

COUNTY OF LINCOLN

New Mexico Special Meeting Board of County Commissioners

Thomas F Stewart, Chair
Lynn Willard, Vice Chair

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

Minutes Thursday September 9, 2021

Minutes of the Special Meeting of the Lincoln County Commission held at 8:30 AM on September 9, 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 Special Meeting of the Board of County Commissioners to order at 8:31.

2. Roll Call

Roll Call.

Present: Chair Stewart, Commissioner Allen (via Zoom), Commissioner Willard, Commissioner Crunk (via Zoom), Commissioner Proctor (via Zoom).

Others present included Ira Pearson, County Manager; Alan Morel, County Attorney; and Nicholas Morerod, Deputy 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.

6. Approval of Proclamation to Recognize September 11, 2021, as "Patriot Remembrance Day" in Lincoln County

Chair Stewart spoke to the history of 9/11 and purpose of the proclamation.
Manager Pearson read proclamation.

Motion: Approval of Proclamation to Recognize September 11, 2021, as "Patriot Remembrance Day" in Lincoln County, **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 Order Setting Property Tax Rates - 2021 Property Tax Year

Beverly Calaway, Treasurer stated the Lincoln County Treasurer's Office received a copy of the 2021 Certificate of Property Tax Rates and the original certified letter from the Secretary of Finance and Administration September 8, 2021. Treasurer Calaway stated in accordance with New Mexico State Statute 3.6.50.1 NMAC, Lincoln County is responsible for ensuring the tax rates that are collected and the distribution rates are verified by a representative of each entity that the County Treasurer collects property taxes for. Treasurer Calaway stated the 2021 Lincoln County Certificate of Property Tax Rates has been verified by the County Treasurers Office to be correct and tax distribution yields have been verified by each taxing entity. Treasurer Calaway stated all assessed values were reviewed by the Lincoln County Assessor. Treasurer Calaway stated positive confirmation was received from all taxing entities included in the tax rate certificate. Treasurer Calaway stated the Lincoln County Treasurer is a fiscal agent of property tax collection for the State of New Mexico, the County of Lincoln, 5 municipalities, 5 school districts, 6 special soil and water districts, the New Mexico Livestock Board, Lincoln County Medical Center (LCMC), Rural medical clinics, and Eastern University in Ruidoso. Treasurer Calaway stated each of these districts tax rates is calculated and imposed by the department of finance according to that districts budget for the fiscal year. Treasurer Calaway stated the factors that will affect the tax year are, inflation, re-assessment years, and new construction for the fiscal year. Treasurer Calaway stated the yield control is used to limit the percentage, by which total revenue is generated by a property tax imposition and by which it may grow from year to year. Treasurer Calaway stated please note 2021 was a reappraisal year, according to the Lincoln County Assessor. Treasurer Calaway stated by limiting large increases in taxpayer's liability from the reassessment process, the yield control brings a property closer to true market value. Treasurer Calaway stated taxable values increased 4.75% in 2021, but actual tax rates decreased in all but 3 districts which were non-residential areas.

Commissioner Willard inquired on the Soil and Conservation assessment value.

Treasurer Calaway spoke on the process for the assess the values.

Walter Hill, Assessor spoke on tax rate decreases as well as property value increases regarding the State of New Mexico and County of Lincoln. Assessor Hill stated 4 non- residential did have a districts minor increase in tax rate due to the central assessment being lowered.

Motion: Approval of Order Setting Property Tax Rates - 2021 Property Tax Year, **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.

8. Approval of Request for Time Extensions:

Ira Pearson Lincoln County Manager stated the request of all three-time extension resolutions would be used for the Gavilan Canyon adjustment for the turning lane.

- a. Approval of Resolution 2021-14 Request for Time Extension for Participation in Local Government Road Fund Program Administered by the NM DOT (County Cooperative Program L200485)
- b. Approval of Resolution 2021-15 Request for Time Extension for Participation in Local Government Road Fund Program Administered by the NM DOT (County Arterial Program L200499)
- c. Approval of Resolution 2021-16 Request for Time Extension for Participation in Local Government Road Fund Program Administered by the NM DOT (County School Bus Route Program L200507)

Motion: Time extension request for Resolution 2021-14, Resolution 2021-15 and Resolution 2021-16, **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 including Resolution 2021-14, 2021-15 and 2021-16 are attached hereto in reference thereto made apart hereof.

9. **Pattern Presentation:**

a. Introduction of Pattern Energy

Crystal Coffman provided an update on pattern energy and Western Spirit Construction.

b. Explanation of the IRB Process

Crystal Coffman gave an overview of the IRB Process.

c. Payment In Lieu of Taxes (PILT)

1. Explanation and Discussion
2. Consideration of Approval of Mesa Canyons PILT Payment for year 2021

Motion: Amend the IRB Agreement and Allow the Catchup Payment, **Action:** Approve, **Moved** by Commissioner Allen, **none seconded**.

Motion died due to lack of second.

Motion: Approve the continuation agreement as previously proposed and expect next reoccurring PILT payment, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Crunk.

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

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

No: Commissioner Allen.

d. SunZia and the Future of Wind Energy in Lincoln County

Crystal Coffman provided an update on SunZia and the Future of Wind Energy in Lincoln County.

10. **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 Meeting 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. 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 Courts.

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.

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. The case is still pending.
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. *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. A Foreclosure Sale occurred on August 31, 2021 and Lincoln County is awaiting receipt of the proceeds from the sale pursuant to the court's Judgment.
9. 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.
10. 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.
11. 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.

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.

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

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 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.

Chair Stewart recessed the Regular Meeting and convened the Closed Session 9:57 AM.

Chair Stewart adjourned the Closed Session and reconvened the Regular Meeting 10:16 AM.

Commissioner Willard 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.

11. Approval of Mediation Settlement Agreement, Settlement Amount and Contingent Fee on Behalf of the County of Lincoln, Re: City of Albuquerque, et al vs. John Monoforte & N.M. Taxation & Revenue Department, Cause No. D-202-CV-2018-08036

Alan Morel Attorney stated The Taxation and Revenue Department has reached an agreement to settle a longstanding lawsuit brought by 44 counties and municipalities around New Mexico over Gross Receipts Tax distributions that date back more than a decade. The settlement agreement still must be approved by all the plaintiffs.

Attorney Morel stated under the settlement agreement, the plaintiffs would share in a one-time distribution of fifty million from the state. Attorney Morel stated the plaintiffs had argued the Department, under previous administration, improperly distributed Gross Receipts Taxes prior to July 1, 2015, when the distribution statute was amended. Attorney Morel stated no changes to the current distribution formula would be made under the settlement agreement.

Attorney Morel stated the department distributes more than \$1.9 billion in Gross Receipts Tax and related revenue to local governments annually.

Motion: Allow the Lincoln County Commissioners to Release the Claims and Approval of Mediation Settlement Agreement, Settlement Amount and Contingent Fee on Behalf of the County of Lincoln **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.

12. Signing of Official Documents

Commissioner Proctor, Commissioner Allen, and Commissioner Crunk approved the use of electronic signature.

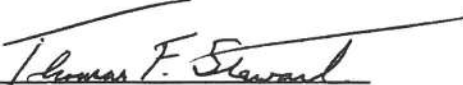
13. Next meeting:

- a. September 21, 2021, Regular Commission Meeting

14. Adjourn

There being no further business to come before the Board of County Commissioners, Chair Stewart adjourned the meeting at 10:20 AM.

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 Whitaker, County Clerk

October 19, 2021
Date Approved

