

Regular Meeting

April 11, 2019

The Board of County Commissioners, in and for the County of Otero, State of New Mexico met in a Regular Meeting at the Administrative Building in Alamogordo, County and State aforesaid. The meeting was called to order by the Chairman at 9:00 a.m., April 11, 2019; and he announced that reasonable notice for this meeting was given to the Alamogordo Daily News and Radio Stations, KYEE, KZZX and KINN.

Present:

- Couy Griffin Chairman
- Gerald Matherly Vice-Chairman
- Lori Bies Member
- Pamela Heltner County Manager
- Michael Eshleman County Attorney
- Sylvia Tillbrook Executive Assistant
- Tim Mills Financial Director
- Lynn Estrada Deputy Clerk

Roll call was taken as follows:

- Commissioner Griffin Here
- Commissioner Matherly Here
- Commissioner Bies Here

Pastor Vick Williford from New Heart Cowboy Church gave the invocation and Lizzie Arbaugh led the Pledge of Allegiance and the Salute to the Flag of the State of New Mexico.

1. Proclamation Law Enforcement Day

Commissioner Griffin read the proclamation to the audience.

Rocky Galassini stated that we have 15 Law Enforcement Agencies here in Otero County. She read the names of the fallen Officers and the dates of their end of watch.

Commissioner Bies made a motion to approve the agenda. The motion was seconded by Commissioner Griffin. A vote was taken and the motion passed unanimously.

2. Consent Agenda:

Commissioner Bies pulled item #11 from the Consent Agenda.

Commissioner Griffin made a motion to approve Consent Agenda items #1 - #10. The motion was seconded by Commissioner Bies. A vote was taken and the motion passed unanimously.

a. **Commissioner Griffin made a motion to discuss CA#11 to approve an agreement between Otero County and the Santa Fe Juvenile Detention Center at \$185 per day per juvenile. The motion was seconded by Commissioner Bies for discussion.**

Carolyn Barela, Detention Director stated in the contract it will be \$225 per day making a \$40 increase. The first contract that was sent there were no changes, but she was told at the beginning of the week juveniles would increase by \$40. In the contract Santa Fe is used as a back-up and Dona Ana County is used first at \$135 per day.

Commissioner Bies made a motion to approve the agreement between Otero County and the Santa Fe Juvenile Detention Center at \$225 per day per juvenile. The motion was seconded by Commissioner Matherly. A vote was taken and the motion passed unanimously.

3. Scheduled Citizen Communications:

a. Laurie Anderson from Otero County Economic Development Council gave a report on business attractions, business retention and the expansion and filming in Otero County.

The Board thanked Ms. Anderson for her work in Otero County and her thorough report.

4. Unscheduled Citizen Communications:

a. Gwenna Reese asked for an update on the Bridge for Riata Road. The Bridge had been approved by the previous Commission, but no work has started.

Tom Porter, Road Superintendent stated that it's been designed and is going out to bid later this summer and will start construction in November. With the construction on 54/70, Riata is the only escape route if there was an incident on the highway.

Ms. Reese stated that also on Riata and Gardner Roads where she lives, the flooding is terrible. She spent \$27,000 to fix the ditch because it's on her property. The ditch needs to be cleaned out to stop the flooding.

Commissioner Griffin and Mr. Porter will make a trip out there to take a look at the ditch.

5. New Business:

Commissioner Griffin moved item #28 to the first item.

a. **Request approval of final plat for the Chaparral Desert Hills Subdivision in Chaparral, NM.**

Commissioner Matherly made a motion to approve the final plat for the Chaparral Desert Hills Subdivision. The motion was seconded by Commissioner Bies. A vote was taken and the motion passed unanimously.

b. Request approval of Resolution #04-11-19/107-62 relating to the sanctuary for the life of unborn human beings.

Commissioner Matherly made a motion to approve Resolution #04-11-19/107-62 for discussion. The motion was seconded by Commissioner Griffin.

Commissioner Griffin read the Resolution. He wants it very clear that through this resolution, that the practice of abortion will not be a practice that will be embraced as a community.

Stephanie Dubois stated that she does not understand where Commissioner Griffin is coming from. You talk about God, but you aren't God. She stated that it's her body and it's her choice.

