

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 November 16, 2021

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on November 16, 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, Lincoln 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 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.

19. Employee Recognition for Going Above and Beyond the "Call of Duty"- Deputy Hari Gray and Deputy Levi Wrye

Manager Pearson stated on November 3, 2021, Undersheriff Martinez received an email from the Bingham family. Manager Pearson stated the Bingham family were traveling through Lincoln County when they had a tire blow out on their travel trailer; the email gives great praise to Deputy Levi Wrye in helping the family get back on the road without incident.

Manager Pearson stated he read an online post by John Martin praising the professionalism and compassion of Deputy Hari Gray. Manager Pearson stated during Mr. Martin's morning walk, Hari stopped twice to make sure he was okay. Manager Pearson stated Deputy Gray gave Mr. Martin a ride to ensure his safety.

Manager Pearson express appreciation to the Bingham and Martin families for taking the time to write and share their positive experiences with the Lincoln County Sheriff's Office.

6. Approval of Minutes

- a. October 19, 2021, Regular Commission Meeting

Motion: Approve the minutes of the October 19, 2021, Regular 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. Treasurer's Financial Report for the Month ending October 31, 2021
- c. Approval or Disapproval of Safety Net Care Pool & Indigent Health Care Claims
- d. Approval of Required 2022 Operational Resolutions:
 - i. Resolution 2021-28 - Establishing 2022 Regular Commission Meetings
 - ii. Resolution 2021-29- Establishing 2022 County Official Holiday Calendar
 - iii. Resolution 2021-30- Open Meetings Act
 - iv. Other 2022 Committee Meetings – Lincoln Historic Preservation Board, Lodger's Tax Committee and Land & Natural Resources Committee (LANRAC)
- e. Approval of Resolution 2021-31: Disposition of County Inventory and Capital Assets
- f. Approval of Resolution 2021-33: Vehicle Replacement Policy
- g. Approval of Memorandum of Understanding Between the County of Otero, City of Alamogordo, Village of Ruidoso, City of Ruidoso Downs, 12th Judicial District Attorney and the County of Lincoln Regarding the White Mountain Drug Task Force-Narcotics Enforcement Unit (NEU)

Motion Approve the consent agenda with changes to the regular June meeting and items 2 and 3, **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.

SEE EXHIBIT A: Copies of the Consent items are attached hereto in reference thereto made a part hereof.

8. Forest, Land & Natural Resources Matters:

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

Melanie Gutierrez, NMSU Lincoln County Ag/4-H Agent reported the Eastern Fair in October was a success. Ms. Gutierrez stated there were 13 kids that attended and 7 of those made the sale. Ms. Gutierrez stated the 3 of those kids also won state showmanship. Ms. Gutierrez stated on Sunday they had their officer election on County Council. Ms. Gutierrez stated they will attend 2021 NMSU Outreach Conference November 18, 2021. Ms. Gutierrez informed they will have a tin art workshop for the kids and one of the clubs will be participating in the Ruidoso Village parade of lights December 4, 2021. Ms. Gutierrez stated their big event is coming up is their horse judging contest in Denver for Nationals.

Melody Gains, Lincoln County Family & Consumer Science 4-H Agent reported they hosted the district federated art show and help assist with the meal preparation for the 101 years for the Woman's Club membership. Ms. Gains shared the "Gearing up for the Holidays" recipe and decorating pamphlet.

- c. State Forestry – EMNRD
- d. South Central Mountain RC & D

Robert Barber, member provided an update on activities held by the South-Central Mountain RC and D. Mr. Barber stated they are getting back to opening for public services. Mr. Barber stated one of the bigger projects going on is the air curtain burn box; Mr. Barber stated on the 29th will attend meeting to certify people to use operated the burn box.

e. Upper Hondo Soil & Water Conservation District

Robert Barber member reported actives are on schedule with eh EWP program, and they are just waiting for the funding to arrive.

f. Land and Natural Resources Advisory Committee-LANRAC

Robert Barber, Chair provided the Meeting minutes of October 12, 2021. Mr. Barber stated he provided comments to the prescribed burn manager certification program.

