

COUNTY OF LINCOLN

New Mexico Regular Meeting Board of County Commissioners

Dallas Draper, Chair
Lynn Willard, Vice Chair

Thomas F. Stewart, Member
Elaine Allen, Member
Preston Stone, Member

Minutes Tuesday June 16, 2020

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on June 16, 2020 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

1. Call to Order

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

2. Roll Call

Roll Call.

Present: Chair Draper (via Zoom), Commissioner Stewart, Commissioner Allen, Commissioner Willard (via Zoom), Commissioner Stone (via Zoom).

Others present included Nita Taylor, County Manager; Alan Morel, County Attorney; and Whitney Whittaker, County Clerk.

3. Invocation

The invocation was presented by Chair Stone

4. Pledge of Allegiance

- a. Pledge – USA 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 roll call vote (**summary:** Yes = 5).

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

6. Approval of Minutes:

- a. May 4, 2020 Special Commission Meeting
- b. May 28, 2020 Regular Commission Meeting

Motion: Approve the minutes of the May 4, 2020 Special Meeting and the May 28, 2020 Regular Meeting, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Allen

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

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

7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Approval of Resolution 2019-45 Budget Adjustment FY 19/20
- c. Treasurer's Financial Report for the Month ending May 31, 2020
- d. Approval or Disapproval of Safety Net Care Pool & Indigent Health Care Claims

- e. Approval to Issue RFP for Electrical Services
- f. Buck Mountain Tower Site-USDA Lease

Motion: Approval of the Consent Agenda. **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

SEE EXHIBIT A: Copies of the Consent Items including Resolution 2019-45 is attached hereto in reference thereto made a part hereof.

8. Forest, Land & Natural Resources Matters:

- a. Smokey Bear Ranger District

Ms. Taylor informed Ranger Canfield reported the Smokey Bear District is under modified stage one Fire Restrictions.

- b. Lincoln County / NMSU Extension Services

Ms. Taylor stated the County Extension Office is accepting Petitions for the County Predator Control Program. Ms. Taylor stated in order for this Petition to pass, as least 51 percent of the owners of sheep and goats and 51 percent of cattle owners must hereby petition the Board of County Commissioners to establish a County Predator Control Program as authorized by Chapter 77, Article 15, Sections 6-14, NMSA 1978, to last for a period of five years from the date of establishment of the program. Ms. Taylor stated the Petition calls for the Board of County Commissioners to appoint the following five livestock owners, residents of the County to serve as the County Predator Control Board.

Motion: Appoint Pete Gnatkowski, Lee Sultemeier, Mark Hendricks, Ron Merritt, Billy Bob Shafer, and Jim Cooper to the County of Lincoln Predator Board, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

- c. State Forestry – EMNRD

Nick Smokovich, Capitan District Forester stated the Smokey Bear Historical Park was open under the Phase I soft opening restrictions.

- d. South Central Mountain RC & D

Ms. Taylor stated Laura Doth Executive Director reported the Council is keeping with the Governor's order and has cancelled the last few meetings.

- e. Upper Hondo Soil & Water Conservation District

Ms. Taylor reported Upper Hondo held its June meeting on the 9th by teleconference.

- f. LANRAC

Ms. Taylor informed Chairman Robert Barber and the LANRAC committee prepared comments to the Lincoln National Forest Wilderness Inventory Evaluation Step, on behalf of the County Commission June 15, 2020.

9. Approval of Imposition of Fire Restrictions by Resolution 2019-50

Nita Taylor, Manager informed both the Smokey Bear Ranger District and the Capitan State Forester have implemented fire restriction due to several recent wildfires, the County is concerned about the safety and welfare of its citizens and visitors during this fire season.

Ms. Taylor informed Ordinance No 2017-03 established guidelines for proper handling of fire and establishment of a procedure for declaring a fire danger emergency to minimize the risk of life and property within the County from wildfires.

