

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 July 20, 2021

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on July 20, 2021, in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

In accordance with the New Mexico Public Health Emergency Order, this meeting was conducted on a platform for video and audio.

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

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 Crunk.

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

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

6. Approval of Minutes:

- a. June 4, 2021, Special Commission Meeting
- b. June 15, 2021, Regular Commission Meeting
- c. June 18, 2021, Emergency Commission Meeting
- d. June 25, 2021, Special Commission Meeting

Motion: Approve the minutes of the June 4, 2021, Special Commission Meeting, the June 15, 2021 Regular Commission Meeting, June 18, 2021 Emergency Commission Meeting, and the June 25, 2021 Special Commission Meeting, **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. Approval of Resolution 2021-03: Budget Adjustment FY 21/22
- c. Treasurer's Financial Report for the Month ending June 30, 2021
- d. Approval of Resolution 2021-04: Treasurer's 4th Quarter Financial Report
- e. Approval or Disapproval of Safety Net Care Pool & Indigent Health Care Claims
- f. Approval of New Indigent Provider Agreement
- g. Approval of Resolution 2021-02: Disposition of County Inventory and Capital Assets
- h. SE New Mexico Economic Development District (SNMEDD) Agreement and Resolution 2021-06
- i. Upper Hondo Soil & Water Conservation District Mill Levy Rate
- j. Alpine Village Sanitation District Mill Levy
- k. Restricted Housing Report - Quarter Ending June 30, 2021
- l. Approval of Resolution 2021-10: Adoption of Required CDBG Certifications and Commitments

Motion: Approve Consent Agenda, **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.

EXHIBIT A: Copies of the Consent Items including Resolution 2021- 03, Resolution 2021- 04, Resolution 2021-02 and Resolution 2021-10 are attached hereto in reference thereto made a part hereof.

8. Forest, Land & Natural Resources Matters:

- a. Smokey Bear Ranger District

Manager Pearson stated the Smokey Bear District Ranger was unable to attend.

Laura Rabon, Public Affairs Officer spoke to the commission regarding a recreation fee change for the Lincoln National Forest. Ms. Rabon stated current fees were no longer covering back logs. Ms. Rabon stated to maintain sites correctly a new fee would need to be applied. Ms. Rabon stated Congress allocated funding to all sites, so a fee was not necessary for all sites, but they had addressed seven sites that they would like to change.

Ms. Rabon asked the commission to review the fees and write a letter of support.

- b. Lincoln County / NMSU Extension Services

Melanie Gutierrez, Lincoln County Extension Office stated they had been busy but were not quite back to 100%. Ms. Gutierrez stated they finished a district contest in Eddy County. Ms. Gutierrez stated the Lincoln County Fair would start August 2, 2021.

- c. State Forestry - ENMRD
- d. South Central Mountain RC & D
- e. Upper Hondo Soil & Water Conservation District
- f. LANRAC

14. NRCS/EWP Program

- a. Approval to Fund the 25% Match at an Estimated Amount of \$203,000.00

Manager Pearson stated the USDA field team finished inspecting the damaged properties on Wednesday, July 14, 2021. Manager Pearson stated Kenneth Branch would explain the inspection process and report the grant match requirements. Manager Pearson informed Lincoln County was not allowed to use American Rescue Plan Act funds towards the match requirements.

b. Approval to Reconstruct the Low Water Crossing on Perry Springs Road

Manager Pearson presented the estimated cost of reconstruction for the low water crossing on Perry Springs Road.

Manager Pearson stated Upper Hondo agreed to be the liaison for Lincoln County and offered \$50,000 for assistance.

Commissioner Allen questioned the low water crossing purpose.

Manager Pearson stated there were five residential houses in the area that would need access to their property.

Attorney Alan Morel stated a low water crossing would provide a bridge when water flow is low but could be very dangerous due to the unknown depth of water under high-flow conditions. Attorney Morel stated this seemed to be the best practice for the area and cheaper than building a bridge to raise the level of the road above the highest flood stage of a river. Attorney Morel stated the possibility of a depth gage being placed at the location.

