

**MINUTES
REGULAR MEETING
LUNA COUNTY BOARD OF COUNTY COMMISSIONERS
Thursday, April 12 2012**

BE IT REMEMBERED that the Luna County Board of County Commissioners met in regular session at 9:00 a.m. on Thursday, April 12, 2012, in the County Commission Chambers of the Luna County Courthouse, Deming, New Mexico, for the purpose of conducting any and all business to come properly before the Board.

The following staff and elected officials were present:

Kelly Kuenstler, County Manager
Glory Johnson, County Manager's Office
Karen Smyer, County Clerk
Natalie Pacheco, Chief Deputy County Clerk
Dora Madrid, Treasurer
Gloria Rodriguez, Chief Deputy Treasurer
Raymond Cobos, Sheriff
John Mooradian, Lt., Luna County Sheriff's Office
Richard Cowles, Sheriff's Department
Barbara Cobos, Chief Deputy Assessor
Marty Miller, Road Superintendent
Carole Smith, Road Department
William Schenk, Road Department
Matthew Elwell, Detention Administrator

Danny Cordova, Detention Center
Yvonne Baca, Detention Center
Dawn Lint, Detention Center
Danny Gonzales, County Manager's Office
Joanne C. Hethcox, County Manager's Office
Billy Ruiz, County Manager's Office
Gabriel Boyle, Planning Director
Benny Ramon, Planning Department
Sylvia Carlos, Planning Department
Frankie Tarazon, Planning Department
Lydia McNulty, Community Health and Welfare
Jessica Johnson, Keep Luna County Beautiful
Darwin Williams, Chief, Sunshine Volunteer Fire Department

CALL TO ORDER: Chairman Spivey called the meeting to order at 9:00 a.m. and led the Pledge of Allegiance and the salute to the flag of the State of New Mexico.

ROLL CALL: County Clerk Karen Smyer called roll. The following members of the Board constituting a quorum were present:

Joe L. Milo, Jr., District 1
Chairman J. Jay Spivey, District 2
R. Javier Diaz, District 3

PRESENTATIONS: Joe Lobato, Director of New Mexico Clean and Beautiful and New Mexico Tourism Department, addressed the Board and requested Jessica Johnson, Keep Luna County Beautiful

Administrator, and program volunteers to come forward to be recognized. Mr. Lobato stated Keep Luna County Beautiful is in its eighth year of operation and its mission is to engage individuals to take greater responsibility for improvement of community environments. He presented the Truett Gill Award of Excellence, the New Mexico Clean and Beautiful Gold Award and the Keep America Beautiful President's Circle Award. Mr. Lobato offered background information as to each award and provided statistical information relating to the number of program participants and the amounts of trash picked up. He congratulated Ms. Johnson on accomplishments with the program. Ms. Johnson expressed appreciation to the volunteers for improving the quality of life in Luna County. Ms. Johnson presented an award of appreciation to Aramark for their sponsorship of activities under the program and she thanked the Board of Commissioners for their support of the programs.

SERVICE AWARDS: Gabriel Boyle, Planning Director, presented a ten-year service award to Benny Ramon of the Planning Department and a five-year service award to Billy Ruiz who is now in charge of Facilities and Special Projects. Detention Director Matthew Elwell presented a five-year service award to Dawn Lint of the Detention Center.

ANNOUNCEMENTS: County Manager Kelly Kuenstler introduced Darwin Williams, newly selected Chief of the Sunshine Volunteer Fire Department and administered his oath of office.

ELECTED OFFICIALS REPORT: County Clerk Karen Smyer announced early/absentee voting dates and times in the clerk's office as well as the alternate site Mimbres Valley Learning Center. She reported she and Chief Deputy Natalie Pacheco, Election Specialist Leslie Nabours, Erik Bencomo and Alex Sera have been certified as voting machine technicians. She stated the technicians will be certifying voting machines for the Primary Election. Ms. Smyer thanked Tony Quarrel, Billy Ruiz, Gabriel Boyle and Benny Ramon for assisting her with a recent mapping project.

County Sheriff Raymond Cobos announced that the Sheriff's Department recently assumed responsibility for court security and is in the process of hiring a third person for the job. Sheriff Cobos also stated that the sheriff's office will be utilizing a building donated to the Village of Columbus by First New Mexico Bank as a substation in Columbus and will be entering into a memorandum of understanding for the use of the building.

