a second thirty day appeal process would begin.

Commissioner Stewart questioned a reference in the January 30, 2015 Historic Preservation Board minutes regarding the approval of placement of Art Loop Flags and requested clarification of this approval.

L.M. Smith, Chair stated to his knowledge the request for placement of Art Loop Flags was one for temporary event placement which was granted by prior Boards over the past 20 years.

Attorney Morel presented a copy of a 2009 Resolution adopted by the Lincoln County Historic Preservation Board which allowed temporary structures for special events such as Art Loop.

There was lengthy discussion about the placement and use of U.S. Flags within the Historic District including whether or not it was appropriate to use the U.S. Flags to indicate whether or not a business was open.

Herb Marsh spoke to Section 4 C of the Ordinance which contains the definition of construction or alteration as actions which would affect the appearance of a structure and Section 4 R which defines exterior appearance to included signage. Mr. Marsh expressed belief Section 7 G 1 was only a definition of materials acceptable for exterior appearance alterations.

Attorney Morel discussed section 7 G 1 referenced by Mr. Marsh and suggested 7 G 6 dealing with signage was more applicable to the situation and provided for a process for application to the Historic Preservation Board for approval of materials prior to placement of signage.

Commissioner Draper questioned Ms. Dockery if the denial of the placement of the flag had cost her business money. Ms. Dockery stated belief loss was incurred from the potential for increased sales. Ms. Dockery stated belief the use of a flag was not "signage" and stated she had complied with the Ordinance requirements for signage on two prior occasions.

Chair Stone suggested there was a need to clarify the Ordinance to eliminate subjective opinions regarding language.

Commissioner Stewart suggested there was opportunity to amend the Ordinance to define flags as temporary in nature and for display only when businesses were open.

Chair Stone recessed the Public Hearing and reconvened the Regular Meeting at 4:12:16 PM.

Attorney Morel reminded the Historic Preservation Board's denial was for an application for a variance to display a red, white, and green flag with the word Pizza on the front and back.

Motion: The Board of County Commissioners hereby reverses the decision of the Lincoln Historic Preservation Board to permit use of a flag providing the flag meets the requirements of the Ordinance as to color and font and is displayed only during business hours, **Action:** Approve, **Moved by** Chair Stone, **Seconded by** Commissioner Draper.

Vote: Motion passed (summary: Yes = 4, No = 0, Abstain = 1).

Yes: Chair Stone, Commissioner Stewart, Commissioner Draper, Commissioner Willard.

Abstain: Commissioner Allen.

SEE EXHIBIT D: Notice of Public Hearing, correspondence, applications, memorandums, minutes, and other documents attached hereto in reference thereto made a part hereof.

Chair Stone recessed the Public Hearing at 4:21:10 PM and reconvened the Regular Meeting at 4:31:13 PM.

Attorney Morel clarified the second public hearing was a separate matter to consider a denial of an application by the Historic Preservation Board to utilize a flag within the District and not to address a request for a variance as presented during the first appeal. Attorney Morel provided copies of all correspondence, applications, memorandums and minutes related to the decision for consideration and inclusion in the record.

Attorney Morel again suggested Commissioner Allen recuse herself from these proceedings due to a potential conflict of interest as a resident of and business owner flying flags in the Lincoln Historic Preservation District.

Chair Stone recessed the Regular Meeting and reconvened the Public Hearing at 4:32:38 PM.

Rhonda Burrows, County Clerk administered the oath to individuals giving testimony.

- b. Appeal of the Lincoln Historic Preservation Board's denial of the Dougherty's Application to display an "Open" flag in the Lincoln Historic Preservation District.

Rhonda Dougherty informed she and her husband own a gallery in Lincoln and had filed an appeal based on a lack of action by the Lincoln Historic Preservation Board. Ms. Dougherty stated when she moved to Lincoln in 1997 she complied with Ordinance requirements for permanent signage and received verbal permission to fly an "Open" flag during business hours. Ms. Dougherty stated she had flown an "Open" flag in Lincoln continuously since that time.