Commissioner Willard stated he spoke to residents, and they would like the crossing to be constructed.

There was a lengthy discussion regarding the history of the original construction of the crossing.

Motion: Approve \$150,000 to reconstruct the low water crossing on Perry Springs Road and approve the 25% match of \$203,000. **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.

9. Approval of Resolution 2021-01: Annual Capital Assets Inventory Certification FY 2020-2021

Manager Pearson informed as directed by the Lincoln County Board of Commissioners, for the Fiscal Year 2020 –2021 annual inventory of chattels and equipment valued at \$5,000 or above. Manager Pearson stated in accordance with generally accepted auditing procedures, and to meet the annual requirements for certification as specified in state statute 12-6-10, we hereby certify the listing of property for over \$5,000 for Lincoln County, New Mexico.

Motion: Adopt Resolution 2021-01, **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.

EXHIBIT B: Copy of Resolution 2021-01 is attached hereto in reference thereto made a part hereof.

10. Approval of Bargaining Agreement Between the County of Lincoln and the Lincoln County Deputy Sheriff's Association

Manager Pearson stated negotiations were initiated by the Association with the goal of getting a pay raise for the three Sergeant positions. Manager Pearson stated after careful research, it was determined that the Sergeants were not supposed to be included in the agreement. Manager Pearson stated the Commission approved raises for the Sergeants during the special May meeting.

Changes:

SECTION 1.B – Added "in the rank of Deputy"

SECTION 9.1.A – Changed sick leave per pay period, not monthly

SECTION 9.3.A,B,C – Removed two Personal Holidays / Added regular shift language

SECTION 15.D – Added regular shift language

SECTION 22.A,D – Replaced pagers with cell phones

SECTION 27.E – Added a step for grievant / County manager review

- SECTION 32 – Added that small discipline will not be used against applicant when promoting after one year
- SECTION 33 – Uniforms are spelled out
- SECTION 35 – Both Parties agree that any raise in wages provided to non-bargaining unit employees will also be provided to the bargaining unit employees.

There was discussion to come back to agenda item after more information was provided.

13. Approval to Pay Prior Year Invoice:

- a. CES-Dekker, Parish and Sabitini

Manager Pearson stated the final invoice was sent in November in the amount of \$5,602.04.

Motion: Approve invoice, **Action:** Approve, **Moved by** Commissioner Allen, **Seconded by** Commissioner Crunk.

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

Yes: Chair Stewart, Commissioner Allen, Commissioner Crunk.

No: Commissioner Willard, Commissioner Proctor.

16. Approval to Schedule Special Meeting for the American Rescue Plan Act

Manager Pearson stated the US Treasury had issued the final ruling on how the ARPA money could be spent. Manager Pearson stated a roundtable discussion was needed to lay out the limitations and start focusing on what we wanted to fund in Lincoln County. Manager Pearson would like to schedule a meeting for the American Rescue Plan Act.

Motion: Schedule a Special Meeting for the American Rescue Plan Act, **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.

Chair Stewart opened public comment at 9:27AM.

11. 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 an abundant amount of traffic going through Lincoln had become extremely dangerous. Commissioner Allen stated they were currently working with DOT to integrate rumble strips and to have a tabletop crosswalk placed to reduce vehicle speeds and also emphasize the presence of the pedestrian crossing.

Commissioner Willard expressed his gratitude for the recent moisture. Commissioner Willard stated the excess flooding in the Hondo area was to not be overlooked and was very grateful for the assistance that FEMA was contributing to the residents of Lincoln County.

Commissioner Proctor stated he virtually attended the lodgers tax meeting on June 29, 2021. Commissioner Proctor stated he attended a meeting at Hondo Schools on July 7, 2021 regarding federal resources offered. Commissioner Proctor stated he had been getting multiple calls regarding the lack of cell service.

