

# COUNTY OF LINCOLN

## New Mexico Regular Meeting Board of County Commissioners

Thomas F Stewart, Chair  
Lynn Willard, Vice Chair

Elaine Allen, Member  
Jon Crunk, Member  
Todd Proctor, Member

### Minutes Tuesday February 16, 2021

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on February 16, 2021 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

#### 1. Call to Order

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

#### 2. Roll Call

##### Roll Call.

**Present:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

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

#### 3. Invocation

The invocation was presented by Chair Stewart

#### 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 Allen, **Seconded by** Commissioner Proctor.

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

#### Approval of Minutes:

- a. January 12, 2021 Special Commission Meeting
- b. January 19, 2021 Regular Commission Meeting
- c. January 26, 2021 Special Commission Meeting

**Motion:** Approve the Minutes of the January 12, 2021 Special Commission Meeting, January 19, 2021 Regular Commission Meeting, and the January 26, 2021 **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

#### 7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures

- b. Treasurer's Financial Report for the Month ending January 31, 2021.
- c. Approval or Disapproval of Safety Net Care Pool & Indigent Health Care Claims
- d. Annual Certified Road Mileage
- e. Approval of State Plan of Operations Between the State of New Mexico and the Lincoln County Sheriff's Office
- f. Approval for Nogal Fire to Purchase UTV
- g. 2020 Volunteer Firefighters Annual Reporting  
-White Oaks Volunteer Fire Department

**Motion:** Approve Consent Agenda, **Action:** Approve, **Moved by** Commissioner Allen, **Seconded** by Commissioner Willard.

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

#### **8. Approval of Budget Adjustment FY 20/21 by Resolution 2020-27**

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

Commissioner Willard questioned the status of the commission approved temporary hires.

Manager Pearson stated only position filled for the County of Lincoln was the cleaning/sanitizing position.

**Motion:** Adopt Resolution 2020-27, **Action:** Approve, **Moved by** Commissioner Proctor, **Seconded by** Commissioner Willard.

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

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

- a. Smokey Bear Ranger District

Manager Pearson stated the District has not hired a new ranger but stated Karl Honkonen, acting ranger for the Smokey Bear Ranger District provided a News Release about the Forest Service and the Natural Resource Conservation Service had been awarded over half a million dollars through the Joint Chiefs Landscape Restoration Partnership for forest restoration near Sierra Blanca in Otero and Lincoln counties.

- b. South Central Mountain RC & D

Robert Barber, Member gave an update on current activities. Mr. Barber stated he attended his first meeting last month, along with newly appointed member Robert Shepperd. Mr. Barber stated Jodie Canfield past Smokey Bear Ranger District Ranger will be appointed next month as a member.

- c. Upper Hondo Soil & Water Conservation District

Robert Barber, Board Member gave an update on the Upper Hondo activities. Mr. Barber stated the district is still working with BLM in concern to weed treatments; Mr. Barber stated a lot is on hold due to weather. Mr. Barber stated the district office is moving to a building off Main in Capitan. Mr. Barber stated this will allow the district to expand operations. Mr. Barber stated the district continues to sell seed and weed treatment. Mr. Barber reported on current legislation; SB332 if passed, will directly affect mil levy funding for the water conservation districts by placing a sunset clause.

- d. LANRAC

Robert Barber, Chair continues to work on same projects. Mr. Barber stated he reviewed a draft of the first two chapters of the Mexican wolf's environmental statement. Mr. Barber stated public opinion by law was due in May this year. Mr. Barber stated he attended a water dialogue in which the Governor requested a review of the State of New Mexico's 50-year water plan. Mr. Barber stated the Joint Chiefs' Landscape Restoration Partnership enables NRCS and the Forest Service.

to collaborate with agricultural producers and forest landowners to invest in conservation and restoration. Mr. Barber stated the committee will meet next month to this regard.

