

# COUNTY OF LINCOLN

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## 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 October 18, 2022

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on October 18, 2022, in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

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

The Invocation was presented by Chair Stewart.

#### 4. Pledge of Allegiance

- a. Pledge – USA Flag
- b. Salute – NM Flag

#### 5. Approval of Agenda

**Motion:** Acceptance of the Agenda and authorized the Chair to move items as necessary,

**Action:** Approve, **Moved by** Commissioner 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 Minutes:

- a. September 20, 2022, Regular Commission Meeting

**Motion:** Approve the minutes of the September 20, 2022, Regular Commission Meeting, **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.

#### 7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Treasurer's Financial Report for the Month ending September 30, 2022

- c. Approval or Disapproval of Safety Net Care Pool & Indigent Health Care Claims
- d. Lincoln County Detention Center Quarterly Restricted Housing Report: July 2022-September 2022
- e. Annual Renewal Approval of the Agreement Between the County of Lincoln and Ventura Plumbing, Heating & Cooling for Plumbing Services- RFP 20-21-004
- f. Annual Renewal Approval of the Contract Between the County of Lincoln and Ventura Plumbing, Heating & Cooling for Heating and Air Conditioning & Preventative Maintenance Services-RFP 20-21-005
- g. Approval of Resolution 2023-21: Participation in Transportation Project Fund Program Administered by New Mexico Department of Transportation-Control No. LP20030
- h. Approval of Resolution 2023-22: Disposition of County Inventory and Capital Assets
- i. Approval of Resolution 2023-23 a Resolution Supporting Operation Green Light for Veterans
- j. Approval of Lincoln Historic Preservation Board Minutes from September 21, 2022

Commissioner Willard questioned items e, and f in the consent agenda, Contract between the County of Lincoln County and Ventura Plumbing. Commissioner Willard questioned the fees associated and if we went out for RFP.

Manager Ira Pearson stated the fees are hourly per the contract and stated the county did go out to RFP and was unsure if this company was the low bid. Manager Pearson stated the award of bid does not necessary mean to lowest of cost.

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

Commissioner Willard read into record the Resolution Operation Green Light for Veterans.

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

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

**Motion:** Convene Board of Finance Meeting, **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 A:** Copies of the Consent Agenda Items is attached hereto in reference thereto made a part hereof including Resolution 2023-21, Resolution 2023-22, and Resolution 2023-23.

Chair Stewart recessed as the Board of County Commissioners and convened as the Board of Finance at 8:40AM

#### **8. Lincoln County Treasurer's Board of Finance – Beverly Calaway, Treasurer**

Beverly Calaway, Lincoln County Treasurer reported on the 2022 Lincoln County Property Tax Billing, the 2022 Delinquent Property Tax Sale, and the Treasurer's Financial Report, ending September 30, 2022. Treasurer Calaway stated on October 17th the Lincoln County Treasurer mailed the 2022 Property Tax bills and met the statutory deadline of November 1st. Treasurer Calaway informed the Treasurer's Office mailed out 29,946 tax bills, an increase 92 bills from 2021.

Treasurer Calaway stated the total 2022 Property Taxes charged to the Treasurer for collection was \$37,453,212.04. Treasurer Calaway stated this was an increase of taxes billed of \$1,866,916.05 from the 2021. Treasurer Calaway stated the increases in assessed values, Municipal Debt and School Debt in several districts, are contributing factors in the increase of property taxes charged.

Treasurer Calaway stated the actual 2022 Property Taxes charged to collect for the County of Lincoln is \$13,889,943.92. Treasurer Calaway stated when preparing the 2022/2023 Budget for

Lincoln County, a projected General Fund Revenue of 93% collection ratio for property taxes, which was approximately \$12,185,887.00

Treasurer Calaway presented pie charts and graphs.