Commissioner Crunk stated the flooding that occurred on the 4th of July some bridges were swept away and left with lots of debris. Commissioner Crunk stated it was a bad situation but also a learning experience.

Whitney Whittaker, Clerk provided information on the upcoming 2021 Regular Local Election.

Walter Hill, Assessor stated the notice of values were out and they would be beginning the protest period.

Beverly Calaway, Treasurer reported Capitan Schools submitted a question to be placed on the 2021 Regular Local Election. Treasurer Calaway stated this would affect property tax billing and distribution to all entities with a delay of billing from 60-90 days.

Chair Stewart questioned if the Capitan Schools could pose another question to the voters in the same year after they just recently had a special election.

Clerk Whittaker informed the school was within the law.

Sheriff Wood reported on arrests and projects throughout the County.

Alan Briley, Assistant District Engineer for the Highway 54 project stated the project had been planned since 2010 and they were finally ready to start. The bid was won by Constructors Inc. Mr. Briley stated they presented to the Town of Carrizozo last week.

Patrick Palomarez, Tech supervisor for the Highway 54 project stated they were looking to start September 28, 2021. Mr. Palomarez stated the specifics of the project.

Tim Ortega, Constructors Inc. stated they just finished up the work on Ski Run Road. Mr. Ortega stated the job would start in the south and work its way to the north.

Steven Hightower, resident expressed his opposition to the Roper Construction plant. Mr. Hightower stated it was clearly a violation on the deed restrictions and the clean air act. Mr. Hightower asked the commission to consider a zoning ordinance.

Chair Stewart stated there was a meeting the following day at 3:00 PM in the Alto pavilion.

Ellen Hightower, resident stated she moved to that area and was proud to raise children in the area where the batch plant was planned. Ms. Hightower stated the batch plant would destroy the community.

David Edward, Board Member for Enchanted Water expressed his concern with the water rights transfer. Mr. Edwards stated he lives in a subdivision up the hill from the Roper construction plant. Mr. Edward stated one of the wells went dry. Mr. Edward also stated that the water tanks could currently produce up to 72 gallons of water a day and were not set up for the 8,600 gallons proposed.

Chair Stewart recessed public comment and convened the public hearing at 10:00AM

Chair Stewart recessed the public hearing and reconvened public comment at 10:01AM

Mr. Edwards stated he had concerns with the water, roads, and debris of the plant.

Frank Kiser, resident expressed his concern for the plant and questioned the proper channeling of authority.

Darrel Stierwalt, resident also stated his concern with water usage from the plant.

James Miller, resident expressed his concern to the plant.

Tony Davis, resident in Sonterra opposed the plant.

Mr. Davis questioned the Resolution taken by this commission regarding critical race theory. Mr. Davis questioned the commission if they researched the resolution and/or reached out to the Public Education Division.

Cynthia Black, resident spoke in support of the critical race theory resolution that the commission adopted.

Carrie Chavez, spoke as a parent of (4) kids in school about certain books that are addressing the critical race theory.

Chair Stewart adjourned public comment and reconvened the public hearing at 10:24 AM

12. 10:00 AM PUBLIC HEARING:

a. Consideration of Adoption of the Final Budget, Fiscal Year 2021-2022 by Resolution 2021-05

Chair Stewart stated the beginning cash rose from an estimated \$7 million in our preliminary budget to \$8,978,077 as we enter final budget. Chair Stewart stated the rise was due to not spending about 1.2 million the county had budgeted last year and transfers of general funds from lines like the LCMC lease line, Homeland Security, and CDBG, back to the general fund after reimbursements and the Wind Turbine and increase in Federal PILTs. Chair Stewart stated with that beginning cash and some additional revenue from the Wind Turbine PILT added to increase our revenues next year, our ending cash, before we approve what we will add to the budget today, has increased to 7,603,957 over required reserves. Chair Stewart explained the county now will have the necessary resources to pay for one-time non-recurring expenses.