**11. Lincoln County Detention Center Update- Warden Scott Colvin**

Scott Colvin, Warden provided an update on status of the facility. Warden Colvin reported the facility was housing 79 prisoners. Warden Colvin reported they have filled all positions in correlation to the RISE grant; with an addition of four (4) new hires.

**12. Lincoln County Medical Center Update-Todd Oberheu**

Todd Oberheu, Hospital Chief Executive for Lincoln County Medical Center reported Roper Construction will start construction on the parking lot in March with a completion end date of hopefully two months. Mr. Oberheu stated a decrease in positive test related to COVID. Mr. Oberheu provided an update regarding information on COVID-19 vaccines. Oberheu reported the Lincoln County Medical Center had assisted with over approximately 600 vaccines.

**13. Local Government Road Fund Projects: CAP/COOP/School Bus Programs-Jeffrey Honeycutt, Road Superintendent**

Jeffrey Honeycutt, Road Superintendent informed New Mexico Department of Transportation District Two Engineering Support Division is soliciting applications for the Local Government Road Fund (LGRF) Program for fiscal year 21/22. Mr. Honeycutt stated the purpose of the LGRF Program is to assist local public agencies in "project development, construction, reconstruction, improvement, maintenance, or repair of public highways, streets and public-school parking lots, for the acquisition of rights-of-way therefore, or for materials for the construction or improvement thereof".

Mr. Honeycutt stated Fort Stanton Rd and Eagle Creek Canyon are two roads that he would like to submit for the cap/coop/school bus program. Mr. Honeycutt estimated the chip seal or asphalt for the 2022 CAP/COOP School bus 2 miles would be approximately \$625,000, with a County match of \$156,250.

**Motion:** Approve the Road Fund Projects with priority being Eagle Creek Canyon Road over Fort Stanton, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Proctor.

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

**14. Authorization to Negotiate for a Dedicated Right of Way/Easement to Expand Gavilan Canyon at the Intersection of Highway 48**

Mr. Pearson stated the Board of Commissioners instructed Road Superintendent Honeycutt to incorporate a right-hand turning lane onto Highway 48. Mr. Pearson stated Lincoln County will need to acquire either a dedicated right-of-way or an easement to complete the project as planned.

David Roybal, Project Manager/Engineer for streets, Roads and Traffic/Engineering discussed the Pettigrew's recent analysis of Gavilan Road repair.

**Motion:** Direct the Manager Pearson, Project Manager for Pettigrew & Associates David Roybal, and Road Superintendent Jeff Honeycutt to continue move forward, **Action:** Approve, **Moved by** Commissioner Proctor, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

**10. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS (Items are for discussion only – no action will be taken)**

Commissioner Allen stated she received information regarding Congresswoman Yvette Herrell. Commissioner Allen requested consideration of a Resolution in support of the congresswoman's concerns.

Chair Stewart questioned about supporting an individual over policy.

Commissioner Willard stated he attended a SERPTO meeting with Road Superintendent Jeff Honeycutt last week. Commissioner Willard stated Jeff was elected as vice chair to the technical committee and Ron Sena from the Village was elected to the policy committee.

Commissioner Proctor stated he will provide an update to any concerning activities regarding the 50-year water review.

Walter Hill, Assessor reported an update on legislative bills that could affect the county regarding the veteran exemptions. Assessor Hill stated the bills of concern were House Joint Resolutions. Assessor Hill explained Joint Resolutions, are bills that not only get passed by the stated but will also go to the voters in the next general election. Assessor Hill stated if approved will directly affect the evaluations and taxes in the county. Assessor Hill stated he will mail out notice of values soon and reported a large increase in value as well as sales. Assessor Hill stated the notice of value will reflect a 3% statutory increase county wide.

Beverly Calaway, Treasurer stated 67% of property taxes were collected. Treasurer Calaway requested a board of finance meeting in month of March.

Michael Wood, Sheriff stated New Mexico suffered a great loss with a state police officer this week and Thanked the officer for his service. Sheriff Wood informed road conditions were not favorable and suggested to the public to avoid the roads if possible. Sheriff Wood stated his department was involved with the arrest of 3 serious felony convictions. Sheriff Wood stated his department has recently hired three (3) new deputies and still have two positions outstanding.

