

COUNTY OF LINCOLN

New Mexico Special Meeting Board of County Commissioners

Dallas Draper, Chair
Lynn Willard, Vice Chair

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

Minutes Tuesday September 8, 2020

Minutes of the Special Meeting of the Lincoln County Commission held at 8:00 AM on September 8, 2020 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

1. Call to Order

Chair Draper called the Special Meeting of the Board of County Commissioners to order at 8:31 AM.

2. Roll Call

Roll Call.

Present: Chair Draper (Via Zoom), Commissioner Stewart (Via Zoom), 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

Chair Draper asked for a moment of silence.

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 Order Setting Property Tax Rates- 2020 Property Tax Year

Nita Taylor, Manager reminded every year in September, the Board of County Commissioners is required to review and issue an order imposing new tax rates for the fiscal year. Manager Taylor stated New Mexico statute 7-38-34 required the Board of County Commissioners to order imposition of the tax.

Manager Taylor stated within five days of receipt of the property tax rate-setting order from the Department of Finance and Administration, each Board of County Commissioners shall issue its written order imposing the tax at the rates set on the net taxable value of property allocated to the appropriate government units. Manager Taylor stated a copy of the order shall be delivered immediately to the County Assessor.

Manager Taylor stated Lincoln County Treasurer Beverly Calaway thoroughly reviewed the rates, identified an error in the Capitan School District Non-Residential rate, and worked with DFA to have it corrected.

Beverly Calaway, Treasurer informed her office received the emailed certificate on Tuesday, September 1, 2020. Treasurer Calaway stated in accordance with NM State Statutes 3.6.50 NMAC, the County of Lincoln was responsible for ensuring the tax rates were correct and the distribution yields were verified by a representative of each entity the County Treasurer collects property taxes for. Treasurer Calaway stated the 2020 property tax rates and distribution yields had been verified.

Motion: Approve the Certificate of Property Tax Rates for the 2020, **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

Absent (lost Zoom connectivity): Commissioner Stone.

7. Determination of Whether to Implement President Trump's Payroll Tax Deferral Program

Attorney Morel informed on August 8, 2020, President Donald J Trump issued the Memorandum on Deferring Payroll Tax Obligations in light of the COVID-19 Pandemic. Attorney Morel stated deferral was applicable to the employee's portion of Social Security taxes for the months September through December 2020 and would have to be paid in the months of January through April 2021. Attorney Morel stated there was a possibility the employee would have to pay the addition of Social Security tax for the months that were deferred plus the current tax for that month. Attorney Morel informed eight counties had opposed participation with one county undecided. Attorney Morel stated no employee returning the form opted for their Social Security taxes to be deferred.

Commission Stewart questioned if the County portion would be deferred as well.

Billie Jo Guevara, Finance Director stated the implementation of the tax deferral would not be hard to put in place and could be tracked on the W2.

Ms. Guevara stated the County would not be deferred, the funds would be there and it would be up to the employee to defer withholding. Ms. Guevara stated she only knew of one county employee that would like to utilize the tax deferral program.

Motion: Approve the Payroll Tax Deferral Program with instructions from the White House,

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

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

Yes: Chair Draper, Commissioner Stewart, Commissioner Allen.

No: Commissioner Willard, Commissioner Stone.

8. Alleged Violation of the Open Meeting Act by Lynn Crawford, Village of Ruidoso mayor, Received September 3, 2020.

Manager Taylor stated on September 3, 2020 Attorney Morel received from the Office of the Attorney General an Open Meeting Act Complaint filed by Lynn Crawford, Mayor of the Village of Ruidoso. Manager Taylor informed the letter from Mayor Crawford to the Office of the Attorney General requested an investigation for violations of the Open Meeting Act based on the County Commission's action of convening an executive session for which the Open Meeting Act does not provide an exception and for failing to give public notice of the possibility that the Commission may take action on an agenda item.

Attorney Morel asked for limited waiver of the attorney-client privilege. Attorney Morel stated governmental agencies are entitled to the attorney-client privilege.