COUNTY MANAGER'S REPORT: County Manager Kelly Kuenstler reported that a public service announcement has been sent out soliciting citizen representation for the library board position held for many years by Virginia Pool.

Ms. Kuenstler further reported the Village of Columbus trustees have unanimously approved the agreement for multi-services.

Ms. Kuenstler reported seeking a solution to enable the cattle crossing in Columbus to reopen however there has been no resolution.

Ms. Kuenstler reported the U. S. Marshal's Office recently removed federal prisoners from the county detention center due to issues with the modular units at the facility. She stated issues regarding insulation and drainage must be addressed. She reported we were up from an average of 80 inmates in December to 224 when they came to inspect the modular units and subsequently removed their

prisoners. She said she would continue to work with the federal agency on the issue and complimented Detention Director Matthew Elwell on his professional competent handling of the matter. She stated there was a fire inspection a few days ago at the detention center and the director is addressing those issues as well. Ms. Kuenstler reported a contraband search took place on March 16 that yielded a few results and emphasized the fact detention officers are conducting effective searches. Detention Director Matthew Elwell explained that federal inspections of the facility are done annually and that the federal marshals have instituted very high standards due to increased suicide rates and escapes in other counties. Mr. Elwell reported that prior inspections were done on eight topics and we were graded on 78 standards this time. He said the average stay of a federal inmate is 17 days.

Ms. Kuenstler reiterated that the sheriff's office has taken over security at the judicial complex.

The County Manager reported in an effort to provide a qualified local work force she is working with Dona Ana Community College to bring back the branch college to provide training for potential employees for alternative energy jobs. She said they may be back as soon as August. Deming Public Schools is also discussing similar training in the high school as well.

Ms. Kuenstler reported that the personnel ordinance committee is recommending revisions to the personnel ordinance which was last amended in 2006. She said the committee is beginning chapter 7 out of 11 tomorrow.

Chairman Spivey announced a recent meeting with Senator Udall who is cautiously optimistic about successfully increasing the limit a Mexican citizen may travel into the United States from 25 miles to 75 in an effort to increase tourist trade from Mexico. Commissioner Diaz requested prayer for Maintenance Superintendent Bob Orosco who is undergoing cancer treatment. An announcement was also made that Mark Jasso is recovering from a recent surgical procedure.

PUBLIC COMMENT: Chairman Spivey opened the floor to public comment. Larry Caldwell asked that the commissioners reevaluate the location of the proposed new sheriff's office to either the site of the Pepsi building which has been razed or to the site of the Western Furniture building rather than using the Knights of Columbus Building since those locations are more centrally located. Ray Krejci commented on the large loss of revenue due to the removal of federal prisoners.

CONSIDER MINUTES: Upon motion of Commissioner Diaz, seconded by Commissioner Milo, the minutes of the regular meeting of Thursday, March 8, 2012 were unanimously approved.

CONSENT AGENDA: Upon motion of Commissioner Milo, seconded by Commissioner Diaz, Payroll Registers totaling \$918,049.57 and Accounts Payable Registers totaling \$563,228.65 were unanimously approved.

OLD BUSINESS: County Manager Kuenstler stated that Resolution 12-21, Statement of Ethics had been previously tabled due to the absence of Commissioner Milo. She stated an amendment has been made to provide that public forums *may* be held. She stated the remainder of the proposed resolution is unchanged. Upon motion of Commissioner Milo, seconded by Commissioner Diaz, Resolution 12-21 including the stated amendment was unanimously approved.

NEW BUSINESS:

- a. **Resolution 12-22 – Budget Transfers:** Seven proposed intradepartmental budget transfers were itemized and explained by the County Manager. Upon motion of Commissioner Diaz, seconded by Commissioner Milo, followed by a roll call vote, Resolution 12-22 was unanimously approved.
- b. **Resolution 12-23 – Budget Increases:** County Manager Kuentler described the proposed six intra or inter departmental fund budget increases. Upon motion of Commissioner Milo, seconded by Commissioner Diaz, followed by a roll call vote, Resolution 12-23 was unanimously approved.
- c. **Resolution 12-24 – Authorizing Application for Financial Assistance and Project Approval to New Mexico Finance Authority for Colonias Infrastructure:** County Manager Kuentler stated they are attempting to improve the conditions of the Keeler Farm drainage Racetrack Road. Randy Hergenrether, representative of Engineers Inc., spoke about the project. Mr. Hergenrether stated the road base has been pushed to the sides of the roadway and there is no free drainage from the roadway and rainfall runoff is draining onto private property. He proposed that the road platform be reconstructed with hard surface, providing roadside ditch drainage and driveway culverts to enhance the conveyance of the runoff. He estimated four 12-inch driveway culverts and one 18-inch culvert would be needed. Road Superintendent Marty Miller disagreed with Mr. Hergenrether's recommendations and the gentlemen were asked to meet to resolve the issue. Commissioner Diaz pointed out that 18-inch is the minimum sized culvert required by county ordinance. County Manager Kuentler asked for authorization to complete and submit an application for financial assistance through New Mexico Finance Authority for the Colonias Infrastructure fund. Commissioner Diaz moved to authorize the application for financial assistance and Resolution 12-24. Commissioner Milo seconded the motion. Following a roll call vote, Resolution 12-24 was unanimously approved.
- d. **County Match to USDA Rural Business Enterprise Grant:** County Manager Kuentler stated she gave a letter of commitment to the Southwestern Regional Housing and Community Development Corporation committing \$10,000 in match funds from Luna County for a rural enterprise grant which has been submitted through USDA. She said it is a grant that helps entrepreneurs and local business people to expand economic opportunities in this area. The commitment letter is contingent on commission approval. Mr. Welch, Executive Director of the Regional Housing Authority was present to answer questions. He explained this is a four-county effort and he expected at least \$20,000 to come back to local county businesses. He said the fund is self-building and initially would favor the localities that provide the match. Each participating county will recommend a local person with a background in finance to sit on the governing board of the loans to review the applications. Commissioner Diaz moved to accept the application for the match funds of the Rural Business Enterprise Grant. Commissioner Milo seconded the motion. At the recommendation of the County Manager, Commissioner Diaz amended the motion to accept the pledge of \$10,000 in match funds from Luna County because the application will be submitted by the Southwestern Regional

Housing and Community Development Corporation. Commissioner Milo seconded the motion which unanimously carried.

- e. **Amendment to Operating Agreement between Luna County and Aramark Correctional Services, LLC:** County Manager Kuenstler explained there is a 5% agreed upon increase in food for the jail for 2012. She said the contract for next year will be renegotiated. Aramark originally proposed an 8% increase but Detention Director Elwell negotiated it down to 5%. Commissioner Milo moved to amend the agreement with Aramark Correctional Services, LLC. Commissioner Diaz seconded the motion which unanimously carried.

Chairman Spivey declared a five minute break after which he reconvened the meeting.

- f. **RFP #100-04 Luna County Comprehensive Plan Update (Recommending Sites Southwest):** County Manager Kuenstler stated the review committee for the Comprehensive Plan update met and recommended Sites Southwest out of Albuquerque to assist the county in updating the Comprehensive Plan. Commissioner Milo moved to accept RFP #100-04, Luna County Comprehensive Plan Update. Upon recommendation of the county manager, Commissioner Milo amended his motion to state that we accept the committee's recommendation of Sites Southwest for the Luna County Comprehensive Plan update. Commissioner Diaz seconded the motion which unanimously carried.
- g. **FY 13 Rural Primary Health Care Act (RPHCA) Contract Extension:** County Manager Kuenstler asked for approval of Luna County to serve as fiscal agent for the Department of Health's RPHCA program. Commissioner Diaz moved to extend the RPHCA contract for FY 13. Commissioner Milo seconded the motion which unanimously carried.
- h. **Resolution 12-25 approving the Colonias Masterplan:** County Manager Kuenstler explained that Resolution 12-25 authorizes and approves submission of an application for financial assistance and project approval to the New Mexico Finance Authority for the Colonias Infrastructure Fund. She said we intend to undertake design, construction and improvements of the county Colonias Masterplan. A copy of the map has been submitted to the commissioners. Gabriel Boyle explained this resolution authorizes the county to pursue funding for the Colonias Masterplan which will provide assistance in prioritizing needs assessments. Ms. Kuenstler stated approval of Resolution 12-25 will authorize submission of an application for financial assistance to the New Mexico Finance Authority for the colonias infrastructure fund. Commissioner Milo moved to approve Resolution 12-25 approving the Colonias Masterplan. Upon recommendation by the county manager, Commissioner Milo amended his motion to authorize submission of an application for financial assistance and project approval to New Mexico Finance Authority. Commissioner Diaz seconded the amended motion which unanimously carried following a roll call vote.
- i. **Resolution 12-26 Approving the Colonias Designation:** County Manager Kuenstler explained Resolution 12-26 designates the unincorporated areas of Catfish Cove, Sunshine, Bell School, Columbus, Franklin Farms, Rockhound, Ventura and Keeler Farm as Colonias. Ms. Kuenstler said the advantage of these designations is with project funding to allow improvements for