Manager Pearson read an email from Steve Kopelman, New Mexico Counties in regards in opposition to HB4.

Cynthia Black, Chair of the Republican Party of Lincoln County. Ms. Black stated Grant County condemned Congresswoman Yvette Herrell publicly. Ms. Black expressed support to a Resolution regarding the issues Congresswoman is dealing with at the federal level. Ms. Black stated in the first few weeks of our time representing New Mexico's Second Congressional District have laid the groundwork to deliver results. Ms. Black stated Congresswoman Herrell is already sponsoring, co-sponsoring, and supporting legislation that will protect jobs, rebuild our local communities, and protect election integrity.

Doris Cherry, resident expressed her support in the commission not supporting an individual by resolution.

## **15. Manager's Report**

### **1) The Ruidoso Board of Realtors presented an award of \$2000.00 to the 7 VFD's in Lincoln County**

The NM State Board of Realtors initiated a state-wide program to raise money for Volunteer Firefighters. Joe Kenmore was on hand to receive the check on behalf of all of the Lincoln County Volunteer Fire Departments. Each department received \$285 to be placed in their Trust account.

### **2) Rancho De Caballos Subdivision - Offer to Donate land for a Volunteer Fire station**

In the regular Commission meeting on January 19, 2021, the Commission directed Alan Morel and myself to look into the feasibility and requirements of Lincoln County accepting donated land for a Volunteer Fire Station near Capitan, NM. Mr. Morel performed extensive research regarding the Rancho De Caballos Subdivision and determined that:

*To the best of my knowledge, no bond has been procured or provided to the County. Multiple documents, including the Disclosure Statement, refer to the Developer's commitment to donate one acre of land to be used for the construction of a volunteer fire department. The construction of the facility would have to be approved by the Developer and the County is not guaranteeing that it will be constructed. To my knowledge, this has not occurred. Lastly, I do not believe that a Claim of Exemption can be utilized to create a new Tract within a previously approved Subdivision so, the Developer would be required to utilize one of the 55 Lots or 13 Tracts to accomplish the transfer to the County which I do not believe the Developer would consider.*

In consultation with the Capitan Fire Department and the NM State Fire Marshall's Office, Joe Kenmore has recommended that the property owner work with the Village of Capitan to determine the needs and requirements of the Village. A fire station two miles north of Capitan is not recommended for the needs of Lincoln County.

### 3) Lincoln County K-9 Deputy Body

The Lincoln County Sheriff's K-9 Deputy requires many hours of care by his handler. Most of this care has to be performed "outside" the normal working hours of the K-9's handler. The Department of Labor has set some guidelines for compensating a Police K-9 handler:

*The Certain training and "care" of a police dog at home by a canine officer is considered a part of the officer's principal activities.*

*We consider the term "care" to mean bathing, brushing, exercising, feeding, grooming, related cleaning of the dog's kennel or transport vehicle and similar activities performed by the canine officer at home on workdays as well as on days off duty or during vacation periods.*

The K-9's handler will be compensated for 3.5 hours of "Care" per week. The cost of feeding and veterinary care will also be paid through Lincoln County. Some of the associated K-9 costs will be reimbursed through the Federal HIDTA Grant.

### 4) Solid Waste Department Update

We have started reviewing the individual delinquent accounts. Many of the accounts have not been reviewed in several years. The liens presented to the Commission today are a result of taking the time to research and document each individual delinquent account.

The receiving and receipting process has been adjusted for transparency and accountability. I will provide an update each month to the Commission regarding the Solid Waste Department

### 5) Personnel Ordinance Review

Along with attorney, Alan Morel, Lincoln County staff have begun to review Ordinance No. 2017-02. The process includes:

- First Read
- Conflicts
- Current law review
- Changes
- Updates
- Commission Review
- Public Review and Comment
- Adoption
- Implementation

The staff should be able to present the proposed changes to the Commission by the April Commission meeting. We will keep you updated as our ordinance review progresses.

