

# 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 October 20, 2020

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on October 20, 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 8:30AM.

#### 2. Roll Call

##### Roll Call.

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

**Absent:** Commissioner Stone

Others present included Ira Pearson, County Manager; Alan Morel, County Attorney; and Whitney Whittaker, County Clerk.

#### 3. Invocation

The invocation was presented by Chair Draper.

#### 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 vote (**summary:** Yes = 4).

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

#### 6. Approval of Minutes:

- a. September 8, 2020 Special Commission Meeting
- b. September 15, 2020 Regular Commission Meeting

**Motion:** Approve the minutes of September 8, 2020 Special Commission Meeting and September 15, 2020 Regular Commission Meeting with corrections, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

#### 7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Treasurer's Financial Report for the Month ending September 30, 2020
- c. Approval or Disapproval of Safety Net Care Pool & Indigent Health Care Claims

- d. Approval of MOU Between the County of Lincoln and the County of Luna for Inmate Confinement
- e. Lincoln County Detention Center Quarterly Restricted Housing Report: July 2020-September 2020
- f. Approval of DWI Memorandum of Understanding Between the Village of Ruidoso and the County of Lincoln
- g. Approval of Resolution 2020-14 Participation in Local Government Road Fund Program Administered by the NM DOT

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

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

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

**SEE EXHIBIT A:** Copies of the Consent Items including Resolution 2020-14 is attached hereto in reference thereto made a part hereof.

Chair Draper recessed the Regular Meeting and convened the Board of Finance.

#### **8. Lincoln County Treasurer's Board of Finance**

Beverly Calaway, County Treasurer directed the Board of Finance's attention to the Treasurer's Financial Report for the month ending September 30, 2020. Treasurer Calaway reported on October 23, 2020 the Treasurer's office will mail out 29,889 2020 property tax bills. Treasurer Calaway stated the total 2020 property taxes charged to the Treasurer for collection was \$35,286,471.85. Treasurer Calaway stated this is an increase of \$2,221,907.63 over the 2019 property tax collections.

Treasurer Calaway reported the ending balance of \$5,971,187.41 in the General Fund. Treasurer Calaway stated the largest transfers out of the general fund were to the Lincoln County Medical Center Construction fund and the Detection Center Corrections fund.

Treasurer Calaway noted the Detail of Receipts for the General Fund Account reflected anticipated General Fund revenues of \$13,526,221 for the Fiscal Year.

Treasurer Calaway stated the Record of Investments and Total Cash held by the Treasurer was \$21,866,719.96. Treasurer Calaway stated this was a reduction compared to our cash held in September 2019.

Treasurer Calaway stated as of September 30, 2020 the Lincoln County Treasurer collected 97% of the 2019 property taxes charged. Treasurer Calaway stated with the economic effects of COVID-19 collection efforts have been productive.

Chair Draper Adjourned the Board of Finance and reconvened the Regular Meeting

#### **9. Forest, Land & Natural Resources Matters:**

- a. Smokey Bear Ranger District
- b. Lincoln County/NMSU Cooperative Extension Services

Ira Pearson, Manager reported the Lincoln County Cooperative Extension Service will be working collaboratively with the Family and Consumer Science CES Agents from Otero, Dona Ana and Luna Counties once again to present the Kitchen Creations Diabetic Cooking Series of classes beginning on Tuesday October 27<sup>th</sup> through November 17<sup>th</sup>. Manager Pearson stated the series will be for 4 consecutive weeks meeting via Zoom on Tuesday evening from 5:30pm to 7:30pm.

- c. South Central Mountain RC & D

Manager Pearson informed Laura Doth was unable to attend the meeting but provided a report of activities.

- d. Upper Hondo Soil & Water Conservation District

Manager Pearson informed Judy Bock, Program Coordinator was unable to attend this month.

e. EMRD State Forestry

Manager Pearson stated Nick Smokovich, District Forester was unable to attend.

f. Land and Natural Resources Advisory Committee (LANRAC)

Manager Pearson stated Robert Barber, Chair of LANRAC was unable to attend but stated Mr. Barber informed the BLM Grazing Lease final draft would be available soon for commission approval.