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 informed she attended the Veterans Day assembly. Commissioner Allen stated all the choirs had an opportunity to sing, a slide show was presented and there was a good turn out from former and past veterans in the community. Commissioner Allen stated that maybe the commission should consider writing a letter to congress regarding the Joshua Collins Coalition Against Bigger Trucks.

Commissioner Willard stated he will attend the SERPTO meeting in Roswell.

Commissioner Proctor stated he attend the LANRAC and the upper Hondo meetings. Commissioner Proctor thanked Robert Barber for his comments presented.

Whitney Whittaker, Lincoln County Clerk stated she will bring back redistricting maps next regular meeting in December

Beverly Calaway, Lincoln County Treasurer introduced new employee, Treasurer's Seasonal Clerk, Russell Wehnau. Treasurer Calaway stated the Mr. Wehnau will help with research, return mail on property tax bills. Treasurer Calaway stated Mr. Wehnau is doing a tremendous job.

Treasurer Calaway discussed the Financial Report, stating total cash held as of October 13, 2021, by the Treasurer was \$29,200,750.43. Treasurer Calaway stated this is in comparison to \$22,670,729.49 in October 2020. Treasurer Calaway informed they have collected \$12.5 million and as of October 31, 2021, the Treasurer's office had collected 15.78% of the taxes billed.

Michael Wood, Sheriff provided a status update from the office stating their office handled 330 calls, 23 physical arrests, assisted in 19 vehicle related crashes, and served 15 traffic citations for the month of October.

Robert Barber, citizen and member or Red Cross stated he will be leaving the Red Cross within the next couple weeks. Mr. Barber stated because he wishes to continue to serve Lincoln County during a disaster by a certified response team. Mr. Barber stated it would be beneficial to have a CERT team within the county. Mr. Barber stated although he thought the Red Cross was a vital asset is an assist but believe the CERT team could tackle the event/task quicker for our county.

David Vanderburg, resident gave respect for elected officials, Mr. Vanderburg stated he wished to speak about agenda item 23. Mr. Vanderburg stated he was a military veteran, and he took an oath to defend the constitution. Mr. Vanderburg stated he was extremely concerned about a mask mandate. Mr. Vanderburg stated these forced mandates are unconstitutional. Mr. Vanderburg stated in section 3 in the commissioner handbook to addresses things that need to be brought to a point. Mr. Vanderburg stated nothing makes public confidence in Government more than unethical, dishonest leadership." Mr. Vanderburg spoke to public trust.

Galen Farrington, resident stated was privilege to witness our police force being honored.

Mr. Farrington stated he would like to comment on Item 25. Mr. Farrington stated Roper never revealed his intentioned use for the proposed cement batch. Mr. Farrington commented on Chair Stewart's motion for cement batch and hopes it will be considered a public nuisance.

Karyl Williams resident from Capitan, weighed in on agenda item 23. Ms. Williams stated there have been and are many laws passed and policies implemented by once-trusted members at all levels of our government that exceed Constitutional authorities and violate and erode protections enumerated in our Constitutions. Ms. Williams stated a few would include concentration camps for Japanese Americans, murder, and theft of resources from native Americans, forced abortions, lobotomies, and medical testing on minorities, children, and others incapable of defending themselves. Ms. Williams stated America and New Mexico are following an all too familiar track that the Nazis did to divide its citizens and eliminate the undesirables. Ms. Williams stated Governments routinely side-step their primary purpose of protecting citizen rights and liberties. Ms. Williams stated to ensure compliance in the latest attack on its citizens, our governments have created unfounded fear of a fully treatable pathogen and relentlessly bombard us with irrational and illogical rules and mandates that not only do not mitigate transmission or relieve disease severity, but generally cause harm beyond what the illness would do. Ms. Williams stated mandating the injection of an approved for emergency experimental compound, that has rapidly mounted adverse side effects, as a condition of employment or to access necessary resources is an absolute violation of the Supreme Law of our Land and is an unlawful government overreach. Ms. Williams also stated forced health care or medical mandate, created by elected government and imposed on the People without defined and specified Constitutional authority, are always immoral, illegal, and are enforceable.