### 6) Meeting and Working with Elected Officials

The Elected Officials, Directors and I have met regularly to discuss procedures, internal policies, proposed changes, and other topics related to a working office environment. Every person / office has been a great help in welcoming me to Lincoln County. I wanted to say – THANK YOU – to each person for helping me transition into this great team!

16. **Approval of Resolution 2020-28- a Resolution Opposing House Bill 4 of the First Session of the 55<sup>th</sup> Legislature; Urging the New Mexico Legislature to Provide More Resources for Behavioral Health Prevention and Treatment, Since Behavioral Health Issues are the Root Cause of Many Civil Rights Claims Against Local Governments; and Recommending Damage Caps on Any New civil Rights Cause of Action as Well as Funding for Any Increased Costs Associated with It.**

Attorney Morel reported on a synopsis of original bill. Attorney Morel stated the bill includes a cap on damages of \$2 million per claimant and provides for the recovery of attorney fees. Attorney Morel stated the Tort Claims Act per statute 41-1-1 NMSA 1978 caps damages at just over \$1 million but does not include attorney fees.

**Motion:** Adopt Resolution 2020-28, **Action:** Approve, **Moved by** Commissioner Proctor, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

17. **Approval of Resolution 2020-29 - a Resolution Opposing House Bill 40 of the 55<sup>th</sup> New Mexico Legislature; Relating to Correctional Institutions; Enacting the Private Detention Facility Moratorium Act; Removing Authorization to Enter Into Contracts or Agreements with Independent Contractors for the Operation of Detention Facilities; Providing for Recommended Termination of Contracts for Operation of Jails Under Certain Circumstances; Making the Operation of a Private Detention Facility Unlawful; Prohibiting Public Funding of Privately Operated Detention Facilities; Requiring Annual Reports; Providing a Penalty; Repealing Section 33-1-17 and 33-3-26 NMSA 1978 (Being Laws 1985; Chapter 149, Section 1 and Laws 1984, Chapter 22, Section 17, as Amended); Declaring an Emergency**

Attorney Morel reported on the synopsis of the original bill. Attorney Morel stated House Bill 40 makes it unlawful to operate a private detention facility in New Mexico, bars governmental entities from contracting with private entities to operate a detention facility, repeals laws that previously authorized counties and municipalities to operate jails and authorized NMCD to contract with private entities for the operation of specific correctional facilities, and extensively amends existing law governing contracts and controls of county jails used to house prisoners.

**Motion:** Adopt Resolution 2020-29, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

18. **Approval of Resolution 2020-30: Disposition of County Surplus Inventory**

**Motion:** Adopt Resolution 2020-30, **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

19. **Authorization to File Solid Waste Liens:**

a.	Artura Chavez and Yolanda Chavez	\$569.62
b.	Rufino G. Herrera	\$1,006.18
c.	Eileen A. Histen	\$949.64
d.	William B. Loving, III	\$921.96
e.	Richard Owen	\$980.80
f.	Dwain Phillips and Norma Phillips	\$1,005.04
g.	Antonio B. Reyes III and Rosa E. Reyes	\$800.04
h.	Steven J. Shearer and Kristine A. Shearer	\$661.94
i.	Daniel Zamora and J'lane Zamora	\$782.71

**Motion:** Approve the filing of Solid Waste Liens, **Action:** Approve, **Moved by** Commissioner Allen, **Seconded by** Commissioner Crunk.

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

20. **Approval of Lodger's Tax Applications with Backup Material:**

- j. Carrizozo Music, Inc.  
Request: \$5,000.00  
Date(s) of Event: January – December 2021  
Presenter: Fran Altieri, President  
Amount Recommended: \$5,000.00
- k. Lincoln County Art Loop Tour  
Request: \$4,500.00  
Date (s): July 2-4, 2021  
Presenter: Lynn Eckman  
Amount Recommended: \$4,500.00
- l. Alto Artist Tour 2020  
Request: \$3,500.00  
Date(s) of Event: August 6-8, 2021  
Presenter: Lynn Eckman



Amount Recommended: \$3,500.00

**Motion:** Approve the Lodger's Tax Committee amount as presented, **Action:** Approve, **Moved** by Commissioner Allen, **Seconded** by Commissioner Willard.