Ms. Taylor stated in section 5B of the Ordinance enables the Board of County Commissioners, upon recommendation of the County Manager or Emergency Services Director, may, during any combination of conditions that could pose a threat of wildfire, declare a fire danger emergency and prohibit all open fires in the County.

Motion: Declare a Fire Danger Emergency, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Commissioner Stone questioned why we would even have the option to issue a burn permit.

Joe Kenmore, Office of Emergency Service stated we are not under extreme fire danger but a permit can be authorized by the proper officer if deemed fit.

Commissioner Stewart stated the Ordinance grants the ability to approve a permit under certain conditions, which is not necessarily an open invitation for everyone to apply.

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

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

SEE EXHIBIT B: Copies of Resolution 2019-50 is attached hereto in reference thereto made a part hereof.

10. Approval of Resolution No. 2019-49 Amending Resolution No. 2017-30 Adopting the Lincoln County, New Mexico Public Records Policy (Inspection of Public Records)

Ms. Taylor informed the number of requests for public records had increased. Ms. Taylor stated it is critical that requests for public records be immediately received, receipted, assigned to the proper individual and tracked. Ms. Taylor stated an additional Records Custodian will help ensure protocol is followed.

Attorney Morel stated it is crucial to respond in a timely manner. Attorney Morel stated the law is very clear on protocol and when a response is due. Attorney Morel stated an additional records custodian is allowed by law and will be beneficial to the County.

Motion: Adopt Resolution 2019-49, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

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

Excused: Commissioner Stone.

SEE EXHIBIT C: Copies of Resolution 2019-49 is attached hereto in reference thereto made a part hereof.

12. Approval to participate in the Local Government Road Fund Program by the following Resolutions and Agreements:

- a. Resolution 2019-46 County Arterial Program (CAP) and County Arterial Agreement L200499
- b. Resolution 2019-47 County Cooperative Program (COOP) and Cooperative Agreement L200485
- c. Resolution 2019-48 County School Bus Route Program and School Bus Route Agreement L200507

Ms. Taylor reminded during the February 18, 2020 meeting the commission approved the Road Superintendent's proposed projects for Gavilan Canyon Road for FY20-21 to the New Mexico

Department of Transportation, in response to its solicitation for applications for the Local Road Fund Program. Ms. Taylor stated per State Statute, Section 67-3-28 NMSA 1978 these funds are to assist local public agencies in project development, construction, reconstruction, improvement, maintenance or repair of public highways, streets, and public school parking lots, or for the acquisition of rights-of-way therefor or for materials for the construction of improvement. Ms. Taylor stated the Local Road Fund Program funds are 75% of the project, with the County funding 25%.

Ms. Taylor stated the following projects have been approved by the NMDOT and a Resolution and Agreement have been approved for each project.

	Total	Road Fund	County
Gavilan Canyon Road Cap	\$228,775.00	\$171,581.00	\$57,194.00
Gavilan Canyon Road COOP	\$84,000.00	\$63,000.00	\$21,000.00
Gavilan Canyon Road Bus Route	\$86,400.00	\$64,800.00	\$21,600.00

Motion: Adopt Resolution 2019-46, Resolution 2019-47, and Resolution 2019-48 **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

SEE EXHIBIT D: Copies of Resolution 2019-46, Resolution 2019-47 and Resolution 2019-48 is attached hereto in reference thereto made a part hereof.

Motion: Approve all three agreements associated with the Road Fund Program Resolutions, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

13. Acknowledge Lincoln County Annual Lodgers' Tax Audit (Agreed-Upon Procedures)

Ms. Taylor stated the agreed upon procedures (AUO) conducted by Kubiak Melton and Associates had been completed and provided to the County. Ms. Taylor stated the purpose for the AUO was to assist in evaluating the vendor compliance with the remittance of Lodger' Tax to the County and to assist the County in determining if the lodging establishments are maintaining adequate records of occupancy taxes collected and remitted to the County for the year end June 30, 2019.