Chair Stewart stated the DFA's balanced budget sheet (the What if Sheet) after preliminary expenditures and transfers is a healthy + 8.61% or \$721,394 to the good. Chair Stewart stated at the same time with economists not sure about future inflation, I think it would be prudent to expect our current routine operational expenses to increase by at least the current projections of 4%.

Chair Stewart stated in comparison with prior years, with hospital construction finally behind us, he feels good about the County of Lincoln's future. Chair Stewart stated we need to continue to be conservative in our revenues and realistic in our expenses because that formula will build our reserves over time. Chair Stewart stated the county will need to focus on the recurring expenses and the long-term effects on the budget.

Chair Stewart stated our manager provided the commission with a brief list of things we did not fund in our preliminary budget. Chair Stewart stated the county will be able to fund the outstanding requests plus the EWP, and the percent of raise for the employee, keeping in mind the salaries are reoccurring.

Chair Stewart asked for public comment receiving none, adjourned the public hearing and reconvened the regular meeting at 10:30AM.

There was a lengthy discussion regarding employee raises.

Motion: Approve \$281,184.63, a 6% raise for employees and the EWP. **Action:** Approve, **Moved by** Commissioner Crunk, **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.

Motion: Approve Resolution 2021-05, **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.

EXHIBIT C: Copy of Resolution 2021-05 is attached hereto in reference thereto made a part hereof.

10. Approval of Bargaining Agreement Between the County of Lincoln and the Lincoln County Deputy Sheriffs Association- Continued

Motion: Approve bargaining agreement, **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.

15. Fairgrounds Property Usage Discussion and Direction Eric Hamilton

Manager Pearson stated the land located south of Magado Creek belongs to the County of Lincoln. Manager Pearson stated the bridge connecting the fairgrounds to the property had been an issue for many years. Manager Pearson stated Road Superintendent Jeff Honeycutt had been discussing possible uses for the land if the bridge was constructed to withstand major flooding.

There was a general discussion regarding possible use of the property.

19. History in Lincoln County: The Cuatros Amigos- Stephen Spencer

Stephen Spencer presented on the Cuatros Amigos the history through his eyes.

21. Lincoln County Detention Center Update – Warden Scott Colvin

Scott Colvin, Warden provided an update on the facility. Warden Colvin stated for the month of June, they booked 111 detainees and released 130.

There was a general discussion regarding the purchase of the body scanner and having it brought back for commissioner approval.

Chair Stewart recessed the regular meeting at 12:00PM and reconvened the regular meeting at 12:30 PM

17. Property Reviews and Direction Due to Possible Ordinance Violations- Linda Phillips Chapman Ordinance Administrator

Manager Pearson stated there were three properties to be reviewed by the Commission.

- Cano Property – Violation of Lincoln County Ordinance 2016-02
 - Unacceptable waste accumulation – Cars / Building Materials / Trash
- Reyes Property - Violation of Lincoln County Ordinance 2016-02
 - Unacceptable waste accumulation – Cars / Trailers / Trash
- Einsel Property - Violation of Lincoln County Ordinance 2016-02
 - Unacceptable waste accumulation – Trees / Slash / Deadfall

Motion: Approve citation of the first two violations, **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.

22. Manager's Report

Manager Pearson provided before and after pictures of Rio Ruidoso log jams, log removal, and flooding in the Carrizozo Lincoln County Courthouse.