9. Approval of Prior Year FY 20/21 Invoices from Rachel's Communications LLC in the Amounts of \$485.25 and \$485.25 for the County Monthly Telephone Maintenance Agreement

Manager Pearson stated in looking at the history of the vendor, the County does not have a current contract and stated he will explore different options for the future.

Motion: Approve of Prior Year FY 20/21 Invoices from Rachel's Communications LLC in the Amounts of \$485.25 and \$485.25 for the County Monthly Telephone Maintenance Agreement, **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.

10. Approval of FY 20/21 Budget Adjustment by Resolution 2021-27

Motion: Adopt Resolution 2021-27, **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.

SEE EXHIBIT B: Copy of Resolution 2020-27 is attached hereto in reference thereto made a part hereof.

Chair Stewart recessed the regular meeting and convened the public hearing at 10:03 AM.

12. PUBLIC HEARING 10:00 AM:

- a. Authorizing The Issuance And Sale Of Lincoln County, New Mexico Taxable Industrial Revenue Bonds (Pattern SC Holdings LLC Project), Series 2021, In One Or More Series, In An Aggregate Principal Amount Not To Exceed \$3,600,000,000 (The " Bonds"); To Provide Funds To Finance The Acquisition, Construction, Equipping And Installation Of Wind Energy Facilities To Be Constructed In One Or More Phases For The Purpose Of Generating Electricity And Located Within The County But Outside The Boundaries Of Any Incorporated Municipality; Authorizing The Execution And Delivery Of An Indenture, A Lease Agreement, A Bond Purchase Agreement, A Sublease Agreement, The Bonds, And Other Documents In Connection With The Issuance Of Each Series Of Bonds; Making Certain Determinations And Findings Relating To The Bonds Of Each Series; Ratifying

Certain Actions Taken Previously; And Repealing All Actions Inconsistent With This Ordinance.

Attorney Morel stated he spoke with bond counsel Eduardo A. Duffy, and he informed the Ordinance is not ready for consideration and will need to be continued to another date. Attorney Morel spoke to the required publications with regards to a continuation.

Chair Stewart asked for public comment.

Robert Barber, resident stated the County questioned if any consideration be made available for public consumption.

Attorney Morel informed not one megawatt is for state use but rather being transferred out of state.

Mr. Barber spoke to some feedback benefits for the County since energy is a big deal now.

Motion: Continue hearing at next regular meeting in December meeting at 10:00 AM, **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.

Recessed the regular meeting at 10:09 and convene the public hearing at 10:10

- b. Clovis Sign Service Inc. - Request For Variance From Ordinance No. 2006-6 Lincoln County Outdoor Advertising Regulation Ordinance: An Ordinance Establishing Restrictions And Prohibitions To Promote Safety Of Travelers Along Certain Highways, To Prevent Visual Pollution Of Those Highways Through Regulation Of Outdoor Advertising, To Protect The Investment In Public Highways And Private Property Values; Defining Areas To Be Regulated; Making Restrictions On Signs And Billboards; Requiring A Permit Prior To Construction Or Alteration; Providing For Exceptions; Prohibiting Abandoned And Dangerous Signs; Providing For Removal Of Non-Compliant Billboards, And Establishing Penalties For Violations; Providing For Ordinances In Conflict Herewith And For The Severability Of Parts Hereof; Providing An Effective Date; And Repealing Ordinance 2004-10.

James Brannon New proposed a 60-foot-tall sign. Mr. New stated the sign is the same as in Vaughn and Carrizozo.

Attorney morel explained county billboard ordinance

Chair Stewart Request Public comment and received none.

Chair Stewart adjourned public hearing and reconvened regular meeting at 10:23AM.

Commissioner Allen question pole length if the pole could be shortened.

Mr. New stated a 50-foot pole would be acceptable.

Motion: Approve 50-foot in replacement of a billboard sign, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

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

Yes: Commissioner Allen, Commissioner Willard.

No: Chair Stewart, Commissioner Crunk, Commissioner Proctor.

There was a general discussion regarding ordinance and need for variance.