Nadie Sykes stated that a resolution isn't an ordinance, so it's meaningless, the same as the 2nd Amendment Resolution. There are no providers here in Otero County. Ms. Sykes stated that she is concerned about Commissioner Griffin not wanting government intervention until it comes to abortion. It is a women's choice and House Bill 51 was only to remove old legislation. Ms. Sykes stated that for the records a resolution such as this is ludicrous and meaningless. If Roe v Wade be overturned and abortion becomes a criminal offense, that resolution will do nothing because it's not an ordinance.

Commissioner Griffin stated that you have to appreciate the beauty of the Republic and through the Republic we should have local representation. If we decide that we are a County that defends life, then we should be allowed to have that platform and not be dictated by Santa Fe, Albuquerque or Las Cruces.

Commissioner Matherly stated that whether you are red or blue, it makes no difference in this matter. A mother knows if her child has a major birth defect and the child's life will be horribly impaired, she has the right to make a choice. If a woman is raped and not by her choice gets pregnant, she should have the right to abort. He stated he is not for abortion, but there are a few situations in his mind that it would be warranted.

Walt Coffman stated that his concern is a woman should have the choice to do what she wants with her body. Women are unique because they can conceive life, a man can't. As soon as that life is conceived he resents somebody deciding to kill it. Women have alternatives besides abortion, adoption is one of them. Life in this country has always been a big deal and we have moved away from it.

Commissioner Bies stated that she is not a fan of abortion, but there are certain circumstances. Not every woman is capable of recovering from a rape through the eyes of a child that was conceived from it. If that choice was taken away from them, it could result in mental instability of a mother then could transfer to the child. There should be time limits prior to a heartbeat.

A vote was taken and the motion failed 1-2 with Commissioner Bies and Commissioner Matherly voting against.

c. Request approval of Resolution #04-11-19/107-63 supporting the Emergency Declaration issued by the President of the United States to construct a Border Wall.

Commissioner Bies stated that she agrees with the state of emergency at the Border simply because of the volume that is coming through. They are costing our taxpayers in their inability to get some of the services that are needed because those resources are being taken up by people who are not paying taxes in this country. Commissioner Bies read Resolution #04-11-19/107-63.

There was no discussion on this item and there was no motion made on item #16.

d. Request approval of a letter supporting the White Sands National Park Designation.

Commissioner Griffin made a motion to approve a letter supporting the White Sands National Park Designation. The motion was seconded by Commissioner Matherly for discussion.

Commissioner Griffin stated that he has spent a lot of time last week calling people about this issue. He contacted former Commissioner Susan Flores and was almost going to pull it off the agenda until he talked with Yvette Herrell and Steve Pearce. Mr. Pearce gave Commissioner Matherly his reasons for opposing it, one of them being if it's a Park the Environmentalists will come and take over with their demands. They wouldn't allow Holloman Air Force Base to fly over White Sands or fire missiles over the Missile Range. The Air Force, the Army, and White Sands have all come to an agreement that this wouldn't happen and they are straightening out the boundaries at the Sands. It could never be a World Heritage Site unless Dona Ana and Otero County both agree.

Janet White stated that she has done a lot of research on this item. Back in 2007 White Sands National Monument was nominated to be a World Heritage Site by the Superintendent of the Sands at that time. How this ties in with the Park designation and the Monument designation is highly significant. With it being a Monument as it is now, the mission statement or the focus is to protect the dunes. As a National Park it brings in a whole plethora of things that need to be protected. It wouldn't be just the dunes. It would include the view scape, sound scape, species, water and anything that could be considered endangered. The economics have been the selling point to change it to a Park. If you look at the sources for the economic indicators, they come from the Federal Reserve in Kansas City. The Federal Reserves in Kansas City is focused on the rural economics, but in that area its corn and soy, and it has nothing to do with the uniqueness of Otero County.

Commissioner Griffin stated that when the Federal Government wants to re-classify the Monument to a Federal Park for economic reasons, there is more to the package than that.

A vote was taken and the motion failed 1-2 with Commissioner Bies and Commissioner Griffin voting against.

e. Discuss and consider submitting comments to the U.S. Forest Service on the South Sacramento Restoration Plan Draft Environment Impact Statement.