Commissioner Stewart questioned if the Board of County Commissioners had the ability to discuss in executive session Agenda item 21 regarding the Lincoln County Lodgers Tax.

Attorney Morel informed the agenda item in consideration was considered an action item. Attorney Morel stated on the bottom of every agenda is a note that reads "all subjects listed on this agenda are to be considered action items by the Board of County Commissioners unless otherwise indicated." Attorney Morel stated the only item that is not considered an action item is public comment.

Motion: Approve the limited waiver of attorney-client privileges, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Commissioner Stewart stated this item should be placed back on the agenda for further discussion.

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

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

Attorney Morel informed the Village of Ruidoso was improperly collecting and retaining lodger's tax. Attorney Morel stated the item was placed for executive session review in order to know the best way to proceed for the County and it had nothing to do with the properties classification from residential to nonresidential.

Manager Taylor stated many efforts took place to communicate with the Village of Ruidoso in order to obtain lodgers tax information. Manager Taylor stated she first spoke to Samantha Mendez, Community Development Director for the Village of Ruidoso, then to Timothy Dodge, Village Manager. Manager Taylor stated the Village Manager informed her there was an audit the County of Lincoln could utilize for the requested information.

Manager Taylor stated the County of Lincoln submitted an IPRA to the Village of Ruidoso requesting information on each property owner, how much rent was paid, and how much taxes were paid on each of the properties. Manager Taylor stated the IPRA also requested each property owner certification. Manager Taylor stated they only received some of the information requested.

Commissioner Willard questioned the date of request from the County and the time allotted in law for a response.

Manager Taylor stated the request went out about a month ago and the Village of Ruidoso responded back to the County informing the information requested was too excessive and burdensome and required additional time to respond.

Attorney Morel stated if a custodian determined a written request was excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. Attorney Morel stated the custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request.

Commissioner Stone questioned if the village would keep requesting an extension to postpone the request.

Attorney Morel stated the IPRA was burdensome but a month would have been an appropriate amount of time to respond to the request at hand.

Walter Hill, Assessor stated he sent an IPRA to the Village of Ruidoso July 21, 2020. Assessor Hill stated the Village also requested an extension due to the information was broad and burdensome. Assessor Hill stated the County Assessor's office requested a spreadsheet of the permits. Assessor Hill stated after many attempts to receive information no further communication was established.

Attorney Morel stated a letter is due to the Attorney General by September 25, 2020 and will bring his response for the Board of County Commissioners to review in executive session at the next meeting.

Beverly Calaway, Treasurer questioned if the collection of property taxes from the Lincoln County Treasurer's office was an issue.

Attorney Morel stated lodger's tax does affect property tax in that the Lincoln County Assessor changes the assessment from residential to nonresidential but does not affect the collection of property taxes.

9. 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 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)

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 and, the parties have until September 24, 2020 to reinstate the case.

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 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. 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. A Hearing on the Motion to Dismiss will take place on September 28, 2020 at 9:00 a.m.

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. 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. **Lincoln County Lodgers' Tax Collection**

13. ***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.

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**

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.

Divebliss, 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.

Divebliss, 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

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 passed (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 at 9:12 AM.

Chair Draper adjourned the Closed Session and reconvened the Regular Meeting at 9:40 AM.

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.

10. Signing of Official Documents

Chair Draper, Commissioner Stewart, Commissioner Willard, and Commissioner Stone gave authorization to the County Clerk to use their electronic signatures.

11. Next Meeting

- a. September 15, 2020 Regular Commission Meeting

12. Adjourn

There being no further business to come before the Board of County Commissioners, Chair Draper adjourned the meeting at 9:41 AM.

County of Lincoln
Board of Commissioners

Approved Telephonically
Dallas Draper, Chair

F Lynn Willard
F Lynn Willard, Vice Chair

Elaine Allen
Elaine Allen, Member

Approved Telephonically
Thomas F Stewart, Member

Preston Stone, Member

ATTEST:

Whitney Whitaker
Whitney Whitaker, County Clerk

October 20, 2020
Date Approved