Treasurer Calaway stated on October 4<sup>th</sup> the New Mexico Delinquent Property Tax Division held a Delinquent Property Tax Sale in Lincoln County and stated there were over 60 bidders present at the sale. Treasurer Calaway stated there were originally 56 properties on the sale list; the Treasurer's Office researched and collected delinquent taxes for 26 of the properties before the sale. Treasurer Calaway stated after collections, the State offered 30 properties for auction, with 29 being sold and one property voided from the sale. Treasurer Calaway stated the Total Sales Amount was \$156,100.00 and that all properties sold were Non-Residential parcels of land.

Treasurer Calaway reported the General Fund line had an ending balance of \$8,346,733.72; an increase of \$2,109,539.99 from 2021. Treasurer Calaway stated the Detail of Receipts for the General Fund Account reflected the projected budgeted general fund revenues of \$16,236,813.50 for the fiscal year. Treasurer Calaway stated as of the end of September 30, 2022, the year-to-date revenue collected is \$656,482.59. Treasurer Calaway stated as of September 30<sup>th</sup>, 2022 the total amount of cash held by the Treasurer was \$30,170,338.67. Treasurer Calaway stated as of September 30<sup>th</sup>, 2022, the Lincoln County Treasurer collected 97.55% of the property taxes charged for 2021.

Commissioner Willard questioned the investment policy regarding the interest rates.

Treasurer Calaway stated all county investments, operational bank accounts and money market accounts are collateralized at 102% as per our investment policy.

Chair Stewart questioned the state equalization tax and its affects.

Calaway stated the State of New Mexico temporarily lower its tax rate from 5.125% to 5% and there is talk in the legislature to keep lowering it.

Chair Stewart adjourned as the Board of Finance and convened as the Board of County Commissioners at 8:50AM.

**Motion:** Approval of the Report as Presented by Beverly Calaway, Lincoln County Treasurer,

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

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

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

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

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

Melanie Gutierrez, County Program Director reported the state fair was very successful; with 14 kids competing in market division for sale holds. Ms. Gutierrez reported on the activities from the NMSU Extension Services included treating trees for fungus.

- c. South Central Mountain RC & D

Robert Barber, member stated they continue to work on the McBride fire clean up with the implementation of the wattles. Mr. Barber stated they have worked with State this month and passed their burn test.

- d. Upper Hondo Soil & Water Conservation District

Judy Bock, District Manager presented their quarterly report for July through September 2022. Ms. Bock stated they continue with their education/ outreach efforts to the public on hazards of noxious and invasive species. Ms. Bock stated they continue to supply resident with vinegar and found a cheaper route come next year.

Ms. Bock offered an invitation to the next Upper Hondo annual meeting at Cree Meadows.

e. LANRAC

Robert Barber, Chair of LANRAC, stated there are 9 projects that the Smokey Bear District is undertaking. Mr. Barber explained 4 of the projects are the open gravel pits; 2 at Hale Lake and 2 north of Capitan. Mr. Barber stated they are used to assist in the maintenance of the forest roads.

Mr. Barber stated there are 2 projects from the McBride fire: fuel lit project and timber sales. Mr. Barber stated sparrows Sparrow Nest Box System is another project from the state to provide these birds with a safe and secure habitat and nesting environment.

Mr. Barber stated November 9<sup>th</sup> is the kickoff meeting EIS for public review. Mr. Barber stated the Sun Zia line made changes but was stated LANRAC will continue to monitor.

Mr. Barber stated the BLM project revision of the grazing regulations public comment on chapters 1 and 2 was submitted two weeks ago.

**10. Consideration of Sponsoring the Lincoln County Community Emergency Response Team (CERT) – Robert Barber**

Robert Barber, citizen gave a presentation regarding starting up a Lincoln County Community Emergency Response Team. Mr. Barber stated the objectives were to develop an organization structure that supports first responders and citizens with preparing for, responding to, and recovering from potential natural and manmade disaster and emergencies; identify and source funding to accomplish the assigned mission; establish a group of volunteers to accomplish the assigned mission; identify and source training needs for volunteers and citizens; identify and source resource needs for accomplishing the mission; and partner with government, medical, spiritual and community organizations.