Motion: Approve receipt of audit and direct Manager Taylor to make necessary adjustments, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

14. Approval of Agreement Between Children, Youth and Families Department and County of Lincoln for FY20/21

- a. Discussion of Agreement Between Lincoln County Juvenile Justice Board and the County of Lincoln for FY 20/21
- b. Discussion of Agreement Between Region IX Education Cooperative and the County of Lincoln for FY 20/21

Ms. Taylor stated the County of Lincoln had received Agreement No. 21-690-3200-20839 from the New Mexico Children, Youth and Families Departments (CYFD), Continuum of Graduated Sanctions. Ms. Taylor stated the long-standing agreement between the County and CYFD provided annual funding for the juvenile justice program.

Ms. Taylor stated in addition to the Grant Agreement with CYFD, the County also entered into a "subcontractor agreement" between the County of Lincoln, and Region IX Education Cooperative.

Glenda Allen stated the agreement was renewable through June 2021.

Ms. Taylor stated a Contract for Services between the County of Lincoln and Lincoln County Juvenile Justice Board would be entered into for FY20-21 once it was approved by the Commission.

Motion: Approve agreement with CYFD, the sub agreement with Region IX and the Contract with Juvenile Justice Board, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

15. Replacement Hospital Update

a. Consideration of Amending Jaynes Corporation Contract to Cover Approved and Anticipated Change Orders

Ms. Taylor stated for Phase II, substantial completion was scheduled for October 20, 2020 and final completion was scheduled for October 28, 2020.

Teryn Lamoreax, new Project Manager for Jaynes Corporation reported a final completion date in September. Mr. Lamoreax explained Jaynes added emergency power that added duration and thus changed the occupancy. Mr. Lamoreax stated the certificate of occupancy had changed to June 1, 2020. Mr. Lamoreax stated the abatement was scheduled for June 15, 2020 and they should start demolition early July. Mr. Lamoreax stated the increase in duration of concrete work and added sidewalk added 92 calendar days.

There was a general discussion regarding the addition of days.

Motion: Approve an increase in existing contingency, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

No: Commissioner Stone.

11. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS (Items are for discussion only – no action will be taken)

Beverly Calaway, Treasurer reported the County had not received their PILT payment. Ms. Calaway informed their office would work closely with auditors regarding the comments made in concern to the lodger's tax. Ms. Calaway reported Monday June 15, 2020 the Department of Finance approved the County Budget. Ms. Calaway applauded the budget team and their hard work.

Chair Draper reported many campsites were being abused and destroyed with the overload of trash in the areas. Chair Draper stated many people were not hauling their trash out and leaving it in the campsites.

Ms. Taylor introduced Robert Vallejos. Ms. Taylor informed Mr. Vallejos accepted the maintenance position with the County.

Mario Chavez, Capitan Resident reported illegal dumping and overfill in County dumpsters. Mr. Chavez stated people need to be made an example and all the trash was blowing away and blowing onto private properties.

15. Replacement Hospital Update- Continued

Todd Oberheu stated the hospital held COVID testing in Capitan last week. Mr. Oberheu stated one patient utilized the isolation pressure room. Mr. Oberheu stated the Emergency room had seen a significant decrease in volume.

16. Lincoln County Detention Center Update

Ms. Taylor stated Warden Morales, Regional Director Mike Curley and Senior Vice President Martin Rickler joined her on a conference call with Anita Morales, HSD lead for the Reach, Intervene Support and Engage Program. Ms. Taylor informed this was a start to an ongoing discussion and pre-planning for the program. Ms. Taylor stated they would be teleconferencing with other County Detention Centers to get an idea of where to begin.