Ms. Dougherty stated in 2006 Ralph and Rosalie Dunlap requested permission to fly a "Welcome" flag at their business in Lincoln. The Historic Preservation Board ruled a "Welcome" flag was not an "Open" flag and the Dunlap's request was denied, however the Dougherty's were allowed to continue use of their "Open" flag. Ms. Dougherty stated in 2008 a sandwich shop had an A-Frame wooden sign which received a request from the Historic Preservation Board to remove that particular sign and to utilize a flag in its place. Ms. Dougherty stated knowledge of an additional gift shop who received permission to fly a flag. Ms. Dougherty objected to the recent development of promoting the procedure to fly an U.S. Flag to indicate a business as open as a commercialization of the U.S. Flag.

Ms. Dougherty commented on the amount of Gross Receipts Tax paid and other contributions made to the economy of the County during her eighteen years of business. Ms. Dougherty discussed the requirement for property owners to file applications and appeals and stated on the date the letter of complaint of the flag was received her landlord had departed for Nicaragua for four months.

Ginger Moore, Vice Chair Historic Preservation Board stated as a volunteer at the State Historic Site she was never directed to advise visitors that only businesses who fly the U.S. Flag were open. Ms. Moore requested the Commission consider and incorporate her comments from the prior hearing into the record.

Mr. Dougherty stated the average visitor would not understand the flying of the U.S. Flag as a representation of a business being open.

Herb Marsh stated the flying of a U.S. Flag to indicate a business as open was a custom of the community. Mr. Marsh asserted Mr. and Mrs. Dougherty were not being denied the right to have signage but were simply asked to comply with the Ordinance. Mr. Marsh stated the Dougherty's viewed the Ordinance as a joke and expressed belief any adverse ruling simply needed to be appealed to obtain a reversal. As a point of order Mr. Marsh stated the Ordinance required the property owner to be present at any hearing conducted and the owner of the property in question was not present. Mr. Marsh expressed belief the "Open" flag was not in compliance with the current Ordinance.

Ms. Dougherty stated the property owner of their rental was comfortable with the Dougherty's representation during this hearing.

Mr. Marsh stated the Ordinance required any appearance other than the owner's be an authorized agent designated in writing.

Attorney Morel stated agreement with Mr. Marsh's interpretation but opined it would be unfair to raise this as a new issue on appeal and the requirement for the owner's appearance was more appropriately addressed in the denial of the application by the Historic Preservation Board.

Mr. Marsh objected saying the requirement for the owner to be present was specifically defined as a requirement for an appeal hearing before the Board of Commissioners.

Ms. Dougherty commented during 18 years of interaction with the Historic Preservation Board and as a business owner renting property no one had ever requested the owner of the property be present for any action before the Lincoln Historic Preservation Board. Ms. Dougherty stated the Historic Preservation Board was disorganized and did not know the procedure to deal with a tie vote.

Linda Scribner, speaking as a County resident objected to the use of the U.S. Flag as an "open for business sign" as an "abomination" and disrespectful to veterans who fought to protect the flag.

Ms. Moore stated for clarification of the record the Historic Preservation Board does not strive to harass any particular individual and does strive to be fair and consistent.

Mr. Dougherty commented on receipt of a letter from the County's Ordinance Administrator citing presence of a motor home as a violation of the Ordinance. Mr. Dougherty objected to this action as harassment.

Commissioner Willard questioned if the hearing was legal absent the presence of the property owner.

Attorney Morel stated because the application denial did not identify the issue it was his belief it was not fair or appropriate to raise new issues during this appeal process and because the Dougherty's did not receive prior official notification of the requirement the hearing was within the law.

Mr. Morel reminded consideration of the Dougherty's Application by the Historic Preservation Board had resulted in a tie vote and was therefore considered a denial of the application and the Board of County Commissioners should therefore consider the appeal.

Chair Stone adjourned the Public Hearing and reconvened the Regular Meeting at 5:03:57 PM.

Attorney Morel stated the Commission should consider the appeal as timely filed and requested the County Clerk incorporate all documents presented into the official record.

Attorney Morel restated the Board of County Commissioner's options to uphold, reverse or modify the decision of the Historic Preservation Board with findings of fact and conclusions of law to be provided in support of the decision.

Motion: The Board of County Commissioners hereby reverses the decision of the Lincoln Historic Preservation Board to permit use of a flag providing the flag meets the requirements of the Ordinance as to color and font and is displayed only during business hours, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Willard.

Vote: Motion passed (summary: Yes = 4, No = 0, Abstain = 1).

Yes: Chair Stone, Commissioner Stewart, Commissioner Draper, Commissioner Willard.

