

FINAL COPY
Torrance County Board of Commissioners
Regular Commission Meeting
July 24, 2019
9:00 AM

Commissioners Present: RYAN SCHWEBACH – CHAIR
JAVIER SANCHEZ – MEMBER
KEVIN MCCALL – MEMBER

Others Present: WAYNE JOHNSON – COUNTY MANAGER
BELINDA GARLAND – DEPUTY COUNTY
MANAGER

JOHN BUTRICK – COUNTY ATTORNEY
LINDA JARAMILLO – COUNTY CLERK
GENELL MORRIS – ADMIN ASSISTANT

1. Call Meeting to order

Chairman Schwebach: Calls July 24, 2019 Regular Commission Meeting to order at 9:03 AM

2. Pledge lead by Chairman Schwebach

Invocation lead by Chairman Schwebach

3. Changes to the Agenda:

County Manager – Defer 10A to a later date, we were presenting the 2009 fire code but the state has gone to the 2015 Edition of the International Fire Code. We will review the 2015 fire code and bring you any changes.

4. PROCLAMATION - None

5. CERTIFICATES AND AWARDS- None

6. BOARD AND COMMITTEE APPOINTMENTS – None

7. PUBLIC COMMENT and COMMUNICATIONS

Bob Boylan - Family Hemp Farm: Recently it has been brought up about male pollen plants as an issue. We have a continue production license and an annual

production license. We do all of our breeding in a greenhouse environment, we are a container grower. Our males are controlled they are not in a field. I want you as fellow farmers to be aware of this. There are different types of Hemp farms, a lot are field grown, we are artisan production CBD. Everything we do is in containers it's very intimate, it's plant to plant. There is a lot going on in the state with the emergency ruling. I think the famers are going to sue for an injunction, to get in front of the Department of Environment. While trying to make it safer, they are putting standards under instant GMP and want to add a lot of extra fees in the middle of the grow season. Plus the commission as farmers their concern should be the people making these rules, for example, are putting the drying process as part of manufacturing. There is a big disassociation from real world and the rules they are trying to make. This will be \$3000 or more of license fees plus all the ancillaries to get to code. It is very difficult for any one that is trying to bring a brand to market. We are dealing with F1 cultivars, which is fino type differences in those cultivars. When the state comes to inspect us, depending on what plants they grab some plants my test hot and some may not and they are the exact same seed set. If we interfere with breeding we are cutting away the program and the ability to stabilize a more reliable stock.

Chairman Schwebach: You are saying to be cautious before we pass the resolution or ordinance. Please get us your contact information. When that time comes we will be leaning on the industry to develop one if needed.

Bob Boylan - Family Hemp Farm: We want to make sure all the stakeholders are informed, you have 120 acres vs. our 2 & 3 acres. If this is going to succeed in Torrance County the 2 & 3 acres have to be financially viable. This Commission is welcome to come tour the farm and we can explain how it works.

John Butrick - County Attorney: The issue regarding designated polling places and consolidating precincts has been resolved. District court rendered our motion and we are allowed to use the precincts and polling locations and voting convents centers as you designated.

8. APPROVAL OF MINUTES

A. COMMISSION: Motion to approve the July 10, 2019 Torrance County Board of County Commission Minutes

Commissioner McCall: Motions to approve July 10, 2019 Torrance County Board of County Commission Minutes

Commissioner Sanchez: Seconds the motion.

All in favor: MOTION CARRIED

9. APPROVAL OF CONSENT AGENDA

A. FINANCE: Approval of Payables

Commissioner McCall: Motion to approve the Consent Agenda

Chairman Schwebach: Seconds the motion.

All in favor: MOTION CARRIED

10. ADOPTION OF ORDINANCE/PUBLIC HEATING

A. FIRE: Motion to approve publication of the 2009 Edition of the International Fire Code

Chairman Schwebach: Deferred

11. ADOPTION OF RESOLUTION

A. FINANCE: Approval of 4th Quarter Report, Resolution No. 2019-41

Tracy Sedillo – County Treasurer: Presenting on behalf of finance. The finance director is at training this week. This is the 4th quarter report that the resolution is approving. This is the only quarterly report that has to be approved by resolution because it is the final report certifying the ending cash balances.

Chairman Schwebach: Motion to approve 4th Quarter Report, Resolution No. 2019-41

Commissioner McCall: Seconds the motion.