potable water supplies, sewage systems and decent, safe and sanitary housing. Gabriel Boyle stated incorporated areas are actually included in the colonias designation and recommended an amendment to the resolution. Chairman Spivey noted that Tulip landfill is included in the designation. Commissioner Diaz questioned whether the past resolution was properly constructed. Mr. Boyle stated this resolution will rectify all issues. Commissioner Diaz moved to approve Resolution 12-26 approving the Colonias designation and removing the word "unincorporated" from the Resolution. Commissioner Milo seconded the motion which was unanimously approved following a roll call vote.

- j. **Digital System Upgrade of Starmax Entertainment Center Movie Theater:** County Manager Kuentler stated this item is a contract between Starmax and GDC Digital Cinema Network (USA) LLC to upgrade equipment to digital technology. Ms. Kuentler explained that notice was previously received that the upgrade would be necessary by the end of 2012 and that by December 31, 2012 all films would be distributed digitally. A few days ago notice was received that the virtual print free programs would be terminated April 30, 2012. This is an initial investment by Starmax repaid at \$750 per film for first run movies and \$350 for second run movies. She said Mr. Kellen is projecting that this would be paid back through this program in about four and a half years. This agreement was reviewed by the county's legal counsel who stated he is not an entertainment lawyer and the county may be interested in seeking further advice. Bill Kellen stated the movie portion of Starmax generates approximately a million dollars or 60% of the revenue taken in annually by the facility. Mr. Kellen advised the Board that if digital projectors are not put in, the center will become obsolete as a movie theater. He said the only other alternative is to put in a DVD system where you would get movies eight weeks out by buying DVDs and showing them. Mr. Kellen stated administration was originally aware that everything would be going digital within five years of operation. He said he did not recommend going digital initially because of the nature of technological advances. Mr. Kellen stated this would initially cost the county but not in the long run. Mr. Kellen stated with the virtual print rebate cities are given it should be paid off within five years. He stated technology is evolving and the projectors currently in place were the workhorses of the industry. The date was moved up because European and Asian countries have gone to digital already. He believed future upgrades would involve software upgrades rather than hardware. He said he could not project what the future refinements might be but anticipated that one will be increased resolution. Mr. Kellen advised the Board there is no market for the current projectors which will be disposed of at the dump as there is no residual value in the equipment. Discussion ensued between Mr. Kellen, Tom Long, the commissioners and members of the community regarding the proposed upgrade. Mr. Kellen stated everyone in the industry is in the process of converting and once the contract is signed the county will be in the queue for the upgrade. The option of showing digital "pay-per-view" clips at Starmax was discussed. Mr. Kellen stated the conversion to digital would not result in an increase in ticket prices for movies. County Manager Kuentler felt it was important that she and staff structure the reimbursement in a way that we are able to compare first run films and look at each reimbursement as they come through. Mr. Kellen advised that he will direct the reimbursement funds directly to the county and they will not pass through Starmax. John Strand provided a chronology of events leading up to the county's decision to hold a bond election to allow voters to decide whether the entertainment complex should be pursued and the election subsequently resulted in a

2:1 margin for the complex. Mr. Strand pointed out that the county has realized a gain of \$5,000 per month and stated the facility improves the quality of life in the county and serves as a draw for future industrialization and economic gain. Following an additional public comment period, Commissioner Milo moved to approve the agreement between Starmax and GDC Digital Cinema Network and to approve the investment in digital technology. Commissioner Diaz seconded the motion which unanimously carried.