Commissioner Griffin made a motion to discuss submitting comments to the U.S. Forest Service on the South Sacramento Restoration Plan Draft Environment Impact Statement. The motion was seconded by Commissioner Bies for discussion.

Commissioner Matherly stated that the Forest Service is trying to implement a ten to twenty year Plan that we might not be around to see the results of.

Commissioner Griffin introduced Randall Chavez, District Ranger Manager for the Lincoln National Forest. He stated he has known him all his life and he will do great things for the Lincoln National Forest.

Commissioner Bies stated that in order for us to get information on these projects from the Forest Service, we have to submit our comments to get the information. The County should be getting this information and not have to submit every time there is a new project.

Commissioner Matherly stated that if he remembers correctly, the Forest Service was supposed to have stayed in contact with us and inform us of any new projects being proposed.

Randall Chavez, stated that the end of the comment period for this project is April 29th and he encourages the Counties comments. He said the County should be listed as a Cooperator and that means that you should automatically receive the information on any project that comes forward.

Walt Coffman, a resident of the Lincoln National Forest stated that he has been a firefighter in the County since 2002. The County Commissioners have a right by law to be involved in the process of any projects. This project is the biggest project that the Lincoln National Forest has undertaken in terms of acres. The Board should have been part of the process six months ago and your input was not asked for. The draft doesn't have the Board of County Commissioners names on it. That is against NEPA's Laws. Local government should be listed as a participant in any project planning.

This item was tabled until after lunch to give the Board time to review the comments that Mr. Eshleman has drafted.

f. Request approval of an appointment to the Otero County Solid Waste Authority by the Board of County Commissioners.

Ms. Heltner stated that Commissioner Flores was one of our two representatives on this Board and Ralph Murphy is the other. This is the Board that oversees operations for the facility out towards El Paso. They meet one time a year in March.

Commissioner Bies stated that she will take the position.

Commissioner Griffin made a motion to appoint Commissioner Bies to the Otero County Solid Waste Authority by the Board of County Commissioners. The motion was seconded by Commissioner Matherly. A vote was taken and the motion passed unanimously.

g. Request appointment of the Otero County members to the Alamogordo Library Board.

Ms. Heltner stated that there are two letters of interest and two vacancies as Otero County representatives. They must live in the County and not the City of Alamogordo.

Commissioner Bies made a motion to approve the appointment of the Otero County members to the Alamogordo Library Board, Cindy Stong and Dave Dooling. The motion was seconded by Commissioner Griffin. A vote was taken and the motion passed unanimously.

h. Request approval to go out to RFP for an update Otero County Comprehensive Plan.

Ms. Heltner stated that last year the Board requested staff to go out for an RFP to update the Comprehensive Plan. At the time the Board decided not to move on it until the two new Commissioners came into office. The RFP that was sent out is now expired so will need to be renewed.

Commissioner Griffin made a motion to go out to RFP for an updated Otero County Comprehensive Plan. The motion was seconded by Commissioner Bies. A vote was taken and the motion passed unanimously.

i. Request approval to award Sealed Bid #19-025 Detention Addition and Repair to Bradbury and Stamm, Albuquerque, NM in the amount of \$24,705,000 base bid \$10,900,000. Alternate two \$8,010,000 equals the \$24,705,000 plus all applicable taxes.

David Gorman, Attorney for White Sands Construction, stated that as a point of order there is still a pending protest from White Sands Construction and the protest must be resolved before the Commission awards this bid.

Mr. Eshleman stated that as we discussed in Executive Session the recommendation of Ginger Herndon, Purchasing Agent and Council was to reject Bradbury's bid and all bids and to re-bid which would make the protest moot. The protest would be tabled because the bid would be rejected.

Mr. Gorman stated that a determination has to be made that it is in the County's best interest to reject all bids and have a basis for doing that. Our position is that we submitted a valid bid that should not have been passed over, which was \$200,000 less than what's on the table now.

Commissioner Griffin stated that throwing out all the bids and reopening these bids is not a way he wants to go. It takes a lot of effort and money to put one of these bids together. His position is to award the bid to White Sands Construction, save the County two million and press forward.