10. Lincoln County Detention Center

a. RISE Grant Status

Warden Colvin reported the meeting with Mescalero Health Services had forward movement and the search continued for the Program Manager.

b. US Marshall's Inspection Update

Warden Colvin informed the US Marshall's office recently inspected the LCDC facility. Warden Colvin informed he would like the County to consider to enter into a MOU with other detention centers regarding inspection for housing federal detainees.

c. Liability insurance Renewal

Manager Pearson stated CSG had provided proof of Liability Insurance.

12. Lincoln County Medical Center Update and Remodel Proposal:

a. Status of Removal of Old Lincoln County Medical Center

Manager Pearson stated Jaynes Corporation continued with demolition of the old hospital.

John Nichols, Project Manager for Jaynes reported no delays and stated the project was moving smoothly. Mr. Nichols stated the tear down of the old hospital was complete and the removal of material was expected to continue for the next few weeks. Mr. Nichols informed that construction can commence on the parking lot once the site is completely cleared.

b. LCMC Administrator – Todd Oberheu

Todd Oberheu, Hospital Chief Executive for LCMC gave a report on COVID patients. Mr. Oberheu stated no hospital is accepting COVID patients during this time. Mr. Oberheu stated they received a visit from The Joint Commission. Mr. Oberheu stated they received a good survey rating.

c. Request to Remodel Physical Therapy Building

Mr. Oberheu discussed Presbyterian's desire to remodel the existing Physical Therapy Building to provide additional clinic space availability. Mr. Oberheu provided a potential floor plan to remodel the Heritage Program area. Mr. Oberheu informed the Heritage Program will be moved off site.

**Motion:** Proceed with research and remodel costs, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

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

Commissioner Stewart reported he would attend the next Joint Land Use Study Group on November 3, 2020.

Whitney Whittaker, Clerk informed the County Clerk's office mailed out over 2,500 absentee ballots and reported on the turnout at that time at both early voting locations. Clerk Whittaker stated the voter turnout for this election was looking great and expressed the importance of voting. Clerk Whittaker stated all six voting convenience centers will be operational on November 3, 2020 from the hours of 7:00AM to 7:00PM.

**13. Approval of Budget Adjustment for FY 20-21 by Resolution 2020-13**

Manager Pearson stated per statute, Counties may request adjustments to its budgets to accommodate changes in its financial operations during the fiscal year. Manager Pearson stated Commission approved adjustments must also be submitted to the Department of Finance and Administration for approval.

**Motion:** Adopt Resolution 2020-13, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

**SEE EXHIBIT B:** Copy of Resolution 2020-13 is attached hereto in reference thereto made a part hereof.

**14. Approval of Resolution 2020-15 Disposal of Surplus Inventory**

Manager Pearson stated Resolution 2020-15 is for approval to dispose of surplus, obsolete or damaged County assets by whichever means are applicable, including sale on public auction, transfer, destruction, or e-cycle.

**Motion:** Adopt Resolution 2020-15, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

**SEE EXHIBIT C:** Copy of Resolution 2020-15 is attached hereto in reference thereto made a part hereof.

**15. Manager's Report**

**1. Hondo Fire Station**

Arron Griewahn reported that the new Hondo Fire Station has been completed, and the final inspection had been done. Glenda Allen and Arron conducted a walkthrough on 10/15/2020 to see if there are any deficiencies we need to have corrected.

**2. White Oaks Billboard Update:**

In the September 15th Commission meeting, Lincoln County Commissioners approved the renewal permit from the NM State Land office. Included in that permit is a separate approval required from the NM Department of Transportation. The Manager's office spoke with the NMDOT on 9/23/2020 regarding the Right of Way (ROW) approval for the billboard on Highway 54. The NMDOT was not aware of the billboard and stated that they would have to forward this request to their legal bureau. I plan to call the NMDOT next week to get a status update.