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

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

No action taken

**23. 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 the Purchase Acquisition or Disposal of Real Property or Water Rights By the Public Body, Section 10-15-1, Subparagraph (H)(8); and Limited Personnel Matters; Evaluation of County Manager, Ira Pearson, Section 10-15-1, Subparagraph (H)(2)**

**Motion:** 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 the Purchase Acquisition or Disposal of Real Property or Water Rights By the Public Body, Section 10-15-1, Subparagraph (H)(8); and Limited Personnel Matters; Evaluation of County Manager, Ira Pearson, Section 10-15-1, Subparagraph (H)(2)

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. An Order Reinstating Case was entered on October 19, 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. On January 8, 2021, the Supreme Court entered its Dispositional Order of Transfer transferring the case to the Court of Appeals for consideration and review. The case 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. **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.

10. **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 23, 2020, Lincoln County, through its counsel Daniel Macke, withdrew its Motion to Dismiss. The case is still pending.

11. **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 filed its Answer to the Complaint on October 23, 2020. On October 26, 2020, an Entry of Default as to Defendant Smile 4 U was entered. The case is still pending.

12. **\*Alto Lakes Golf & Country Club v. Jack H. McCloud, et al, Cause No. D-1226-CV-2020-00235** Complaint to Foreclose Lien was filed on October 19, 2020. The County filed its Answer to the Complaint on December 3, 2020. On January 28, 2021, Judge John Sugg entered a Decree of Foreclosure and a Special Master's Sale is scheduled to take place on March 31, 2021 at 10:00 a.m. at 313 Cree Meadows Dr., Ruidoso, NM.

13. **\*Alto Lakes Golf & Country Club v. J. Lynn Starr, et al, Cause No. D-1226-CV-2020-00236** Complaint to Foreclose Lien was filed on October 19, 2020. The County filed its Answer to the Complaint on December 3, 2020. On December 29, 2020, a Disclaimer of Interest on behalf of the Estate of J. Lynn Starr was filed. On January 28, 2021, Judge John Sugg entered a Decree of Foreclosure and a Special Master's Sale is scheduled to take place on March 31, 2021 at 10:15 a.m. at 313 Cree Meadows Dr., Ruidoso, NM.

14. **\*Alto Lakes Golf & Country Club v. Moises De La Torre, et al, Cause No. D-1226-CV-2020-00237** Complaint to Foreclose Lien was filed on October 19, 2020. The County filed its Answer to the Complaint is on December 3, 2020. On December 29, 2020, a Disclaimer of Interest of Defendants Moises and Casandra De La Torre was filed. On January 27, 2021, Plaintiff filed its First Amended Complaint to Foreclose Lien and The County of Lincoln filed its Answer to First Amended Complaint that same day. The case is still pending.

15. **State of New Mexico Department of Transportation v. Anthony Sanchez, et al, Cause No. D-1226-CV-2020-00217** Complaint for Condemnation was filed on October 7, 2020. This cause of action was filed in conjunction with the current sidewalk improvement project taking place on US Hwy. 54 in downtown Carrizozo and is still pending.

16. **\*Jacob Scott v. Lincoln County Board of Commissioners, Brack Rains and Unknown Defendants, Cause No. D-1226-CV-2021-00001** Complaint for Negligence and Negligence Per Se and Deprivation of Constitutional Rights was filed on January 1, 2021. Lincoln County has yet to be served with the Complaint.

#### **Tort Claims Notices Received or Threatened**

##### **2021**

**Cline, Terry** – Tort Claim Notice received January 11, 2021 alleging injuries sustained as a result of claimant's garbage truck being struck by a front-end loader at the Otero-Greentree Regional Landfill.

