

COUNTY OF LINCOLN

New Mexico Special Meeting Board of County Commissioners

Lynn Willard, Chair
Elaine Allen, Vice Chair

Thomas F. Stewart, Member
Jon Crunk, Member
Todd Proctor, Member

Minutes Tuesday January 12, 2021

Minutes of the Special Meeting of the Lincoln County Commission held at 8:00 AM on January 12, 2021 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

1. Call to Order

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

2. Roll Call

Roll Call.

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

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

3. Invocation

Chair Willard requested 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 Willard, Commissioner Stewart, Commissioner Allen, Commissioner Crunk, Commissioner Proctor.

6. Selection of Chair & Vice-Chair

Motion: Open nominations for selection of Chair, **Action:** Approve, **Moved by** Commissioner Proctor, **Seconded by** Commissioner Allen.

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

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

Commissioner Allen nominated Lynn Willard

Commissioner Proctor and Commissioner Crunk nominated Thomas Stewart

Motion: Cease nominations, **Action:** Approve, **Moved by** Commissioner Proctor, **Seconded by** Commissioner Allen.

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

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

A roll call vote for nomination Lynn Willard

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

Yes: Chair Willard, Commissioner Allen.

No: Commissioner Stewart, Commissioner Crunk, Commissioner Proctor.

A roll call vote for nomination Thomas Stewart

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

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

Abstain: Commissioner Stewart.

Consensus the commission voted Thomas Stewart to Chair.

Motion: Open nominations for selection of Vice Chair, **Action:** Approve, **Moved by** Commissioner Allen, **Seconded by** Commissioner Proctor.

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

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

Commissioner Stewart and Commissioner Crunk nominated Lynn Willard

Commissioner Proctor nominated Elaine Allen

Motion: Cease nominations, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Proctor.

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

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

A roll call vote for nomination Lynn Willard

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

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

Abstain: Commissioner Willard.

Consensus the commission voted Lynn Willard to Vice Chair.

7. Lincoln County Executive Session Pursuant to the Open Meetings Act: Discussion of all Threatened and/or Pending Litigation Section 10-15-1, Sub-Paragraph H. (7);

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. The case is still pending.

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. The case is still pending.

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. 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.

Tort Claims Notices Received or Threatened

2021

*Clinie, 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.

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.

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 Trespacios, 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

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

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

Vote: Motion carried by unanimous 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 8:46 AM.

Chair Stewart adjourned the Closed Session and reconvened the Regular Meeting at 9:50 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.

8. Solid Waste Department

- a. Presentation of Current Operations
- b. Future Direction of Internal Procedures

no action taken

9. Selection and Approval of County of Lincoln - 2021 Insurance Deductible and Coverage Options

Manager Pearson informed the County of Lincoln has been presented with deductible and contribution amounts for the following categories:

- Multi-Line: General Liability and Civil Rights
- Multi-Line: First Party Property & First Party Auto
- Law Enforcement

Manager Pearson stated each category has three to four deductible amounts with corresponding contribution amounts.

Motion: Maintain and keep deductions currently, **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 questioned if the county would like to add any additional required coverages.

Motion: Accept coverage for 2021 for the \$4,000 amount, **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.

10. Renewal of Banking Documents and Signature Cards for Newly Elected Officials

Sherrie Huddleston, Chief Deputy Treasurer, discussed the procedures for obtaining new signatures the elected officials.

11. Authorization to Schedule Public Hearings to Consider the Transfer of Ownership of Dispenser Liquor License Number 0812 from Allsup's Convenience Stores, Inc. to BW Gas & Convenience Retail, LLC.

Manager Pearson informed BW Gas & Convenience Retail, LLC has applied for a transfer of Liquor License from Allsup's Convenience Stores, Inc to the BW Gas name. Manager Pearson informed the Director of the Alcoholic Beverage Control (ABC) has granted Preliminary Approval of the transfer application. Manager Pearson stated the establishment is currently located at 28586 US Highway 70 in Hondo, NM. Manager Pearson informed the application has an address of 113 San Pablo, Hondo, NM which is not the correct address for this establishment. Manager Pearson informed the county contacted the New Mexico Regulation and Licensing Department to inform them of this incorrect address as well as the new owners.

Motion: Schedule Public Hearing for liquor license number 0812 with all address associated, **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.

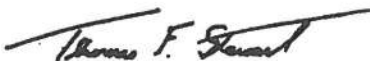
12. Upcoming Meetings:

- a. January 19, 2021- Regular Commission Meeting

13. Adjourn

There being no further business to come before the Board of County Commissioners, Chair Stewart adjourned the meeting at 10:09 AM.

County of Lincoln
Board of Commissioners



Thomas F. Stewart, Chair

Approved Telephonically
F Lynn Willard, Vice Chair


Elaine Allen, Member


Jon Crunk, Member

Approved Telephonically
Todd Proctor, Member

ATTEST:


Whitney Whittaker, County Clerk

February 16, 2021
Date Approved