Mr. Barber stated initial focus is search and rescue, fires (structures and wildfires) flooding, address the three phases of a disaster cycle, staff, train, and equip volunteer teams, as well as find finance.

Joe Kenmore, Office of Emergency Services spoke in support of this organization.

**Motion:** sponsor the Lincoln County Community Emergency Response Team, **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.

**14. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS (Items are for discussion only – no action will be taken)**

Commissioner Allen reported she will be continuing to attend the Juvenile Justice Board and Greentree meetings.

Commissioner Allen read a letter from Lincoln resident Jim Spiri expressing his gratitude for the Lincoln County Sheriff and his office.

Commissioner Willard reported he attended the Southeast Transportation meeting.

Whitney Whittaker, County Clerk spoke to the upcoming 2022 General Election. Clerk Whittaker provided stats for absentee by mail and for early vote to that date. Clerk Whittaker stated the turnout was looking great.

Beverly Calaway, Lincoln County Treasurer stated the County received the 2 million received assistance for local government for the national opioid fund.

Michael Wood, Lincoln County Sheriff provided stats for the month on calls and public assistance. Sheriff Wood also expressed his gratitude and the support from the community.



Gary Popplewell, resident, and voter thanked all the elected officials for their service. Mr. Popplewell provided a "fact sheet" to all commissioners about the current election system.

Mark Fischer, rancher, and candidate applauded Mr. Popplewell. Mr. Fischer expressed his concern about account accuracy and requested the commission to adopt a Resolution to ensure the County Clerk only hand tallies the votes of the election.

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

**a. Smokey Bear Ranger District**

Jennifer Thomas, acting District Ranger stated he accepted the offered of District Ranger. Ranger Thomas provided a district report that included working with booking.com.

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

Todd Oberheu, Hospital Chief Executive, provided an update on hospital, stated they are still waiting on the new general surgeon to receive his all his documents from the state. Mr. Oberheu stated they are running behind due to covid but are hopeful to have him in place by December. Mr. Oberheu stated the importance of the Mil Levy that is on the 2022 General Election Ballot. Mr. Oberheu informed they found a solution for parking lot flooding issue. Mr. Oberheu stated they are set to begin on the parking lot by placing a drainage system to eliminate the water. Mr. Oberheu stated no changes to Covid procedures but is hopeful to have new set of orders in place soon.

**11. Lincoln County Detention Center**

**a. Update – Warden Scott Colvin**

Manager Pearson stated Warden Colvin was unable to attend and will provide an update at next commission meeting.

**b. Approval of Virtual Detention Center Inspection**

Manager Pearson stated Grace Phillips General Council from NMC toured the facility as well and provided positive feedback. Manager Pearson stated it might be beneficial for the future of the County to work with NMC regarding internally ran detention centers for the simple fact that they would cover the insurance.

Chair Stewart stated he was blown away by the number of facility improvements.

**c. Discussion and Consideration of IT Infrastructure Upgrade**

There was a general discussion to go out for RFP and will bring back for consideration next month.

**Motion:** Approve the virtual Detention Center Inspection, **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.

**13. Consideration of a Wind Energy Conversion Systems (WECS) Application - Submitted by Pattern Energy and Mesa Canyon Wind LLC**

Jeremy Turner Director, NM Project Development stated this was a continuation effort. Mr. Turner spoke about the megawatts generated from red cloud. Mr. Turner provided a Lincoln County Site Boundary which shows the Corona Wind is comprised of Western Spirit Wind and SunZia Wind; the area they are seeking for approval.

Mr. Turner stated they had already received the WECS permit in project- number is increasing – red cloud 1800 megawatts addition.