Calle De Papalote Road Damage

- Papalote Road is not County Maintained
- Sheriff Wood and I visited the residents to perform welfare checks

McDaniel Bridge destroyed

7/6/2021 - Massive amounts of rain fell in Upper Canyon

- McDaniel bridge was washed away in a very short amount of time
- Ruidoso personnel responded immediately
- County of Lincoln responded to help as needed
- Road / OES / Sheriff Departments helped direct traffic and respond to the stranded residents

Bridge repaired in 3 days

- VOR hired MP Chavez to help with the bridge reconstruction
- 25-30 residents were stuck on the north side of the creek
- Sheriff Wood and I used an old logging road to gain access to the north side homes
- Everyone worked together to bring food and supplies to stranded residents
- 60 truck loads of debris was removed from the area
- MP Chavez had the bridge repaired by 7/9/2021

- Cars were able to cross by 3:30pm on Friday

Magado Creek Bridge

- Road Department Crew answered the call during the 4th of July weekend
- A large rainstorm washed out most of the bridge material
- Within four hours, the crew had the bridge passable for the rodeo contestants and spectators

Hondo Meeting for Federal Resources

- NMDHSEM
- USDA-NRCS-EWP
- USDA-FARM SERVICES-ECP

Public Community Meeting scheduled for July 21, at 3PM in the ALGCC Pavilion

- What's Happening? A Community Meeting.
- Wednesday, July 21, 2021 3:00 PM
- Topic of discussion:
- The proposed construction of a concrete batch plant in Alto. Is this good for our community? If not, what can we do about it.
- Learn about the status of this proposed project
- A "Public Hearing" being scheduled by the NM Environmental Dept.
- The expected impact on: Air Quality / Water Usage / Traffic Flow / Roadway Damage
- The State and National Scenic Byway / The White Mountain Wilderness Area
- Noise & Light Pollution (proposed plant is seeking to operate 52 weeks per year, as much as 7 days per week and as much as 18 hours per day from 3 a.m. to 9 p.m.)

18. Healing America's Heroes Presentation

No action taken, will be placed on next meeting agenda.

20. Lincoln County Medical Center Update – Todd Oberheu

Manager Pearson stated Todd Oberheu, Hospital Chief executive was unable to attend.

22. Manager's Report- continued

HR Department:

Currently four positions open with the County of Lincoln:

- *Operator II-Road Department
- *Dispatcher-Sheriff's Office
- *Sheriff's Deputy- Sheriff's Office
- *Zia Senior Citizen's Site Manager/MAPIS Coordinator-Carrizozo

Lincoln County Solid Waste Update:

Manager Pearson stated as of June 30, 2021, the department has generated \$1,046,559.85 in revenue.

There was discussion regarding the Chisum Fire Station.

Manager Pearson stated a change order review with the possibility of placing item on special meeting.

23. Lincoln County Fair Board Presentation

Manager Pearson stated JulieAnne Leonard was unable to attend.

24. Approval to Transfer Baseball Field to the Town of Carrizozo by Quitclaim Deed

Motion: Approve the quitclaim deed, **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. Solid Waste Customer Request of Waiver of \$5 Penalty Fee

Manager Pearson stated solid waste customer Jan Esslinger, called the Solid Waste Department on July 6, 2021, upset to find a \$5 late fee had been applied to her account for late payment of last quarter's solid waste bill. Manager Pearson stated the customer stated she spoke with someone from the County who informed her of a "grace period" of five days, which is not the policy. Manager Pearson stated all customers who receive a Solid Waste bill have a month to pay the bill, either online, by check or money order.

Motion: Direct the county manager to deny waiver request for the solid waste late fee, **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.

26. Approval to Participate in the Local Government Road Fund Programs by the Following Resolutions and Agreements

- a. Resolution 2021-07 County Cooperative Program (COOP) and Cooperative Agreement L200521
- b. Resolution 2021-08 County Arterial Program (CAP) and Arterial Agreement L200535
- c. Resolution 2021-09 County School Bus Route Program (SBR) and School Bus Route Agreement L200543

Motion: Adopt Resolution 2021-07, Resolution 2021-08, and Resolution 2021-09, **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.

EXHIBIT D: Copy of Resolution 2021-07, Resolution 2021-08, and Resolution 2021-09 are attached hereto in reference thereto made a part hereof.