17. Manager's Report

1. **Brian Moore: Co-Chair of the Governor's Economic Recovery Council** will provide an overview of the current status of the Council's thoughts and activates addressing "re-opening"
2. **Covid-19:** Among the Governor's Office, the Department of Health and the NM Counties, an ongoing update of COVID-19 information has been provided.
 - The Governor's Office provides an update of COVID-19 cases across the state, by county, every day. Of interest, is the nine contiguous counties with positive tests ranging from 0 to 5; and one non-contiguous county, Hidalgo, which has 2 positive cases.
 - New Mexico Counties provides a number of tools to assist in keeping track of key statistics:
 - a. A matrix depicting the level of operational restrictions each county has imposed; including the degree of availability to the public. As with a number of counties, all Lincoln County employees are back to work full time. While general public employee availability to the public is limited, each department has developed processes to meet public needs by offering specific arrangements, depending on circumstance.
 - b. An Expense Tracking Tool to capture expenses that may be eligible for reimbursement. Twenty-six of thirty-three counties responded. Should NM Homeland Security and Emergency Management reimburse the county for the Blue-Med Triage facility Shelter, it will be removed from this list.
 - Emergency Services Director Joe Kenmore has been in contact with the Ruidoso Office of the State Health Department to determine their availability to provide testing to county employees. The tentative date scheduled is Thursday, June 18th.
 - To date, several normal summer key activities have been cancelled in the County, including the Smokey Bear Stampede and Old Lincoln Days.
3. **Legislature approved capital outlay projects** have undergone close scrutiny by the Department of Finance and Administration, the Legislative Finance Committee and the State Board of Finance. Mandatory questionnaires were responded to for each of our legislatively approved projects: 1. the construction of the hospital (\$460,340); 2. Improvement to the County Fairgrounds (\$245,250); 3. County Courtyard drainage in Carrizozo (\$100,00); and 4. ADA improvements in County Courthouse building (\$90,000). The County agreed to a postponement of the Courthouse improvements until the next bond sale. The hospital and fairgrounds' requests for capital outlay awards are viable, have passed the scrutiny of the evaluators and continue to be considered for the June / July Severance Tax Bond sale.
4. **Bonito Lake Restoration Project.** The meeting agenda for the May 28th Bonito Lake Restoration Project was attached. This project commenced on November 6, 2017 and is scheduled to end on June 23, 2021, totaling 1,324 days, 564 days longer than anticipated. This has been a huge project, with 354,540 CY of 581,000 of debris hauled (61% complete). Rob Richardson and Bob Johnson have been invited to provide a report at a Commission meeting in the near future.
5. **Request for County to Dedicate 50' of Road Easement of Tiger Drive to the Village of Capitan.** Johnathan LaMay of the Capitan Road Department reported that the Capitan Schools was wanting to dedicate a 50' road easement of Tiger Drive that they own to the Village of Capitan. The Village would like the County to also consider dedicating a 50' easement of Tiger Drive owned by the County to the Village. The dedication of these two easements would enable the Village of Capitan to repair and improve Tiger Drive. Mr. LaMay was aware that the Village would incur the cost of having a survey of the property conducted, ensuring a proper legal description was in place. Road Superintendent Honeycutt was in favor of this dedication.

Motion: Dedicate 50 foot easement of Tiger Drive to the Village of Capitan, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

6. **Bronze Plaques for the Hospital and the Emergency Services Building** were reviewed by the Commission during the May 28, 2020 meeting; and stylistic and other modifications have been made at Commission direction. At the advice of Attorney Morel, additional slight changes were made based on the language of State Statute, Chapter 13, Public Purchases and Property; Article 8 – Public Building Plaques. The basic change is the size of the font thanking the taxpayers.

Section 13 – 8 – 1: Public buildings; acknowledgment of taxpayers when elected officials acknowledged. "On every new public building plaque that lists, acknowledges or thanks the elected officials who were in office at the time the building was funded, constructed or renovated, there *shall* be included a statement of *equal size and visibility* that thanks the taxpayers of the governmental entity, "Lincoln County" for their contribution in funding the construction or renovation.

Ms. Taylor recommended the 24" x 18" horizontal plaque for the hospital and the 12" x 18" vertical plaque for the EMS building.

There was a discussion to bring it back to the next Commission Meeting after discussing the options with Presbyterian.

7. **Lodger's Tax – Nightly Rentals.** Alex Fuller has continued to work with Host Compliance to ensure we have information about rental property; and once a new vendor has been identified, he makes contact for registration. Because of this persistence, the County now has over 100 registered vendors. He will be available to report status.