Adam Cemea Clark, Senior Environmental and Natural Resources Manager explained the Corona Wind Projects Environmental Protections

Mr. Cemea Clark stated Pattern Energy is a leader in the wind industry in developing and implementing environmentally responsible development and follows the U.S. Fish & Wildlife Service Voluntary Land-Based Wind Energy Guidelines, the Avian Powerline

Mr. Cemea Clark stated they surveyed and will avoid the sensitive cultural resources before any ground disturbance activities

Chair Stewart read into record the application

**Motion:** Approve Pattern Energy and Mesa Canyon Wind's implementation of an application,  
**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.

**15. Approval of Budget Adjustment for FY 22/23 by Resolution 2023-20**

**Motion:** Adopt Resolution 2023-20, **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.

**SEE EXHIBIT B:** Copy of Resolution 2023-20 is attached hereto in reference thereto made apart hereof.

**16. Manager's Report**

**1) Digital Billboard Update**

Lindmark Advertising has the digital billboard (on highway 48, near Chism gas station) up and running. During the regular BOCC meeting on 4/15/2022, the Commissioners approved the digital Billboard with the conditions that any complaints within the first 30 days were to be brought before the BOCC for reconsideration of the approval. No complaints have been received regarding the billboard. The County of Lincoln will have public announcement space available to us at no charge. Fires, evacuation routes Amber alerts and construction notices can be displayed within a few hours.

**2) Supreme Court's Behavioral Health Summit**

SUMMIT ON IMPROVING THE COURT AND COMMUNITY RESPONSE TO THOSE WITH MENTAL ILLNESS IN NEW MEXICO OCTOBER 17-19, 2022, Warden Colvin will be attending this Summit on behalf of the County of Lincoln.

**3) Auditor Update** the County of Lincoln Auditors, Kubiak Melton & Associates, will be onsite from November 7-11 to perform field work for the FY 21/22 financial audit.

**4) Upper Hondo Report**

On October 11, 2022, we received the Lincoln County Cooperative Weed Management Area (LCCWMA) report for July through September. The report was included in the agenda packet. One major takeaway from the report is the number of acres and miles that have been treated for weeds.

**5) Lincoln County Website Update**

Work continues to finalize the website. Kerry Gladden (The Agency) is helping to launch the website in the near future.

**6) ARPA / PILT Update**

On September 30, 2022, the County of Lincoln submitted to receive the Local Assistance and Tribal Consistency Funds available from the US Treasury. These funds were allocated in 2022 for counties that receive federal PILT payments. Email from the Treasury reads as follows:

*The submission review process generally takes approximately four business days. During that time, you may be contacted at this email address if there is an issue regarding your submission that needs correction or clarification. BOCC will be updated when the funds are received.*

#### 7) FEMA Reimbursement

The County of Lincoln has submitted \$38,552.73 into the FEMA portal for reimbursement – 100% reimbursement. Now that we are approved for Categories C through G (permanent work), major projects will be brought before the BOCC.

#### FEMA PORTAL

Chavez PO #914393 \$ 3,958.10  
Roll off Tipping fees \$ 24,168.77  
Road Dept Labor \$ 2,741.86  
Road Dept Equip. \$ 7,684.00  
Total: \$ 38,552.73  
FEMA Port. \$ 38,552.73

#### 8) Director's Reports

##### 17. County of Lincoln Solid Waste:

- a. Solid Waste Presentation – Public Works Director, Francesca Herrera
- b. Consideration of a Second Clerk Position

**Motion:** Approve a lower pay grade from a 24-22 and hire another, **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.

- c. Consideration of Rate Changes

There was a consensus to look into the ordinance and conduct more research.

- d. Approval to File Solid Waste Lien
  - i. Clint Skeen \$895.02

**Motion:** Approve the filing of solid waste lien form Clint Skeen, **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 recessed the regular meeting at 12:10PM and reconvened the regular meeting at 12:45 for a lunch break.