**\*Purcella, Les** – Tort Claim Notice received January 28, 2021 alleging damage to his automobile by an employee with the Lincoln County Assessor's office.

**\*Chavez, Cecilia** – Tort Claim Notice received February 1, 2021 alleging damage to NM State Police vehicle by Deputy Wikoff with the Lincoln County Sheriff's Office.

##### **2020**



**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 fees 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.

**Buster, Crystal** – 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.

**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.

**Touche, Claudia and Trespalacios, Antonio** – Tort Claim Notice received November 5, 2020 alleging false arrest, excessive force, intentional infliction and emotional distress, and harassment by the Lincoln County Sheriff's Deputies, and claims against the County of Lincoln based on retaliation, negligent training and supervision, and for inadequate policies and procedures.

**Goodman, John and Lovone** – Tort Claim Notice received November 24, 2020 alleging substantial damage as a result of Lincoln County Sheriff Deputy Joshua William Snodgrass' failure to yield right of way.

**Humphrey, John D.** – Tort Claim Notice received December 17, 2020 alleging personal injuries occurring at Moon Mountain Disc Golf.

## **2019**

**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

**Action:** Approve, **Moved by** Commissioner Proctor, **Seconded by** Commissioner Allen

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

Chair Stewart recessed the Regular Meeting and convened the Closed Session at 10:32 AM.

Chair Stewart adjourned the Closed Session and reconvened the Regular Meeting at 11:55 AM.

Commissioner Willard attested 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.

### **24. County Manager Ira Pearson Six (6) Month Review/Contract Negotiations**

Chair Stewart reminded current contract had a six (6) month evaluation. Chair Stewart suggested consideration of an increase of \$85,000 due to excellent review from the Commission.

**Motion:** Approve the renewal of contract with an increase of \$85,000 effective March 6, 2021,

**Action:** Approve, **Moved by** Commissioner Proctor, **Seconded by** Commissioner Crunk

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

Chair Stewart recessed the Regular Meeting at 12:00 PM and convened the Public Hearing at 1:00PM

22. 1:00 P.M.: PUBLIC HEARING:

- a. Public Hearing to Consider an Application Seeking a Transfer of Ownership for Liquor License #0812 from Allsup's Convenience Store Inc., Allsup's #130 to BW Gas & Convenience Retail, LLC. Allsup's #132130, Located at 113 San Pablo, Hondo, NM 88336 and/or 380 Don Pablo Rd., Hondo, NM 88336 and/or 28586 US Highway 70, Hondo, NM 88336.

Linda Aikin, representative for Allsup's was present to answer any questions.

Commissioner Willard questioned if the construction at the Hondo facility was progressing.

Ms. Aikin stated they are going forward with the development.

Chair Stewart adjourned hearing at 1:11PM and reconvened the Regular Meeting.

**Motion:** Approve transfer of ownership for liquor license #0812 from Allsup's Convenience Store to BW Gas and Convenience Retail LLC, **Action:** Approve, **Moved by:** Commissioner Allen, **Seconded by:** Commissioner Willard.

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

**Yes:** Chair Stewart, Commissioner Allen, Commissioner Willard, Commissioner Crunk, Commissioner Proctor.

25. Signing of Official Documents

Chair Stewart, Commissioner Willard, Commissioner Allen, Commissioner Proctor and Commissioner Crunk gave approval to utilize their electronic signature.

26. Next meeting:

- a. March 16, 2021 Regular Commission Meeting

27. Adjourn

There being no further business to come before the Board of County Commissioners, Chair Stewart adjourned the meeting at 1:14 PM.

County of Lincoln  
Board of Commissioners

Approved Telephonically

Thomas F. Stewart, Chair

  
F Lynn Willard, Vice Chair

Approved Telephonically

Elaine Allen, Member

Approved Telephonically

Jon Crunk, Member

Approved Telephonically

Todd Proctor, Member

4997

ATTEST:

  
Whitney Whittaker, County Clerk

March 26, 2021  
Date Approved