Motion: Grant authority to County Manager to act on Commission if sign is within the Ordinance guidelines, **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.

Chair Stewart recessed the Regular meeting at 10:30AM and reconvened at 10:38AM.

13. Lincoln County Detention Center Update – Warden Scott Colvin

Scott Colvin, Warden stated the Department of Behavioral Health is inspecting the facility. Warden Colvin stated this is necessary for being awarded the funds from the Rise Grant. Warden Colvin stated the Master control is online and linked up to current system. Warden Colvin stated the full body scanner went operational last night and expressed gratitude towards receiving vital equipment

There was a general discussion regarding the record retention.

14. Lincoln County Medical Center Update – Todd Oberheu

Todd Oberheu, Hospital Chief Executive provided an update on Lincoln County Medical daily operations.

21. Discussion and Direction of Potential Use of American Rescue Plan Act (ARPA) Funds for the Lincoln Mutual Domestic Water Consumers Association

Manager Pearson stated under the American Rescue Plan Act, New Mexico would receive \$2.5 billion dollars for relief and recovery. Manager Pearson stated through ARPA, we have an opportunity to invest in our communities.

There was direction for County Manager to work with Lincoln Mutual Domestic Water Consumers Association along with the County attorney to come up with a letter of support or equal value.

22. Integrated Resource Plan Presentation - Zia Natural Gas Company

Leslie Graham, General Manager of Zia Natural Gas Company provided a presentation on the Integrated Resource Plan.

16. Approval of Resolution 2021-32 Authorizing Zia Senior Centers Program Director and County Manager to Submit a Proposal for RFP 2002-01 (Provision of Service for Older New Mexicans) and to Sign and Enter into a Four-Year Contract (2022-2026)

Renee Montes, Senior Center Project Director stated the purpose of the request is to solicit sealed proposals for the provision of services for Older New Mexicans. Ms. Montes stated Non- Metro AAA will make funding available from the Federal Title III Older American Act of 1965 and the State of New Mexico House Bill 2 appropriations through annual subrecipient agreement in 32 counties. Ms. Montes asked the Commission for a letter to go along with the proposal.

Motion: Adopt Resolution 2021-32 and approve letter, **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.

SEE EXHIBIT C: Copy of Resolution 2021-32 is attached hereto in reference thereto made a part hereof.

15. Manager's Report

1) Warden Colvin and I are looking into the legal requirements for record retention. Half of the storage building is filled with boxes of files. Digitization might be an option. I will update the Commissioners as we learn options.

2) LCDC Body Scanner

The body scanner for the Detention Center has been installed and is operational.

3) American Rescue Plan Act (ARPA) Update

Many counties are still holding off on spending ARPA money until the Treasury's Final ruling is published. We don't know the time frame for publishing, causing frustration in trying to plan projects. Wilson & Company is still working on the design for the Magado Creek Bridge and drainage plan.

4) Meeting with Senator Heinrich's Field Team

Sheriff Wood and I met with Ashley Beyer, field representative for Senator Heinrich. She asked our major concerns and was very up front on where the Senator stood on certain issues.

- We expressed our concerns regarding the ARPA funds and the Treasury's lack of response to our questions.
- I questioned the listing of the Penasco Chipmunk as endangered
 - The impacts on emergency communications
 - The tourist related activities will be impacted
- The fires and flooding in Lincoln County were briefly discussed

5) Ruidoso Chamber of Commerce Meeting

On November 3, 2021, I attended the Ruidoso Chamber meeting. Everyone was glad to see Lincoln County representation. A brief County update was given along with updates from Village of Ruidoso and several local businesses. The Chamber asked that we continue to participate in future meetings.

6) Insurance for LCDC

Alan Morel and I had a conference call with David Stanfield, president of CSG. CSG has procured insurance coverage that will lower the yearly premium as well as lower the deductible. CSG will be working on a plan to return the \$250,000 "retainer" that was required by the previous insurance carrier. Commission will be updated as we learn the timeframe for this process.

