

COUNTY OF LINCOLN

New Mexico Special Meeting Board of County Commissioners

Jackie Powell, Chair
Preston Stone, Vice Chair

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

Minutes Friday, March 7, 2014

Minutes of the Special Meeting of the Lincoln County Commission held at 2:00 PM on March 7, 2014 at the at the Ruidoso Substation, 115 Kansas City Road, Ruidoso, New Mexico.

1. Call to Order

Chair Powell called the Special Meeting of the Board of County Commissioners to order at 2:01:56 PM.

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 Commissioner Stone.

4. Pledge of Allegiance

- A. Pledge – U.S.A. Flag
- B. Salute – N.M. Flag

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 Draper.

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

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

6. 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:

1. Lodger's Tax Issue-Casa del Cocinero-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 took place Dec. 13, 2013 with new filings of Suggestion of Death December 19, 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. Motion for Substitution of Parties filed December 10, 2013.
 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. The County'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. Ownership has changed to Washington Federal and Lincoln County has not received any payments as of January 7, 2014.
 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. Plaintiff's Motion to Reconsider with Judge Singleton was denied in Hearing Jan. 24, 2013. Melendres, Melendres and Harrigan hired by the county to manage county's withdrawal from GSWA. Motion to Stay Judge Singleton's decision filed by Mr. Beauvais Feb. 10, 2014.
 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 was Jan. 6, 2014, and produced an Order of Dismissal. Notice of Hearing scheduled March 10, 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 Letter 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, with legal notices published in local newspapers.
 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, with Motion to Dismiss filed Dec. 27, 2013, with Order of Dismissal filed Jan. 6, 2014.
 11. *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 Counts has been assigned the case Oct. 25, 2013. Hearing requested Nov. 25, 2013 for state's Motion to Dismiss, and Plaintiff's Response to Lincoln County's and State's Motion to Dismiss filed Jan. 3, 2014. Hearing scheduled for March 24, 2014 at 1:30 p.m. at the Otero County Courthouse.
 12. *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. Plaintiff's First Set of Interrogatory Questions filed Jan. 27, 2014.
 13. *State of NM/Lincoln County v. Gonzales Gonzales M-30-MR-2014-00004* Filed Jan. 7, 2014. Alleged bringing contraband into LCDC – Entry of Appearance, Exhibit List and Witness List filed with court.
 14. *State of NM/Lincoln County v. Alberto Ruiz – M-30-MR-2014-00012* Filed Jan. 5, 2014. Alleged bringing contraband into LCDC – Entry of Appearance, Exhibit List, and Witness List filed with court.

15. *State of NM/Lincoln County v. Avalon-Construction, Ruidoso, NM D-1226-CV 2014-00006* Filed Jan. 6, 2014 Open complaint for Refund of Taxes paid. Case assigned to Basham & Basham/Dwyer. Peter Dwyer is lead attorney.
16. *US Bank National Association v. John C. Allen, et. al. D-1226-CV 2013-00304* Filed Dec. 24, 2013 Foreclosure. Entry of Appearance filed Jan. 17, 2014 and Disclaimer of Interest filed January 20, 2014.
17. *State of NM/Lincoln County v. Nathan Little – M-30-MR-2014-00015* Filed Jan. 21, 2014. Alleged bring contraband into LCDC – Entry of Appearance, Exhibit List and Witness List filed with court.
18. *State of NM / Lincoln County v. Shann M. Marler M-30-MR-2014-00026* Alleged bringing contraband into LCDC. Arraignment was Feb. 6, 2014 with Entry of Appearance pending.

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. Claim has been denied by NMAC.

Espinoza, Robert-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-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.

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. Correspondence received from Theresa Riordan on March 28, 2012, concerning her son's treatment and detention conditions while being held in LCDC.

Sheridan, Michael 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-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 Stone, **Seconded by** Commissioner Minter.

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

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

Chair Powell recessed the Regular Meeting and convened the Closed Session at 2:04:23 PM.

Chair Powell adjourned the Closed Session and reconvened the Regular Meeting at 3:55:11 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.

7. Discussion / Possible Action on Refund / Rebate of Dividends (excess Revenues) Otero/Lincoln County Regional Landfill: Amendment of Joint Powers Agreement for the Financing and Establishment of the Otero/Lincoln County Regional Landfill required to rebate the excess funds

Ms. Taylor stated the Otero County/Lincoln County (Greentree) Solid Waste Authority Boards had determined that excess revenues existed which were not needed for the prepayment of the landfill debt or for member rate reduction. Ms. Taylor stated according to direction by the NM Department of Finance (DFA) a First Amendment to the Joint Powers Agreement (JPA) for the Financing and Establishment of the Otero County/Lincoln County Regional Landfill was prepared and submitted to DFA for approval to allow for the disbursement of the excess funds.

Ms. Taylor stated DFA returned the First Amendment and informed an amendment required formal approval by all members of the JPA individually. Ms. Taylor stated nine of the twelve parties to the JPA had since formally approved and signed the First Amendment. Ms. Taylor stated the Village of Ruidoso, The City of Ruidoso Downs, and the County of Lincoln still needed to formally approve the First Amendment, thereby approving the rebate of excess revenues.

Ms. Taylor presented additional information received from Greentree Solid Waste Authority (GSWA) regarding the calculation for disbursement of the \$400,000 refund. Ms. Taylor stated GSWA would receive 34% or \$137,605 of the refund with \$51,335 of that amount to be paid to the Village of Ruidoso who paid landfill fees directly to the City of Alamogordo. Ms. Taylor stated the remainder of \$86,270 would be retained by GSWA.

Ms. Taylor recommended approval of the First Amendment contingent upon the GSWA Board adopting a motion directing the refund, once received, be restricted to repayment of the New Mexico Finance Authority debt incurred by GSWA.

Motion: Approve the First Amendment to the GSWA JPA allowing the subsequent rebate of excess funds to GSWA with the stipulation "the Board of GSWA will approve a motion directing the refund of \$86,270.00, once received, be restricted to the repayment of the New Mexico Finance Authority debt incurred by GSWA". **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Minter.

Chair Powell questioned whether members of the public present wished to comment. No comments were received.

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

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

8. Discussion / Possible Action – Re: Status of Lincoln County's current relationship with GSWA

Ms. Taylor stated the purpose of the item was to provide opportunity for discussion regarding Lincoln County's current relationship with GSWA. Chair Powell requested public comment. No comments were received.

Chair Powell informed dates were being considered for a workshop with experts and the NM Environmental Department for discussion of solid waste collection. Ms. Taylor added the workshop would be most beneficial if attended by all local entities including GSWA and all of the municipalities. Chair Powell confirmed the workshop would be open to the public and to anyone interested in the issues.

9. Signing of Official Documents

14. Next Regular Meeting

Tuesday – March 18, 2013

15. Adjournment

There being no further business to come before the Board of County Commissioners, Chair Powell adjourned the meeting at 4:07:29 PM.