Ginger Herndon, Purchasing Agent stated that White Sands Construction had to get their sub-contractor pre-approved which was APIC Solutions. APIC was not pre-approved. Ms. Herndon stated that her problem is we are going to get sued by Bradbury and they will win because it was stated in the bid that the sub-contractor must be pre-approved.

Dennis Crimmons stated that if the Architects give us a form that has what they want listed, we must list everybody on that form. If one of those listed is a second tier sub-contractor, then we at a minimum have to say that it's a second tier sub-contractor. We weren't given a sub-contractor form that said we were supposed to list it.

Commissioner Bies stated that she doesn't want to see any lawsuits come out of this situation, but if we award to one because there was a problem with the other bid they will sue us and vice versa. The general consensus from Executive Session was to start the bid process over.

Commissioner Matherly stated that this is a mess. It will cost the taxpayers money if we go to battle on this. We have the right to reject both bids and he would love to keep it local, but it's going to cost us a fortune either way we go. He stated that we have been advised by our Legal Counsel to go with Bradbury and Stamm.

Commissioner Griffin made a motion to approve to award Sealed Bid #19-025, Detention addition and repair to Bradbury and Stamm, Albuquerque, NM in the amount \$24,705,000 base bid \$10,900,000. Alternate One \$5,795,000, Alternate Two \$8,010,000 equals the \$24,705,000 plus all applicable taxes. The motion was seconded by Commissioner Bies. A vote was taken and the motion failed 0-3 unanimously.

j. Discuss and consider appeal by White Sands Construction of the rejection of their bid for construction contract for the Otero County Detention Center project.

Commissioner Griffin made a motion to discuss and consider an appeal by White Sands Construction of the rejection of their bid for construction contract for the Otero County Detention Center project. The motion was seconded by Commissioner Matherly.

Commissioner Griffin stated that we should move forward with the project as it's been bid on. He would like to award the bid to White Sands Construction, saving the taxpayers two million dollars.

Commissioner Griffin made a motion to accept the appeal by White Sands Construction of the rejection of their bid for construction contract for the Otero County Detention Center project. The motion was seconded by Commissioner Matherly. A vote was taken and the motion failed 1-2 with Commissioner Bies and Commissioner Matherly voting against.

Commissioner Griffin instructed staff to go out for RFP to re-bid the entire County Detention Center.

k. Request approval of Resolution #04-11-19/107-61, to vacate Sierra Blanco Road in the West Side Subdivision.

Commissioner Griffin stated that this item will be moved to after lunch.

The Board allowed Charles Bisby to speak on vacating Sierra Blanco Road in the West Side Subdivision, because he has to travel to El Paso. The issue, he believes is being reconsidered because of the letter from the Forest Service. The Viewers have changed their opinion about Sierra Blanco Road because of the Forest Service letter. The letter was written by the former Chief Ranger and she said in the letter that the Forest Service has no rights to the road.

Commissioner Griffin stated that the property owners want to close this road in order to provide for security for their property and their homes. There has been some vandalism and break-ins. They want it closed to have security but Mr. Bisby wants to prevent this from happening, because he likes to use that road to access the forest.

Mr. Bisby wouldn't object to the closure of the road if he also had access to the gate, but the property owners won't give him access to the gate.

I. Request approval of Resolution #04-11-19/107-65 to hold an election to allow the issuance of restaurant alcohol licenses in the unincorporated portion of Otero County.

Commissioner Griffin made a motion to approve Resolution #04-11-19/107-65 to hold an election to allow the issuance of restaurant alcohol licenses in the unincorporated portion of Otero County. The motion was seconded by Commissioner Bies.

Commissioner Bies stated that the Apple Barn would like to put in for a beer and wine license. We haven't had an election to allow areas in the unincorporated portions of Otero County to do this, so it makes it impossible for them to further their business. This resolution will put the language on the ballot for the November election.

A vote was taken and the motion passed unanimously.

m. Request approval to submit Fire Protection Fund applications for FY2020 budget to State Fire Marshall's Office.

Commissioner Griffin made a motion to submit Fire Protection Fund applications for FY2020 budget to State Fire Marshall's Office. The motion was seconded by Commissioner Bies for discussion.