8. **Departmental Updates.**

Brianna Herrera, Human Resource and Administrative Assistant provided an update on current open position in the County. Ms. Herrera stated the Chief Procurement Officer position would be closed that day.

Billie Jo Guevara, Finance officer, stated the budget had been reviewed and approved by DFA. Ms. Guevara stated there were \$20,000 on budget adjustments due to year end.

Joe Kenmore reported 5 acres burned from the Tecolote fire. Mr. Kenmore stated only 2 structures were lost and no casualties. Mr. Kenmore stated smoke jumpers were called in, but not used due to windy conditions.

Glenda Allen planning manager and project manager stated they have processed 35 Liquor license renewals and they were continually working on alarm permits. Ms. Allen stated the County was caught up on all the grants submission paperwork. Ms. Allen stated she attended the Southeast Policy and Technical Committee (SERTPO) meeting and announced Commissioner Willard was nominated vice chair of the policy committee. Ms. Allen stated all her staff was tested for COVID-19.

Jeff Honeycutt, Road superintendent informed the Nogal drainage project was going well; the crew removed the current structure and placed pipes that morning. Mr. Honeycutt stated the final part would be the pouring of the concrete.

Mr. Honeycutt stated he had been in contact with Pattern Energy regarding the road agreement. Mr. Honeycutt stated the Road Agreement proposed was the one Torrance County adopted. Mr. Honeycutt stated that agreement will not work for Lincoln County.

18. **Consideration of Re-Appointments to Boards/ Commissioner's Committees:**

- a. Land and Natural Resources Advisory Committee- James Taylor
- b. Property Tax Protest Board- Patsy Sanchez (Alternate)
- c. Property Tax Protest Board- Derek Moorhead (Alternate)

Motion: Appoint James Taylor to the Land and Natural Resources Advisory Committee, and Appoint Patsy Sanchez and Derek Moorhead to the Property Tax Protest Board, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

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

a. Public Hearing to Consider Approval of the Final Budget Fiscal Year 20/21

Motion: Schedule public hearing to consider approval of the final budget fiscal year 20/21,

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

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

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

20. Lincoln County Executive Session Pursuant To The Open Meetings Act: Discussion Of All Threatened and/or Pending Litigation, Section 10-15-1, Subparagraph (H)(7); Discussion of Limited Personnel Matters, Section 10-15-1, Subparagraph (H)(2); and Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights by the Public Body, Section 10-15-1, Subparagraph (H)(8)

Motion: To close the meeting for the purposes of an Executive Session to discuss all Threatened and/or Pending Litigation Section 10-15-1 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. Board of County Commissioners of Lincoln County v. Roger Romero D-1226-CV-2018-00055 Complaint for Foreclosure. Complaint was filed February 20, 2018. Defendant Roger Romero filed an Answer to the Complaint asserting a Counterclaim to be filed in the U.S. District Court on April 2, 2018. A Judicial Inquiry Hearing took place September 4, 2018. The case is still pending.

2. Roger Romero v. State of New Mexico – D-1226-CV-2018-00113 (Underlying Cases are: Board of County Commissioners of Lincoln County v. Roger Romero, D-1226-CV-2018-00055, and State of N.M. v. Roger Romero M-30-MR-2016-00142) A Petition for Writ of Habeas Corpus was filed requesting that the Judgment & Sentence entered by Judge Vega in Cause No. M-30-MR-2016-00142 be vacated and set aside. George Romero's Answer to Complaint and Counterclaim was filed April 30, 2018 in Cause No. D-1226-CV-2018-00055. Judge Counts is the presiding Judge. On February 26, 2019, an Order Setting Aside Conviction was entered by Judge Counts. On March 25, 2019, a Notice of Appeal was filed with the N.M. Supreme Court, Case No. S-1-SC-37602 which is still pending)

3. Roger Romero, et al vs. Lincoln County, et al – U.S. Dist. Court Cause No. 2:18-cv-01137-JAP-GJF A Complaint for Violation of Civil, Constitutional and Statutory Rights was filed on December 5, 2018. On December 27, 2018. A Guardian Ad Litem has been appointed to represent the Plaintiffs. On September 16, 2019, the case was dismissed and, on October 7, 2019, Plaintiffs filed their Notice of Appeal to the United States Court of Appeals for the Tenth Circuit. The case is still pending.