- k. **Expansion of Starmax Entertainment Facility Patio:** Ms. Kuentler explained the proposed build-out of a 650 square foot patio on the south side of the building will be at management's expense. She said commission approval is necessary to enable construction on a county building. Commissioner Diaz moved to approve expansion of the facility at the management's expense. Commissioner Milo seconded the motion which unanimously carried.
- l. **Second Addendum to Starmax Operating and Lease Agreement:** Ms. Kuentler stated this is a second addendum to the lease and operating agreement with American Family Entertainment Center and gives the operator a fifteen day grace period to pay their monthly rent payment to the county. She stated the addendum provides for a 10% penalty if the payment is not made within the 15 day grace period. Bill Kellen said he requested the grace period because he has to advance money to get a film and he needs a period of time to generate the income. Mr. Kellen stated food purveyors make automatic withdrawals from the bank account and he is trying to better manage the cash flow. Ms. Kuentler stated the contract will be renegotiated when it expires. Commissioner Milo inquired about profit sharing and Ms. Kuentler stated she realized the county should have opened a separate bank account for profit sharing and it was never done. Mr. Kellen has produced a profit sharing accounting which Ms. Kuentler will review. She said Mr. Kellen has been asked for a check for half the profit. Commissioner Milo moved to approve the Second Addendum to Lease and Operating Agreement. Commissioner Diaz seconded the motion which unanimously carried.
- m. **Fire Protection Fund Distribution Applications:** Ms. Kuentler requested authorization to participate in the 2013 fire protection fund distribution. Ms. Kuentler advised that the fund distribution is different for the volunteer departments depending upon their ISO rating. She explained that the ISO rating for Savoy is a ten and the others are rated 9. Commissioner Diaz moved to approve the fire protection fund distribution application. Commissioner Milo seconded the motion which unanimously carried.

INDIGENT CLAIMS REPORT: Upon motion of Commissioner Diaz, seconded by Commissioner Milo, the meeting of the Board of County Commissioners was unanimously recessed and the meeting of the Indigent Hospital Claims Board convened. Joanne Hethcox reported the claims dated March 8, 2012 should be amended to correct prior inadvertent approval of a payment above the allowable amount. She stated there were 15 claims in the amount of \$46,952.22. Commissioner Diaz moved to amend the claims dated March 8, 2012 as recommended by Ms. Hethcox. Chairman Spivey seconded the motion which unanimously carried. Ms. Hethcox reported monies received for March 2012 was \$54,598.83 and the balance in the fund as of March 31, 2012 was \$103,400.56. Commissioner Milo moved to approve

63 claims dated April 12, 2012 in the amount \$180,007.15. Commissioner Diaz seconded the motion which carried unanimously.

ANNOUNCE NEXT MEETING: Chairman Spivey announced a workshop will be held at the Village of Columbus Community Center on April 17, 2012 and a regular meeting will be held May 10, 2012.

EXECUTIVE SESSION: Chairman Spivey entertained a motion to enter into executive session to discuss acquisition and disposal of real property pursuant to Section 10-15-1 (H)(8) NMSA 1978 pertaining to the Columbus Port of Entry Bypass Project and 1808 South Lime and 1810 South Lime. Commissioner Diaz moved for executive session for the purpose as stated by Chairman Spivey and further stated no other matters would be discussed. Commissioner Milo seconded the motion which carried unanimously following a roll call vote. Upon return from executive session, Commissioner Diaz moved to reconvene and he further stated no matters other than acquisition and disposal of real property pursuant to Section 10-15-1(H)(8) NMSA 1978 pertaining to the Columbus Port of Entry Bypass Project and 1808 and 1810 South Lime were discussed. Commissioner Milo seconded the motion which unanimously carried. Commissioner Diaz moved to reject the offer on 1808 and 1810 South Lime and authorize the county manager to renegotiate with the proposed buyers. Commissioner Milo seconded the motion which carried unanimously. Commissioner Diaz moved to approve the proposed acquisition of properties as stated in the Master Plan agreement of 2009 relating to the Columbus Port of Entry. Commissioner Milo seconded the motion which carried unanimously.

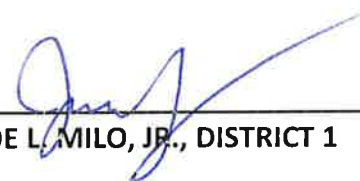
JAIL INSPECTION: Chairman Spivey announced the meeting would be recessed and reconvened at 1:30 at the jail for the purpose of conducting an inspection. The report of jail inspection will be incorporated into the minutes of this meeting by reference.

RECESS/ADJOURN: Chairman Spivey recessed the meeting and announced the regular meeting of the Board will be adjourned following the jail inspection.

ATTEST:

LUNA COUNTY BOARD OF COUNTY COMMISSIONERS


KAREN SMYER, LUNA COUNTY CLERK


JOE L. MILO, JR., DISTRICT 1

APPROVED: 
May 10, 2012


CHAIRMAN J. JAY SPIVEY, DISTRICT 2


R. JAVIER DIAZ, DISTRICT 3