All in favor: MOTION CARRIED

B. FINANCE: Approval of Resolution adopting proposed FY20 Budget, Resolution No. 2019-42

Tracy Sedillo – County Treasurer: This is an updated Recap. There were 3 line items that were inactive, there was activity in them changing the cash balance by \$642.00. This is the adopting budget resolution, the only thing that has changed

about the budget is the beginning cash balances. Any other changes have to be made by resolution.

Chairman Schwebach: Motion to approve Resolution adopting proposed FY20 Budget, Resolution No. 2019-42

Commissioner McCall: Seconds the motion.

All in favor: MOTION CARRIED

12. APPROVALS

A. MANAGER: Approval of revised grant Program Management Policies and Procedures.

Cheryl Allen - Grant Coordinator: You have previously approved a version of this a few weeks ago, a few changes needed to be made. In section 1 coordination of grant policy and grant operation previously said County Manger now states County Manger and County designee. On page 2 we added to the grant coordinators responsibility of maintaining the SAMS registration. On Page 5 Reads: If the grant agreement deadline does not permit for Board review during a regularly scheduled Board meeting, and if a grant specifies a match from the County of \$20,000 or less, the County Manager and County Attorney are authorized to approve and sign the grant agreement. The Board must ratify the agreement at the earliest Board meeting to authorize the financial commitment. This was added in the event we are faced with a tight deadline.

Wayne Johnson – County Manager: We have this week an Emergency grant that is due on Friday. We didn't put it on the agenda but this is an example where it requires no match from the county, we are looking for emergency funding for vehicles. The earliest we could call a special meeting would be Friday. It doesn't make sense to get you all together just to approve something that costs the county nothing. We tried to create a moderately low match dollar amount, so the County Manger can determine if to proceed with the application.

Commissioner McCall: Match up to \$20,000?

Cheryl Allen - Grant Coordinator: Yes, up to \$20,000 of a match. We can change that amount.

Chairman Schwebach: That's a little high. What this Resolution says is the County Manger and attorney can commit \$20,000 of county funds and matching funds to a grant.

Commissioner McCall: How about \$10,000?

Chairman Schwebach: \$10,000 would be better. Do we have funds set aside for this?

Wayne Johnson – County Manager: No

Chairman Schwebach: What happens if that does go through, comes to the Commission and we don't ratify it?

Wayne Johnson – County Manager: We would have to withdraw the application.

Chairman Schwebach: How does it look if we start bringing back grant applications and say we don't want to commit to that?

Cheryl Allen - Grant Coordinator: It doesn't look great but most grants have a provision for amendments.

Wayne Johnson – County Manager: If you are uncomfortable with that amount, make the motion changing the amount. None of us will be here in 20 years and it may be this provision that trips you up down the road. It does give the County Manger more authority. You need to be comfortable that a County Manger won't abuse this type of authority or discretion.

Commissioner Sanchez: What is the advantage?

Wayne Johnson – County Manager: When we have a tight deadline. Sometimes the grants don't come to our attention in time for us to bring it to the board at our regular scheduled meeting.

Commissioner Sanchez: This is for submitting an application, once the sub grant agreement is issued, it still has to come back for the Commission's approval?

Wayne Johnson – County Manager: Yes, it doesn't change.

Commissioner Sanchez: This would allow you to catch as much funds as possible but we would still have ultimate veto power when it comes to signing a sub grant agreement.

Wayne Johnson – County Manager: You are correct, I would never put the commission in a position where they didn't have some off ramps on a decision they were cut out of due to a deadline.

Cheryl Allen - Grant Coordinator: This paragraph is approval of the contract, not just submitting an application. You may want to consider, in kind matches. You may want to put a \$20,000 limit if it's an in kind match and \$10,000 If it's a cash match.

Commissioner McCall: Can we change it to where it's not ultimate approval?

Wayne Johnson – County Manager: That is how it is currently written. We would bring it back to you at the next regular scheduled meeting.

Commissioner McCall: Can we change the verbiage on that?

Wayne Johnson – County Manager: It has to be ratified at the next meeting.

Chairman Schwebach: I'm reluctant to go to \$20,000, I'm good with \$10,000 and in kind and in the future if we need we can change that amount.

Commissioner Sanchez: This is a matter on whether we want our County Manger to have the discretion to commit funds contractually.

Cheryl Allen - Grant Coordinator: Do we want to build in a provision for setting up an emergency board meeting.

Wayne Johnson – County Manager: That’s covered under open meetings.

Chairman Schwebach: I’m comfortable with giving the authority. Our manger and administrative office needs to be empowered more.

Commissioner McCall: I don’t have a problem with \$20,000 as long as the Commission has the authority at the end to ratify, pass or do not pass.