4. Romero, et al. v. Stone, et al, Cause No. D-1226-CV-2019-00271 Request for Appointment of Guardian Ad Litem for Plaintiffs and Complaint for Violation of Civil and Constitutional Rights, Negligence, Prima Facie Tort and Wrongful Taking was filed on October 9, 2019 along with a Jury Demand. Lisa B. Riley is the presiding Judge. Lincoln County has yet to be served with the Complaint.

5. Kane County, Utah, et al v. The United States, 17-739C and 17-1991C (Consolidated) Class Action Lawsuit to recover PILT underpayments for fiscal years 2015-2017. On August 14, 2018, Lincoln County submitted its Opt-In Notice to participate in the lawsuit. On October 16, 2019, Lincoln County received notice that it would be receiving \$46,011.00 from the Judgment Fund.

6. Brd. of County Commissioners of Lincoln County v. Amerisourcebergen Drug Corp., et. al – U.S. Dist. Court Case No. 2:19-cv-00462 – Complaint for Public Nuisance,

Violations of Racketeer Influenced and Corrupt Organizations Act (RICO)... filed on May 20, 2019 by Attorneys Robles, Rail & Anaya, P.C., et. al. After receiving no oppositions to the transfer of the case, on June 17, 2019, the case was transferred to the Northern District of Ohio noting that as of December 5, 2017, 1,534 cases have been transferred to Ohio for further proceedings.

7. **City of Albuquerque, et al vs. John Monoforte & N.M. Taxation & Revenue Department, Cause No. D-202-CV-2018-08036** Judge Franchini is the presiding judge. Lincoln County has entered into an Agreement for joining in the litigation to recover amounts representing unauthorized reductions in violation of New Mexico Statutes. On November 14, 2019, Lincoln County joined in the litigation.

8. **Greentree Solid Waste Authority v. Lincoln County, Cause No. D-1226-CV-2014-00095** – Compromise and Settlement Agreement and Release executed on December 17, 2015.

9. **Raymond Magana, et al v. Walter Hill, L.C. Assessor, Cause No. D-1226-CV-2019-00335** Complaint for Refund of Property Taxes was filed on December 19, 2019. Judge Daniel A. Bryant is the presiding Judge. On January 29, 2020, Lincoln County filed a Motion to Dismiss in Lieu of an Answer to the Complaint and a hearing on the Motion has been requested.

10. ***Beauvais, P.A. vs. County of Lincoln, Cause No. D-1226-CV-2020-00085** Complaint for alleged violation of the Inspection of Public Records Act was filed on April 4, 2020 and served upon Lincoln County on April 6, 2020. Plaintiff recused Judge Daniel Bryant and a new Judge has yet to be assigned. On May 6, 2020, Defendant filed its Motion to Dismiss in Lieu of an Answer. Settlement was reached and the case will be dismissed.

11. ***Richard Ford v. Terry A. Colwell, II, et al, Cause No. D-1226-CV-2020-00104** Complaint for criminal trespass, theft, misappropriation of monies and violations of civil rights was filed by Gary C. Mitchell on May 11, 2020. Judge Daniel A. Bryant is the presiding Judge. Lincoln County was served on May 29, 2020. On June 26, 2020, the case was removed to the U.S. District Court and, on July 3, 2020, County Defendants filed their Motion to Dismiss.

Tort Claims Notices Received or Threatened

2020

Scott, Jacob – Tort Claim Notice received January 16, 2020 alleging negligent, malicious and/or tortious actions and/or omissions by former employees of the Lincoln County Sheriff's Office, including, but not limited to, infliction of pain and suffering.