Paul Quairoli, Emergency Services Director stated that annually we submit applications to the State Fire Marshall's Office to receive Fire Funds from the State of New Mexico. We receive the second highest amount of funds within the State of New Mexico.

A vote was taken and the motion passed unanimously.

n. Request approval of a service agreement between Otero County and AURA for electrical service at the Sunspot Fire Department.

Commissioner Griffin made a motion to approve the service agreement between Otero County and AURA for electrical service at the Sunspot Fire Department. The motion was seconded by Commissioner Bies for discussion.

Mr. Quairoli stated that there has been a presentation that the National Solar Observatory in Sunspot will be moving from that facility and AURA is the new company that will be in charge of the grounds at this facility. It is a non-profit that is the Association of

Universities for Research and Astronomy. We have a fire station there that is on their power grid. There is a separate meter and the Electric Coop agreed that the separate meter would be billed to AURA, because that's who the primary owner of the installation is. Otero County would receive the bill from AURA for only the services that would be for our fire station. There has to be an agreement in place for it to be legal and to pay them for our use.

A vote was taken and the motion passed unanimously.

o. Request approval for a pay increase for County Attorney Michael Eshleman.

Commissioner Griffin made a motion to table the pay increase for County Attorney Michael Eshleman until after the Executive Session. The motion was seconded by Commissioner Bies. A vote was taken and the motion passed unanimously.

p. Request the Board of Commissioners to Canvass and approve the 2019 Alamogordo Special School Tax Election Results at 1:00 pm.

Commissioner Bies stated that 23,430 ballots were mailed, 7,296 were received back and 13,394 were not returned.

Robyn Holmes, County Clerk stated that 2,740 were returned as undeliverable because there was a problem with their address. The voter will be purged eventually if they don't update their address. Ms. Holmes stated that it was on the radio, if a voter didn't receive their ballot and they are registered in the school district, they could come to the office, show their ID and we would give them their ballot to vote. They could also do their address update while at our office. There were a few that came in but not many. She said that we received 61 ballots back with no signature, so the ballots were not counted.

Ms. Holmes stated that all our ballot totals matched with the amount of ballots that were accepted and run through the machines. There was a 30 percent turn-out and the tax did pass.

Commissioner Griffin made a motion to approve the 2019 Alamogordo Special School Tax Election results. The motion was seconded by Commissioner Bies. A vote was taken and the motion passed unanimously.

q. Discuss and consider submitting comments to the U.S. Forest Service on the South Sacramento Restoration Plan Draft Environmental Impact Statement.

This item was tabled until Mr. Eshleman could get the documents the Board had requested.

Commissioner Bies stated that since the Chief Ranger, Randall Chavez is going to check if Otero County is listed as coordinators, they should be automatically sending us all the information each time they do an emailing. The only time we would have to submit comments is if we had an issue with the plan.

Mr. Eshleman stated that we do get certain notices, but he doesn't think we are getting a notice for every project.

Commissioner Griffin made a motion to submit comments to the U.S Forest Service on the South Sacramento Restoration Plan Draft Environmental Impact Statement. The motion was seconded by Commissioner Bies. A vote was taken and the motion passed unanimously.

r. Request approval of Resolution #04-11-19/107-61, to vacate Sierra Blanco Road in the West Side Subdivision.

Commissioner Griffin made a motion to approve Resolution #04-11-19/107-61, resolution to vacate Sierra Blanco Road in the West Side Subdivision. The motion was seconded by Commissioner Bies for discussion.

Frank Wilson, Attorney for some of the property owners in the West Side Subdivision stated that these clients that are here today are directly concerned with the issue before you and enable them to take the measures necessary to protect their property and their persons as well. This area has experienced more trespassers and it's unfortunate when things start disappearing.

Mr. Bisby spoke again on his behalf to not close the road and to have access to the gate.

A vote was taken and the motion passed unanimously.

Commissioner Bies stated that the issue has been resolved and instructed the property owners to close and lock the gate.

6. Committee Reports:

a. David Black, Otero County Sheriff stated that we has hired two Transport Courthouse Security people and two Community Service Deputies.

Sheriff Black stated that the Field Training Program is a 12 week course to get a new hire certified. He has put some extra patrol out on highway 54.