**3. LCMC Appraisal Walk-Through:**

The contract between Presbyterian and Lincoln County was approved by NM DFA with some conditions. One of the conditions was to have the original appraised value (appraised in 2016) certified by the appraiser (VMG Health) after construction was complete. Due to COVID-19 travel restrictions, the certification process had to be completed virtually. Brad Treptow walked through the entire facility while participating in a ZOOM meeting. The appraiser was at his desk in Dallas, TX, while Brad held a tablet for the "Virtual Appraisal". There were minor glitches with internet connections and access to rooms occupied by patients. Overall, the process was a success. Thank you to everyone involved in the process.

**4. Detention Center road to the Sally Port:**

The Lincoln County Road Department constructed a new road on the north side of the Detention Center. This road is rolled and compacted base course approximately 22' wide and 300' long. This will allow officers and transport vehicles to enter the Sally Port from the north side of the building and exit from the south side. The previous configuration had vehicles pulling in the Sally Port and reversing in the same direction. Warden Colvin and his staff are excited to get this project complete.

**5. US 54 Construction Update:**

We have had several discussions regarding the reconstruction of US 54 through downtown Carrizozo. David Roybal (Pettigrew Engineers), Glenda and I will be working with NMDOT to ensure that Lincoln County Capital Outlay projects work in conjunction with the new highway. I will keep the Commissioners updated as the project nears. Anticipated start date – October 2021.

**6. Good News From a Local Citizen:**

The following email was sent to Van and Justin from Sierra Contracting after a meeting with Lucky Meyers. Mr. Meyers was in the office to discuss solid waste issues on September 18th. Mr. Meyers left the offices only to return a few hours later.

*On Fri, Sep 18, 2020 at 11:20 AM Ira Pearson <IPearson@lincolncountynm.gov> wrote:  
Good morning Justin,*

*Nita and I just met with Lucky Myers (Carrizozo Auto Salvage). Mr. Myers took the time to drive into town and let us know that the sanitation driver, Michael Magill, did an amazing job when servicing the dumpsters this morning. He said that Michael emptied the dumpsters and then proceeded to pick up all of the surrounding trash that had fallen out of the dumpsters.*

*It is all too often that citizens are quick to criticize an employee for the smallest details – and we don't get to hear about the great things they do.*

*When hearing a compliment, I like to make sure those accolades are passed on to the management!*

*It sounds like you have a great employee!  
Have a great day,  
Ira T. Pearson  
Lincoln County Manager*

I want to thank Mr. Meyers for taking the time to spread some good news in a time where people might be a little too critical.

**19. Red Cloud Wind, LLC:**

**a. Road Use Agreement**

Alan Morel, Attorney stated there are minor changes to the Road Use Agreement between Red Cloud and the County of Lincoln.

**Motion:** Approve Road Use Agreement, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

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

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

**b. Request for Variance from Ordinance 2017-04 [Wind Energy Conversion Systems] Regarding Road Setback Requirements**

Adam Cernea Clark, Patten Energy stated in correlation to the Red Cloud Wind Project a setback variance is requested. Mr. Clark stated the setback requirement in the Lincoln WECS Ordinance, Sec 8(c) for turbine CM-T3-2016 allowed for a setback of 1.3x or greater rather than the previously required 1.5x.

**Motion:** Approve Variance CM-T3-2016, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

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

**16. Approval of Prior Year Invoices FY 19-20: Texas/NM Publications**

Manager Pearson stated the finance department received the attached invoice from Texas/NM Publications by mail on June 15, 2020 for approval in the amount of \$487.98. Manager Pearson stated the Lincoln County Finance Director called multiple times requesting a proof of the advertisement. Manager Pearson stated the finance director did receive all documents required to pay the outstanding invoice.

**Motion:** Approve payment of invoices from Texas/NM publications, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion passed (summary: Yes = 3, No = 1, Abstain = 0).