##### 18. Approval of Lincoln County Lodgers Tax Position

Manager Pearson stated with the increase of lodgers in Lincoln County, a Lodger's Tax position is needed to properly administer and track the funds generated. Manager Pearson reported this position would perform a number of duties to include registering vendors, issuing certificates, tracking nightly rentals, identifying nonregistered short-term rentals, verifying tax reported vs taxes owed, budgeting yearly lodger's tax expenditures in compliance with state statute, work with Lodger's Tax funding applicants and the Lodger's Tax Committee to ensure public money is spent properly.

**Motion:** Approve the position of Lincoln County Lodgers tax, **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.

##### 19. County of Lincoln Construction Projects

- a. Project Consultant Update (All Projects) – Eric Hamilton, Wilson & Co. Engineering Manager

b. Consideration of Palo Verde Slopes Final Design Task Order

**Motion:** Approve Task order, **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

c. Approval of Funding Source for Phase 1 of Fairgrounds Drainage Project

**Motion:** Approve Fairgrounds drainage project, **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.

20. Consideration of Purchasing Police Canine Accessories from the City of Ruidoso Downs

There was a general discussion regarding the funding from the previous commission meeting and what was purchased and the use of American Rescue Plan Act (ARPA) funds to purchase the canine accessories from the City of Ruidoso Downs.

**Motion:** Approve \$500 using ARPA funds, **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.

21. Approval of Sheriff's Office Lieutenant's Job Description

Manager Pearson stated this position is under the supervision of the Sheriff or designee, performs a variety of supervisory and administrative duties in accordance with the mission, goals and objectives of the Lincoln County Sheriff's Office and in compliance with governing state, municipal and county laws and ordinances.

**Motion:** Approve the upgraded job description for Sheriff Lieutenant, **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.

22. Consideration of Funding for the Lincoln County Juvenile Justice Board in the Amount of \$10,500.00 for Alternatives to Sentencing for Juvenile Offenders or Youth At-Risk Within the Boundaries of Lincoln County

There was a lengthy discussion regarding the original budget meeting and the fact there was no representation there for the request.

There was consensus to move forward to support the request as presented.

**Motion:** Approve amount \$10, 500 for the Juvenile Justice Board, **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.

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

- a. An Ordinance Providing for an Efficient and Fair Method of Enforcing the Ordinances of Lincoln County; Establishing the Position of Ordinance Enforcement Officer Under the Supervision of the Sheriff's Department; Authorizing the Ordinance Enforcement Officer to Enforce the Provisions of Lincoln County Ordinances; Designating Authority and Procedures for Ordinance Enforcement Officers; Providing for the Severability of Parts Hereof; Repealing Ordinances in Conflict Herewith; and Providing an Effective Date

**Motion:** Schedule the public hearing, **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.

24. **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); and Discussion of the Purchase Acquisition or Disposal of Real Property or Water Rights by the Public Body, Section 10-15-1, Subparagraph (H)(8); and Limited Personnel Matters, Including, But Not Limited to, County Public Works Director, Francesca Herrera, Contract Renewal/Negotiations, Section 10-15-1, Subparagraph**

**Motion:** To Close the Meeting For The Purpose Of County Executive Session Pursuant To The Open Meetings Act: Discussion Of All Threatened And/Or Pending Litigation, Section 10-15-1, Subparagraph (H)(7); And Discussion Of The Purchase Acquisition Or Disposal Of Real Property Or Water Rights By The Public Body, Section 10-15-1, Subparagraph (H)(8) and Limited Personnel Matters; Evaluation of Lincoln County Public Works Director, Francesca Herrera, Section 10-15-1, Subparagraph (H)(2)