7) Lincoln Historical Preservation Board

On October 20, 2021, Commissioner Allen and I attended the regular meeting of the Lincoln Historical Preservation Board. There was a discussion regarding food trucks in Lincoln proper. The Board listened on how the local tavern had been "hiding" the food trucks on the weekends. The Board and residents were able to come to an agreement on the parking of food trucks in the historic district.

HR Update:

As of November 11, 2021, we have the following openings:

- Deputy Clerk Treasurer I
- Dispatcher
- Operator II
- Carrizozo Senior Center District Driver
- Carrizozo Senior Center Cook
- Animal Control Officer/Civil Process Server

We have two employees getting ready to retire so that will open two more positions by the end of the calendar year.

This week I will be attending the Human Resources Affiliate Fall Conference at the Inn of the Mountain Gods.

There has been a lot of discussion regarding the vaccine mandates in the workplace. The HR Affiliate is buzzing with the most recent publications and will discuss this more in depth at the Conference this Wednesday and Thursday.

More topics to be discussed at the Conference are PERA Changes and Updates, ERISA Benefit Changes and Updates, and the New Mexico Retiree Health Care Authority (NMRHCA) Changes, Record Keeping, Rule Change, Retirement and Percentage of Insurance Paid Before the age of 65.

COVID-19 In the Workplace- Great news to report that we have not had a positive case in over a month! Just a reminder to all employees to continue wearing your masks, sanitize your workspace, wash your hands and if you feel ill, please stay home. With the colder weather here, common colds, the flu, streptococcal pharyngitis (strep throat) and COVID-19 tend to thrive in this weather, as well as many others. PLEASE take care of yourselves so that it's easier to take care of each other.

Solid Waste Update:

A month and a half into the fourth quarter receipting and the solid waste department has receipted \$206,623.85. This time last year, the department had receipted \$202,717.57 so we are seeing a slight increase.

For the fiscal year beginning July 1, 2021, the department has receipted a total of \$445,567.28.

Last year this time, they receipted \$444,263.29.

In the September regular meeting, the Commission approved for the Lincoln County Solid Waste Department to eliminate billing for private dumpster service. We have not had a definite answer from our current provider as to whether they will continue that service and begin billing. Greentree Solid Waste does provide that service for County residents who wish to continue with their service. As of January 1, 2022, Lincoln County Solid Waste will pick up these receptacles and discontinue billing.

Chair Stewart recessed the regular meeting at 12:02 reconvened at 12:30

- 17. Consideration of Appointments to Boards/ Commissioner's Committees:**
-Lodger's Tax Committee- Member who is a resident of the unincorporated area of the County who represents the general public

Motion: Approve appointment to the Lodger Tax Committee to Coda Omness, **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.

- 18. Annual Renewal Approval of the Agreement for Professional Services Between the County of Lincoln and Kenneth R Vega for Misdemeanor Probation Compliance**

Manager Pearson stated in last month's regular meeting consent agenda, a request for annual renewal was denied due to the contract showing a term date of September 30, 2016. Manager Pearson stated the date was reflected incorrectly as Mr. Vega was awarded the contract for the Misdemeanor Compliance Program (RFP 19-20-001) on October 15, 2019, with a contract term date of October 14, 2023.

Motion: Approve annual renewal to Kenneth R Vega, **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.

- 20. Installation of Telecommunications Tower at 111 Copper Ridge Road, Capitan, NM - Discussion and Direction**

Manager Pearson stated he invited Sean Milks, Gravity Pad Towers, LLC to discuss the possibility of installing a telecommunications tower near our OES office. Several cellular carriers would co-locate on the tower, providing greater phone coverage along the Highway 48 route.

Attorney Morel informed once built it will have to be approved by Department of Finance Authority.

There was instruction given to proceed with negotiation through the County Manager.

- 23. Discussion and Possible Direction Regarding the Occupational Safety and Health Administration's (OSHA) Emergency Temporary Standard (ETS) Requiring Businesses with at Least 100 Employees to Mandate That Their Employees Get Vaccinated Against COVID-19 or Wear a Mask and Test for COVID-19 on a Weekly Basis**

Attorney Morel informed the Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard requiring that employers with 100 or more employees must have all their workers vaccinated against COVID-19 no later than Jan. 4, 2022. Attorney Morel further stated the Fifth Circuit court of appeals issued a preliminary injunction blocking enforcement of the emergency temporary standard while challenges to it are heard in the federal court system.