**Yes:** Commissioner Stewart, Commissioner Allen, Commissioner Willard.

**No:** Chair Draper.

**17. Approval to Purchase UTV for Glencoe/Palo Verde VFD**

Manager Pearson stated the Lincoln County Fire Services had received approval to purchase a UTV for fire and rescue services from the New Mexico Fire Marshall's office, using NM State Fire Protection Funds. Manager Pearson stated the UTV will be equipped to carry injured personnel as well as firefighting apparatus.

**Motion:** Approve purchase of UTV using State Fire Protection Funds, **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.

**18. Road Department:**

a. Job Vacancies Status

Jeff Honeycutt, Road Superintendent informed Kim Roper, Administrative Assistant was retiring December 31, 2020.

b. Request to Update County Salary Plan

Jeff Honeycutt, Road Superintendent presented a spreadsheet, graph, and job descriptions of salary comparison and potential increase between the County road department, Village of Ruidoso, and NM Department of Transportation. Mr. Honeycutt stated there are currently four Operator II positions open and one Operator III position open. Mr. Honeycutt stated by increasing the Road Department's employee wages by 5% it would mirror the budget from fiscal year 2019-2020.

**Motion:** Approve a 5% increase for unclassified employees (Operators) in the Road Department effective the next pay period cycle, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

There was a general discussion regarding salary and grade level.

Manager Pearson stated he spoke to Socorro County regarding their salary study. Manager Pearson stated it would cost the County approximately \$15,000 to \$25,000 to have the study done in Lincoln County.

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

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

**20. Approval to Issue RFPs and/or Solicit Bids:**

- a. Capital Outlay Grant for Renovation of Courthouse Courtyard
- b. Capital Outlay Grant for Construction of Courthouse ADA Compliant Bathrooms



- c. Capital Outlay Grant for Renovations to the Lincoln County Fairgrounds
- d. Sheriff's Department ADA Compliant Ramp
- e. Solid Waste Collection Centers Re-Certification

There was a general discussion regarding the courthouse renovations in correlation to the Highway 54 project.

Manager Pearson stated the Sheriff's Office ADA Compliant Ramp had a previous quote that was given to Lincoln County utilizing CES. Manager Pearson stated he would like to engage engineers and contractors to determine the best, cost effective design. Manager Pearson informed all material will be presented to the Commission before any expenditures are made.

**Motion:** Approve to solicit Bids or issue RFP, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

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

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

**21. Eric Carlson's Request to Purchase a Portion of County-Owned Property Located behind the Carrizozo Health Center**

Attorney Morel informed resident Eric Carlson of Carrizozo inquired about purchasing Lincoln County property located at 700 E Avenue. Attorney Morel stated the property was located behind the Carrizozo Health Center. Attorney Morel stated the resident would like to purchase the property in order to "square up" their property.

Attorney Morel advised Mr. Carlson that all costs associated with selling the land would be the responsibility of the purchaser.

There was a general discussion regarding the property in question. The County Assessor was directed to appraise the value of the property and come back to the next commission meeting for Commission consideration.

**22. Request for Approval of Allocating PNM Energy Rebate to Other Proposed Project Costs**

Paul Royalty informed that PNM offers a program for new construction rebates as well as a rebate for converting current buildings to energy efficient lighting.

Mr. Royalty stated PNM identified three Lincoln County buildings that qualify for a rebate, the Health Department, Annex and the Lincoln County EMS building. Mr. Royalty stated it would ultimately save the County \$3,400 a year but would cost around \$12,000 for installation.

**Motion:** Approve the LCMC energy rebate amount for the cost of converting the three buildings in Ruidoso with energy efficient lighting as described for a cost of \$12,000 plus, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

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

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

**23. Authorization to Schedule Public Hearing to Consider Other Outdated or New Lincoln County Ordinances:**

- a. Safety Net Care Pool Ordinance 2015-01

**Motion:** Authorize to schedule a public hearing to consider the Safety Net Care Pool Ordinance and the Solid Waste Ordinance to review multiple dwellings, **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.