Abstain: Commissioner Allen.

SEE EXHIBIT E: Notice of Public Hearing, correspondence, applications, memorandums, minutes, and other documents attached hereto in reference thereto made a part hereof.

25. Rancho Ruidoso Valley Estates Subdivision-Discussion of Road Maintenance

Mary Stanfield, resident of Rancho Ruidoso Valley Estates expressed a desire to clarify the record regarding the history of road conditions in the subdivision. Ms. Stanfield stated Manager Taylor and Carl Palmer, Road Superintendent attended a Rancho Ruidoso Valley Estates Homeowners Association meeting on May 15, 2014 during which a list of six roads requiring repair was presented as prioritized by the HOA. Ms. Stanfield expressed belief Mr. Palmer and Ms. Taylor agreed to include two roads per year over the next few years in the County's road repair plans. Ms. Stanfield stated currently Ms. Taylor and Mr. Palmer denied any such agreement. Ms. Stanfield acknowledged repairs were completed to major roads in 2007 and for some side loops in 2013 but reminded two cul-de-sacs were left incomplete at that time.

Ms. Stanfield stated the HOA initiated an IPRA request for documents related to County road projects for both the prior five years and for upcoming years. Ms. Stanfield stated due to the

broad request for information, over six thousand documents were presented for review and there was insufficient time to review the records prior to this meeting.

Ms. Stanfield stated plans to file a more specific IPRA request and requested an opportunity to discuss the matter at the next Regular Meeting. Ms. Stanfield noted multiple individuals in the audience available to attest to her recollection of a prior agreement to repair roads in Ruidoso Rancho Valley Estates. Ms. Stanfield provided background documentation for review prior to the next meeting.

Ms. Taylor acknowledged attendance at the Homeowners Association Meeting and recalled requesting the Homeowners Association to prioritize their needs. Ms. Taylor stated it was not typical for County staff to commit in advance to road repairs due to the changing nature of road conditions within the County and apologized for any misunderstanding. Ms. Taylor stated in response to Ms. Stanfield's concerns Carl Palmer, Road Superintendent had reviewed the roads in question and Mr. Palmer was developing a cost analysis for those repairs.

Carl Palmer, Road Superintendent recalled the meeting in question but did not recall specifically committing to particular road repairs. Mr. Palmer stated a prior analysis of the side roads in question and those left unpaved yielded an estimate of approximately \$250,000 to overlay with asphalt. Mr. Palmer stated chip sealing these roads would cost approximately 50% less. Mr. Palmer apologized for any impression given that action would be immediate.

Commissioner Draper reminded the public the County was responsible for maintaining 804 miles of roads many of which were in need of repair. Commissioner Draper commented on the "competition" for time and dollars for road repair throughout the County.

Yolanda Rubio, current member of the Rancho Ruidoso Valley Estates HOA Board commented on the history of interaction with the County Commission and expressed belief funding for road repairs for Rancho Ruidoso Valley Estates was long overdue with only minimal repairs occurring since 2007.

Ms. Stanfield stated the documentation provided for future review detailed actions from the original acceptance of the Rancho Ruidoso Valley Estates by the County in 1995 through the approval of road repairs in 2007 and 2013. Ms. Stanfield stated these records supported the assertion of the need for repair particularly for the two cul-de-sacs identified.

32. Signing of Official Documents

33. Next meetings:

July 21, 2015 - Regular Commission Meeting

34. Adjourn

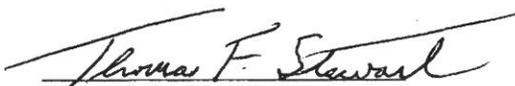
There being no further business to come before the Board of County Commissioners, Chair Stone adjourned the meeting at 5:39:16 PM.

County of Lincoln
Board of County Commissioners

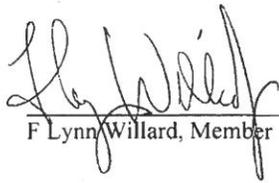

Preston Stone, Chair


Dallas Draper, Vice Chair


Elaine Allen, Member

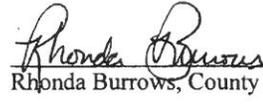

Thomas F Stewart, Member

3610



F Lynn Willard, Member

ATTEST:



Rhonda Burrows, County Clerk

July 21, 2015
Date Approved