There was no action taken

- 24. Approval for Award of RFP 21-22-03 Telecommunications Facilities Consultants**

Manager Pearson stated the scoring committee met on Tuesday, November 2, 2021, to tabulate the proposals and rank them accordingly. Manager Pearson stated there were two companies that provided proposals to Lincoln County: Center for Municipal Solutions (CMS) and Triadic Enterprises

Motion: Award the contract for Telecommunications Facilities Consultants to CMS,

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.

25. Review, Discussion and Possible Direction of a County Nuisance Ordinance

No Action taken

26. Jayne's Construction Request for \$21,000 for the Lincoln County Medical Center Construction- Discussion and Possible Action

Manager Pearson stated he was contacted By John Nichols regarding the billing from Jayne's Construction. Manager Pearson stated he said that an accounting error led to an underpayment of \$21,000. Manager Pearson stated he asked Mr. Nichols to provide the documentation and present the information to the Commission. Manager Pearson stated he was further contacted by Matt Andersen from Jaynes Construction; in which he would like to present the invoice information.

No action was taken.

27. 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: To close the meeting for the purposes of an Executive Session to discuss Threatened and/or Pending Litigation, Section 10-15-1, Subparagraph (H)(7); Discussion Of 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. The case is still pending.

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 Dispositional Order of Transfer transferring the case to the Court of Appeals for consideration and review.

On January 28, 2021, a Dispositional Order was entered transferring the case to the NM Court of Appeals for consideration and review. Case No. A-1-CA-39446 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. The case is still pending.

4. **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.

5. ***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. On October 20, 2021 Lincoln County received its GRT distribution recovery amount due from TRD. Dismissal documents are to be filed within the near future.

6. **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.

7. **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. A 5 day Jury Trial is scheduled to begin on September 19, 2022.

8. **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.

9. **Lincoln County, ex rel, Greentree Solid Waste Authority and Mary 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.

10. ***Debra Wilcox v. Board of County Commissioners, Deputy Samuel C. Hanna, Caroline McCoy and Former Sheriff Robert Shepperd, Cause No. D-1215-CV-2021-00574** A Complaint for Damages was filed on the 2nd day of September, 2021 by Steven Sanders alleging personal injury resulting from an improper and grossly negligent investigation and for "malicious abuse of process". County Defendants were served on November 2, 2021. 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.

Kieter, Dave; Jakubcewicz, Mark; Riddle, Jasper; Patton, Van – Claimants each allege damages to personal and real property as a result of the extraordinary flooding experienced throughout Lincoln County.

Myers, Sylvia – Tort Claim Notice received August 30, 2021 alleging that Lincoln County Medical Center's treatment fell below the standard of care.

Siegel, Erik – Tort Claim Notice received August 30, 2021 alleging deprivation of rights involving tort, constitutional rights, and other claims.

White, Lionel Glenn, Jr., and family members and tenants, Ralph Nosker and his family members, Barbara Arthur and her family members, and Barlou, LLC – Tort Claim Notice received September 16, 2021 alleging inundation by water resulting in damages to existing roadways and parking in the Gavilan Canyon Road area which are all located within the municipality of the Village of Ruidoso.

***Smoley, Cinthia** – Ms. Smoley submitted to the Lincoln County Treasurer Department a Statement dated 11/2/2021, for "Arbitration Award/monies due for default".

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

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 Willard.

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 2:28 PM.

Chair Stewart adjourned the Closed Session and reconvened the Regular Meeting 2:51 PM.

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.

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

There was discussion to continue IRB Ordinance.

29. Signing of Official Documents

All five commissioners authorized permission to use electronic stamp.

30. Next meeting:

- a. December 21, 2021, Regular Commission Meeting

31. Adjourn


There being no further business to come before the Board of County Commissioners, Chair Stewart adjourned the meeting at 2:54 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

December 21, 2021
Date Approved