**24. 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); 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 Threatened and/or Pending Litigation Section 10-15-1, Subparagraph H. (7); Discussion of Limited Personnel Matters, Section 10-15-1 Subparagraph H. (2) Evaluation County Manager, Ira Pearson; 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. A Disposition Order for Lack of Prosecution was entered on August 25, 2020. Lincoln County filed its Motion to Reinstate the Case on September 23, 2020, and submitted a proposed Order Reinstating Case to Judge Counts on October 9, 2020.
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, Docket No. 19-2165. 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 Cause 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. The case is still pending.
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. The case is still pending.
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. On September 24, 2020, a Stipulated Dismissal of the case was filed.
10. **Beauvais, P.A. v. 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. On May 6, 2020, Defendant filed its Motion to Dismiss in Lieu of an Answer. Settlement has been 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. 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 which is still pending.
12. **Aaron Ramos v. Sam Chavez, et al, Cause No. D-1226-CV-2020-00155** A Verified Petition for Alternative Writ of Mandamus alleging IPRA violations was filed by Plaintiff Ramos on



July 15, 2020. On August 13, 2020, County Defendants filed a Motion to Dismiss which is still pending.

13. **\*Phillip Vice v. L.C. Assessor, Cause No. D-1226-CV-2020-00192** A Petition appealing the decision of the Lincoln County Valuation Protest Board was filed by Plaintiff Vice on September 11, 2020. On October 13, 2020, Lincoln County, through its counsel Daniel Macke, filed its Motion to Dismiss which is still pending.

14. **\*Alto Lakes Golf & Country Club v. Smile 4 U, et al, Cause No. D-1226-CV-2020-00184** Complaint to Foreclose Lien was filed on September 1, 2020 and an Amended Complaint to Foreclose Lien was filed to add the County of Lincoln as a Defendant. The County's Answer to the Complaint is due on or before October 28, 2020.

#### **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.

**Vega, Gary** – Tort Claim Notice received July 20, 2020 alleging tire damage due to claimant having driven in the bar ditch on Jicarilla Rd. due to County road graders.

**Nosker, Brian** – Tort Claim Notice received August 10, 2020 alleging improper maintenance of U.S. Forest Bridge at Glencoe.

##### **Deer Park Paving Lien Assessments/Foreclosures**

**Village of Ruidoso** – The Village of Ruidoso, at its September 8, 2020 Regular Monthly Meeting, moved "to direct legal to take any and all action including litigation in District Court regarding the threats by Lincoln County Commission to increase property taxes on short term rental properties located in the Village of Ruidoso."

**\*Stark, Cary** – Tort Claim Notice received October 9, 2020, in which Claimant alleges that, after making a 911 call concerning the driver of a vehicle he was a passenger in, the responding officers allowed him to leave with the same driver which ultimately resulted in a crash causing Claimant to sustain injuries.

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.

**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

**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.

**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.

Chair Draper recessed the Regular Meeting and convened the Closed Session at 12:04 PM.

Chair Draper adjourned the Closed Session and reconvened the Regular Meeting at 12:34 PM.

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.

**25. Signing of Official Documents**

Chair Draper and Commissioner Stewart grant authority to use their electronic signature.

**26. Next meetings:**

- a. November 10, 2020- Special Commission Meeting  
(Canvass General Election Votes)
- b. November 17, 2020 – Regular Commission Meeting

**27. Adjourn**

There being no further business to come before the Board of County Commissioners, Chair Draper adjourned the meeting at 12:35 PM.

County of Lincoln  
Board of County Commissioners

Approved Telephonically  
Dallas Draper, Chair

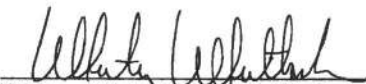
Approved Telephonically  
F Lynn Willard, Vice Chair

Approved Telephonically  
Preston Stone, Member

Approved Telephonically  
Thomas Stewart, Member

  
Elaine Allen, Member

ATTEST:

  
Whitney Whittaker, County Clerk

November 17, 2020  
Date Approved