Eagle Creek West Condominiums Owners Association, Inc. – Tort Claim Notice received January 20, 2020 alleging that if Lincoln County continues to assess a solid waste collection fee to the Members of Eagle Creek West Condominiums Owners Association, Inc. it will be necessary for them to take legal action against the County.

Hamilton, Erika – Tort Claim Notice received January 21, 2020 alleging damages for bodily injury due to negligent operation of a motor vehicle while being transported by a detention officer to and from court.

Heidbreder, Amanda – Tort Claim Notice received January 31, 2020 alleging, among other issues, no access to a phone, and unsanitary and overcrowding conditions at the Lincoln County Detention Center.

Stubblefield, Rory – Tort Claim Notice received February 20, 2020 alleging that members of the Lincoln County Sheriff's Office did commit multiple torts against Claimant by failing to perform their duties.

Siegel, Erik – Tort Claim Notice received April 14, 2020 alleging negligent, malicious and/or tortious actions and/or omissions by the Lincoln County Detention Center including, but not limited to, infliction of pain and suffering.

Skeen, Clint – Tort Claim Notice received April 17, 2020 alleging false arrest, denial of 5th Amendment rights, as well as violations of Article II, Sections 10 and 18 of the NM Constitution by the Lincoln County Sheriff's Office.

***Olsen, John** – Tort Claim Notice received July 8, 2020 alleging negligent, malicious and/or tortious actions and/or omissions by the Lincoln County Detention Center and the Lincoln County Sheriff's Office including, but not limited to, infliction of pain and suffering as a result of their acts/omissions.

2019

HES, LLC and, Kenneth and Irene Livingston – Tort Claim Notice received January 3, 2019 alleging The N.M. Dept. of Health seized and destroyed cannabis plants belong to HES, LLC and Kenneth and Irene Livingston. On January 24, 2019, NMAC denied the claim.

Lueras, Ramon – Tort Claim Notice received January 31, 2019 from Pizzonia Law Firm was received which referenced "Lueras v. Lincoln County Road Dept., et al"

requesting copies of Mr. Lueras' employment records. While the correspondence appeared to be more like an IPRA, NMAC was notified out of an abundance of caution. On February 8, 2019, NMAC confirmed that Mr. Lueras has a work comp claim and that the January 31, 2019 correspondence from Pizzonia Law Firm relates to that claim. NMAC did open a claim as "record only".

Estrada, Ricardo – Tort Claim Notice received February 14, 2019 alleging that, while incarcerated at LCDC, the Claimant was physically attacked by a former employee of LCDC out of retaliation causing injuries to his small finger on his left hand and possibly a left foot fracture. TCN emailed to R. Martinez on February 15, 2019 and that same day, NMAC advised that there is no coverage for this matter as NMAC does not provide coverage on behalf of counties or their detention centers which are operated or administered by a private contractor.

Lopez, Iris; May, Andrew; Bustamante, Joseph; Flanagan, Wayne Otero; Hernandez, Gabriel – Tort Claim Notice received March 18, 2019 from Chris Nedbalek, Nedbalek Law Office, LLC alleging deprivation of Claimants' rights, including the Eighth Amendment prohibiting cruel and unusual punishment (i.e. unsanitary conditions, drug use by inmates, and mold problems.)

Balderas, Hector – Tort Claim Notice received April 9, 2019 regarding threat of litigation and liability for failure to enforce the law.

Youtz, Shane – Correspondence received May 7, 2019 threatening litigation if Lincoln County's Right to Work Ordinance (Ordinance No. 2018-01) is not repealed due to the passing of HB85.

Udall, Steve – Tort Claim Notice received May 22, 2019 [dated 12-14-19] alleging a Lincoln County Sheriff's Deputy's vehicle hit the air conditioning condensing unit located at the Magistrate Court in Ruidoso damaging the unit beyond repair.

Divelbliss, Kim – Tort Claim Notice received June 17, 2019 [dated 6-11-19] alleging that the Claimant was taunted, harassed and her rights were violated resulting in her ultimate termination from employment by the Lincoln County Detention Center.