**New or Updated Matters since last report \***

1. **Board of County Commissioners of Lincoln County v. Roger Romero D-1226-CV-2018-00055** Complaint for Foreclosure. Complaint was filed February 20, 2018. Defendant Roger Romero filed an Answer to the Complaint asserting a Counterclaim to be filed in the U.S. District Court on April 2, 2018. A Judicial Inquiry Hearing took place September 4, 2018. 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. **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.
6. **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 12<sup>th</sup> Judicial District Court for further proceedings. The 5 day Jury Trial scheduled to begin on September 19, 2022 was re-scheduled to begin on May 15, 2023.
7. **\*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. On January 6, 2022 Judge Sugg entered an Order of Dismissal for Lack of Prosecution. On January 12, 2022, Plaintiffs filed their Motion to Reinstate. On September 27, 2022, Judge

Sugg entered a Notice of Intent to Dismiss giving the Plaintiffs 30 days to take significant action in the matter or the case will be dismissed.

8. **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** Complaint for Damages was filed on the 2<sup>nd</sup> 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.

9. **\*New Mexico Bank & Trust v. Roger Gomez, et al, Cause No. D-1226-CV-2022-00001** Complaint for Foreclosure of Mortgage was filed on January 4, 2022. A Decree of Foreclosure was entered by Judge Sugg. The Special Master's Foreclosure Sale took place on October 3, 2022 at 9:00 a.m. The case is still pending while awaiting a final Order from the court.

10. **Eby Revocable Trust AND William R. Moser v. Lincoln County Assessor, et al, Cause No. D-1226-CV-2021-0260** A Notice of Appeal of Decision of Tax Protest Board was filed on the 14<sup>th</sup> day of December, 2021 by Attorney Zach Cook. On January 27, 2022, New Mexico Counties assigned Attorney Daniel Macke to represent Lincoln County. The case is still pending.

11. **Allen Theaters Properties, LLC v. Walter Hill, County Assessor, Lincoln County, Cause No. D-1226-CV-2021-0264** A Complaint for Property Tax Refund was filed on the 27<sup>th</sup> day of December, 2021 by Attorney Gary Eisenberg. On January 26, 2022, New Mexico Counties assigned Attorney Daniel Macke to represent Lincoln County. The case is still pending.

12. **Crystal Buster v. Board of County Commissioners for Lincoln County, Correctional Solutions Group, LLC, et al, Cause No. 2:21-cv-01208** A Complaint for Recovery of Damages Caused by the Deprivation of Civil Rights with a Jury Demand was filed on the 12<sup>th</sup> day of December, 2021, by Coyte Law P.C., and the Law Offices of Matthew Vance, P.C. The case is still pending.

13. **Lionel Burns v. Lincoln County Sheriff's Department; Deputy Daniel Brawley; in their individual and official capacities, and Rhonda Burns, Cause No. D-1226-CV-2022-00032** A Complaint for Damages was filed on the 4<sup>th</sup> day of March, 2022, by Clayton E. Crowley, Esq. and Joseph J. Gribble, Esq.

On April 22, 2022 the case was removed to the U.S. District Court for the District of New Mexico, Cause No. 1:22-cv-000304. The case is still pending.

14. **Potential Recovery of County of Lincoln Losses from the McBride / Nogal Fires**

15. **\*Butch's Properties, LLC v. Vera Cruz Ranches, et al, Cause No. D-1226-CV-2022-00166** A Complaint to Quiet Title was filed on the 18<sup>th</sup> day of August, 2022 by Attorney William Griffin. Lincoln County was served on the 26<sup>th</sup> day of August, 2022, and filed its Answer to the Complaint on the 26<sup>th</sup> day of September, 2022. The case is still pending.

16. **\*Pioneer Bank v. Andrew Smith, et al, Cause No. D-1226-CV-2022-00089** An Amended Complaint for Foreclosure and Collection of note was filed on the 24<sup>th</sup> day of August, 2022 by Attorney Andrew Ragsdale. Lincoln County was served on the 24<sup>th</sup> day of August, 2022, and filed its Answer to the Complaint the 28<sup>th</sup> day of September, 2022. The case is still pending.