Commissioner Griffin stated that the drugs that are coming across the Border and through our checkpoints, because they are unmanned is outrageous. He would like to declare a State of Emergency in our county, because the Cartel has free reign right now bringing drugs through our Checkpoints.

Commissioner Matherly asked the Sheriff if they could set up road blocks and start doing checks. Sheriff Black stated that he didn't have the personnel to do that.

The Board set a Special Meeting for 8:00 am on Thursday, April 18, 2019 to Declare a State of Emergency in our county.

b. Paul Quairoli, Emergency Services Director stated that we had 111 calls from the Fire Departments. Code Enforcement caught 3 people dumping and they were stopped. There were 17 cases opened, 8 cases that were closed and 2 cases that were unfounded.

c. Tom Porter, County Road Department stated that Chip Sealing was completed on Jun Sung Drive, Angelina Blvd in Chaparral, Section Road and Alamo Canyon Road. In High Rolls culverts were cleaned and maintained. The parking lot at the Animal Shelter was completed and a lot of sign maintenance was done. Spraying for the African Rue was started yesterday at the Detention Center and 3 quarters of the Training Center, it was finished today along with Hamilton Road, the Shop Road and the Convenience Center on LaValle Road. The Rifle Range is scheduled for Tuesday. Mr. Porter stated that he received some preliminary numbers from the State for 2020 projects that were approved and out of the \$863,000 that was requested we are going to receive about \$304,000.

d. Carolyn Barela, Detention Center Supervisor stated that today's population is 194 inmates, 3 Juveniles in Dona Ana County and the Otero County Prison is housing 9 of our adults. There was a plumbing issue in the kitchen with one of the drains. Maintenance tried to unclog it and when it was brought up, there was dirt. She stated that it needs to be fixed so later on there won't be a problem with the foundation in the kitchen. Ms. Barela stated that we have 2 new officers in transport that are going to class to be certified to carry fire arms. One officer went through the CPI Training in Albuquerque and next she will be attending a Mental Health

First Aid training in Florida in May. When her training is complete she will be coming home to train all the Officers. All the policies and procedures are being worked on for updating and assuring that they are actual practices of the facility as well as in compliance with standards.

e. Pamela Heltner, County Manager stated that construction has started at CHINS doing asbestos abatement. In High Rolls for the Senior Center, core samples of the soil have been completed and we are waiting for those inspections to come back. The RFP for the Women's Club will be closing April 24th. The Agreement was delivered to Vicky Milne at the Soil and Water Conservation for the hire of 2 Contractors for 10 days at \$31,250 to spray the African Rue.

f. Michael Eshleman, County Attorney stated that he put together the amended contract for Soil and Water. He is drawing up a Memorandum of Understanding with Janet Waffle to get her mail at the Administration Building and use the County's Logo. The Evaluation was completed for outside Counsel for General Legal Work.

7. Executive Session

Commissioner Griffin made a motion to hold an Executive Session under New Mexico Statute 1970 A 10-15-1 NMSA 10-15-1 (H) (8) to discuss 1) Pending/Threatened Litigation, a) Courthouse, b) Bond Counsel, 2) Land, a) Purchase of Real Property, 3) Personnel, a) County Attorney. The matters to be discussed in Executive Session will be limited only to those items. The motion was seconded by Commissioner Bies. Roll call was taken as follows:

Commissioner Griffin yes

Commissioner Matherly yes

Commissioner Bies yes

Commissioner Griffin made a motion to come out of Executive Session under New Mexico Statute 1970 A 10-15-1 and stated the only items that were discussed were limited only to those items specified in the motion for Executive Session, the Board of County Commissioners. The motion was seconded by Commissioner Bies. Roll call was taken as follows:

Commissioner Griffin yes

Commissioner Matherly yes

Commissioner Bies yes

Commissioner Griffin made a motion to approve the pay raise for Michael Eshleman, County Attorney to \$90,000 a year with 1 week extra paid vacation, starting July 1, 2019. The motion was seconded by Commissioner Bies. A vote was taken and the motion passed unanimously.

There being no further business before the Board, the Chairman adjourned the meeting at 3:25 pm.

APPROVED:

Couy Griffin, Chairman

ATTEST:

Robyn Holmes, County Clerk