Divelbliss, Ty – Tort Claim Notice received June 17, 2019 [dated 6-11-19] alleging that the Claimant was terminated from employment by the Lincoln County Detention Center out of retribution.

Yokley, Scott – Tort Claim Notice received June 17, 2019 [dated 6-12-19] alleging that the Claimant was sprayed directly in the eye with pepper spray during his employment with the Lincoln County Detention Center.

Samaniego, Barbara – Tort Claim Notice received June 26, 2019 alleging injuries sustained while undergoing a MRI at the Lincoln County Medical Center.

Arroyos, Joshua – Tort Claim Notice received August 30, 2019 alleging assault while detained at the Lincoln County Detention Center.

Wilcox, Debra – Tort Claim Notice received September 11, 2019 alleging personal injury and property damage resulting from false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights and/or deprivation of any rights, by LCSO Deputy Hanna on or about September 7, 2019.

Green, Judy – Tort Claim Notice received November 21, 2019 alleging that Ms. Green died as a result of the negligence, gross negligence, inattentive care, omissions and actions of the Lincoln County Medical Center.

Ramos, Aaron – Tort Claim Notice received December 13, 2019 charging the legality of the Lincoln County Sheriff's Office's Invoice for records responsive to an IPRA Request.

Arenas, Jaime – Tort Claim Notice received December 25, 2019 alleging that Deputy Finley with the Lincoln County Sheriff's Office cursed at him, brandished his weapons, and used excessive non-contact deadly force.

2018

Duke, Arnold – Harrisburg Document recovery

Russell, Eric – Tort Claim Notice received September 28, 2018 alleging damages related to an incident involving the Lincoln County Sheriff's Department and Claimant's dog.

Steward, Tynel – Tort Claim Notice received November 1, 2018 alleging that while incarcerated at Lincoln County Detention Center, the Claimant (i.) was attacked due to the negligence, reckless, and/or intentional actions of jailers and other county employees, (ii.) has not received adequate medical care, and (iii.) is being held in inhumane conditions of confinement, including, but not limited to, sewage gas, overcrowding, and sleeping conditions.

Windstream – Tort Claim Notice received November 13, 2018 alleging that Windstream Facilities at 147 Pfingsten Rd., Nogal, N.M. sustained damage as a result of the negligent acts or omissions by employees or agents of Lincoln County. Alleges that on or about September 22, 2018, Lincoln County was installing a culvert and damaged a Windstream Cable.

Windstream – Tort Claim Notice received November 13, 2018 alleging that Windstream Facilities at 148 Nogal Canyon Rd., Nogal, N.M. sustained damage as a result of the negligent acts or omissions by employees or agents of Lincoln County. Alleges that on or about September 27, 2018, Lincoln County was installing a culvert and damaged a Windstream Cable.

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

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

Chair Draper recessed the Regular Meeting and convened the Closed Session.

Chair Draper adjourned the Closed Session and reconvened the Regular Meeting.

Commissioner Stewart 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 and no action was taken.

21. Limited Personnel Matter

Ms. Taylor submitted formal notice to the County Commission of her intent to retire. Ms. Taylor's proposed last day will be September 15, 2020.

Motion: Accept Nita Taylor's letter of retirement, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

Motion: Follow a formal process to replace Lincoln County Manager, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

22. Signing of Official Documents

23. Next meetings:

a. July 21, 2020 Regular Commission Meeting

24. Adjourn

There being no further business to come before the Board of County Commissioners, Chair Draper adjourned the meeting at 11:35 AM.

County of Lincoln
Board of Commissioners


Dallas Draper, Chair

Approved Telephonically
F Lynn Willard, Vice Chair

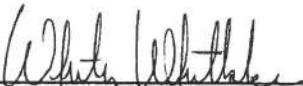

Elaine Allen, Member

4842

Approved Telephonically
Thomas F Stewart, Member

Approved Telephonically
Preston Stone, Member

ATTEST:


Whitney Whittaker, County Clerk

July 21, 2020
Date Approved