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

##### **2022**

**Schwartz, Neil** – Tort Claim Notice received on February 10, 2022 alleging malicious and/or tortious actions and/or omissions by the State of New Mexico, the Lincoln County Sheriff's Department, the New Mexico State Police, and the Twelfth Judicial District Attorney's Office resulting in damages to Claimant including, but not limited to, infliction of mental pain and suffering, injuries to Claimant's reputation, and current and future loss of earnings.

**Downs, Barbara** – Tort Claim Notice received May 6, 2022 alleging improper road and/or waterline maintenance resulting in a vehicle collision due to the icy road at the intersection of Sudderth Drive and Paradise Canyon in Ruidoso, New Mexico. A 2<sup>nd</sup> Tort Claim Notice was received on May 9, 2022 for a separate source with the same allegations as those set out in the May 6, 2022 notice.

**McMinn, David** – Tort Claim Notice received on July 6, 2022, alleging multiple, serious issues due to the use of excessive force by BIA law enforcement who may have been agents of or acting on behalf of the Village of Ruidoso, Ruidoso Police Department, Lincoln County, N.M. State Police and the State of New Mexico.

**New Mexico Boys and Girls Ranches, Inc. and its Employee, Bridgman, Ted** – Tort Claim Notice received on August 9, 2022, alleging violation of civil rights and tort claims act, including a demand to cease and desist and the return of promotional materials confiscated by County representatives at the Lincoln County Fair.

**\*Villanueva, Leticia** – Tort Claim Notice received on October 3, 2022, alleging negligent, malicious and/or tortious actions and/or omissions, and infliction of pain and suffering.

**\*Estates of Wesley Clark and Linda Clark** – Tort Claim Notice received on October 11, 2022 alleging wrongful deaths as a result of the McBride Fire due in part to faulty siren warning systems.



**\*Unnamed inmate being transported from Eddy County to Lincoln County Detention Center alleging injuries as a result of an automobile accident / rollover of the Detention Center Transport Van owned by Lincoln County.**

## **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".

**Vonderane, Glenn** – Tort Claim Notice received October 19, 2021 alleging personal injury while using a staircase at the Village of Ruidoso public parking lot located at 151 Center Street.

**Brady, Rosarita** – Tort Claim Notice received December 6, 2021 alleging an improper investigation of a shooting death by the Lincoln County Sheriff's Office.

## **2020**

**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.

**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 at 1:51 PM.

Chair Stewart adjourned the Closed Session and reconvened the Regular Meeting at 2:50 PM.

Commissioner Crunk 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.

## **25. Public Works Director, Francesca Herrera, Contract Review/ Negotiations**

Chair Stewart stated after a comprehensive review of the board it was decided to keep current salary and reevaluate again at 6 months for the Public Works Director with an evaluation of \$70,000.



**Motion:** Approve to keep current salary and after 6 months to reevaluate, **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.

**26. Signing of Official Documents**

All commissioners granted permission to use their electronic signature/stamp.

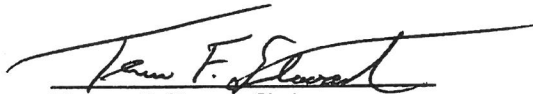
**27. Next meeting:**

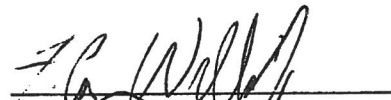
November 15, 2022 – Regular Commission Meeting

**28. Adjourn**


There being no further business to come before the Board of County Commissioners, Chair  
Stewart adjourned the meeting at 2:56 PM.

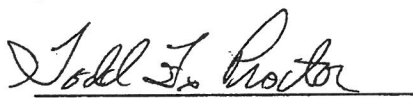
County of Lincoln  
Board of Commissioners

  
Thomas F. Stewart, Chair

  
F Lynne Willard, Vice Chair

  
Elaine Allen, Member

  
Jon Crunk, Member

  
Todd Proctor, Member

ATTEST:

  
Whitney Whittaker, County Clerk

November 15, 2022  
Date Approved