27. Lodgers' Tax Request:

- a. Chile the Kid Beer and Wine Festival
Requester: Ruidoso Downs Racetrack
Request Amount: \$2,500.00
Date(s) of Event(s): August 6-8, 2021
Presenter: Matt Ingram

Motion: Approve request, **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.

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

Motion: Schedule a Public Hearing to consider Cannabis Ordinance, **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.

29. **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)**

Motion: Close the meeting for the purposes of an executive session Pursuant to the Open Meetings Act: Discussion of Limited Personnel Matters Related to the 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).

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. 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 Disposition Order of Transfer transferring the case to the Court of Appeals for consideration and review. The case is still pending.
On January 28, 2021, a Disposition Order was entered transferring the case to the NM Court of Appeals for consideration and review. The case is still pending.
3. ***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. On May 7, 2021 Defendants filed their Motion to Dismiss in Lieu of an Answer. The case is still pending. A Hearing on Defendants' Motion to Dismiss is scheduled to take place on August 26, 2021 @ 2:00 p.m.
4. **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.
5. **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.
6. **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. Mediation took place on April 28, 2021 before retired Judge William Bustamante at which time, settlement did not occur. The case is still pending.
7. **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.
8. **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 March 30, 2021, the case was remanded back to the 12th Judicial District Court for further proceedings. The case is still pending.

9. **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.

10. **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.

11. ***State of New Mexico v. Ohlin Skeen, Cause No. D-1226-CR-2020-00038**

Criminal Complaint alleging aggravated battery, false imprisonment, interference with communications, etc. Lincoln County has filed a Motion for Reconsideration of the Court's Order to House the Defendant at Otero County Detention Center. The case is still pending.

12. ***Lincoln County, ex rel, Greentree Solid Waste Authority and May Mansfield vs. Sierra Contracting, Inc, et al, Cause No. D-1226-CV-2020-00081**

Complaint Under Fraud Against Taxpayers Act was filed by Zach Cook and Victor Marshall on March 31, 2020. On September 17, 2020, Plaintiffs filed their Notice that Qui Tam Plaintiffs are proceeding with this action. The case is still pending.

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.

Mow, Jacob – Tort Claim Notice received February 18, 2021 alleging damage to his vehicle due to icy road conditions on Cora Dutton Rd. and the County Road Department's failure to salt to roadway.

***Cervantez, Adam** - Tort Claim Notice received alleging the use of excessive force and related constitutional claims during his arrest on April 22, 2021.

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

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 1:53 PM.

Chair Stewart adjourned the Closed Session and reconvened the Regular Meeting 2:17 PM.

Commissioner Crunk attested those matters discussed in the closed meeting were limited to those specified in the motion for closure or in the notice of separate closed meeting.

30. Signing of Official Documents and Authorization to Utilize Electronic/Stamp Signature

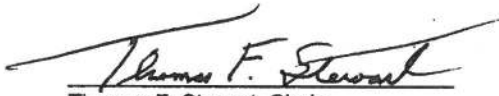
31. Next meetings:

- a. August 17, 2021- Regular Commission Meeting
- b. September 3, 2021-Special Meeting to Impose Property Tax Rates (Subject to Change)
- c. September 21, 2021-Regular Commission Meeting

32. Adjourn

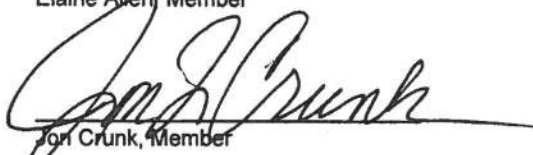
There being no further business to come before the Board of County Commissioners, Chair Stewart adjourned the meeting at 2:19 PM.

County of Lincoln
Board of Commissioners


Thomas F. Stewart, Chair


F Lynn Willard, Vice Chair


Elaine Allen, Member


Jon Crunk, Member


Todd Proctor, Member

ATTEST:


Whitney Whittaker, County Clerk

August 17, 2021
Date Approved