Commissioner Sanchez: I agree with that. How do we change the language to make it specific that the commission has ultimate authority?

Wayne Johnson – County Manager: Leave the \$20,000 as is and empower the Commission chair, can’t call each of you asking what you think, that would be a violation of open meetings. If you empower the chair to concur with the Manger. Instead of the County Attorney make it the Commission Chair in an emergency situation and you have some accountability, a representative of the County Commission. Worst case I approve it and you hear about it at the next meeting. With you seeing the application once beforehand. You have authority to call a meeting to stop the process if need be.

John Butrick - County Attorney: what percentage of the grants that come in, come in where they need to get approved before the next commission meeting?

Cheryl Allen - Grant Coordinator: 1 out of 10 or 15.

Chairman Schwebach: If this is not approved today we can’t apply for that grant without an emergency meeting Friday, is that correct?

Wayne Johnson – County Manager: Yes

Chairman Schwebach: I suggest we approve this with similar language in what we have and drop the dollar amount to \$5,000. This will cover us for Friday. Put it on the agenda for next meeting.

Wayne Johnson – County Manager: We can make a change to the application side of this to allow for this to happen. Can we make a provision on this?

John Butrick - County Attorney: It would be similar to a temporary provision, I’m not aware of a law to prohibit or enable you to do this.

Wayne Johnson – County Manager: Being this is just an application, I think we can legally do it if you wish to move forward. Right now I don’t technically have the authority to move forward.

Commissioner Sanchez: I suggest we approve this so we can move forward with the application but also revisit this at the next meeting.

Chairman Schwebach: I don’t want this to be a habit. I want our County Manger and County Attorney to sign off on this. Two employees we have direct control over and to where we can send a clear message if it’s abused there are ramifications. That’s the protection I would like to see down the road. I think the Commission needs to know where we are committing ourselves to grants.

Wayne Johnson – County Manager: We can make a motion with the change to the amount and amendment to allow the County Manager in the application circumstances similar to the contract circumstances to sign off on the grant application. I propose we bring back the changes at the next meeting for further review of the application by the Commission. There is nothing prohibiting me from sending you the applications and contract in emergency situations, so you are aware of it. It can be up to you if you want an emergency meeting. A notification clause, we determine if it appropriate for us to execute a contract but we notify you giving you the ability to contact me if you want an emergency meeting.

Commissioner McCall: In the verbiage, as soon as the application is sent out the Commissioners are made aware of it and sent out electronically.

Wayne Johnson – County Manager: That would happen only in cases you haven't already approved that application in a Commission Meeting.

Chairman Schwebach: Can you paraphrase the amendment to get a motion?

Wayne Johnson – County Manager: Can we take a moment to write this up?

Chairman Schwebach: Motion to table till before the Executive Session.

Commissioner Sanchez: Seconds the motion.

All in favor: MOTION CARRIED

B. MANAGER: Approval of Sub-contract with Ware Resources that will provide Boys council service for Juvenile Justice Grant.

Cheryl Allen - Grant Coordinator: In your packet was a contract that was provided between Ware Resources and Torrance County, our County Attorney requested some changes. On 1st page statement of work; it used to say article IX it is now Article V & IX, because both address work and termination. In Section 12 Product of Service or Copyright; all materials developed or acquired by the contractor under this agreement shall become the property of the County and shall be delivered to the County no later than the termination date of this agreement. Nothing developed or produced in whole or in part by the contractor under this agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the contractor. In section 16 Applicable Law; we added a sentence. Venue shall be located in the Seventh Judicial District Court in Torrance County. In Section 17 Liability; a second paragraph was added, The County shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold the County

harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by the County in connection with the performance by Contractor of Contractor's duties according to this Agreement. The Contractor shall defend, indemnify and hold harmless the County from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the County and the New Mexico Association of Counties by certified mail. In section 22 Severability; if any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable. Scope of Work in attachment 1 under Essential Function, item 6; Continuum was added to Coordinator. Item 9: guardian was added. Conduct retention calls to the parents or guardians of each participant on a weekly basis to build a relationship with the parent or guardian as well as to discuss the progress of their participating child. Under Working Conditions; Internet will be provided at various school locations. We are requesting approval to get this executed, so we can begin work on the contract. We are asking you authorize the County Manager to sign off.

Wayne Johnson – County Manager: We have a pattern of having the chair sign a lot of documents. We don't make motions to that effect. In this case, I'm asking you authorize me to sign. We added signature lines as a board to sign for this. I don't think we are following what we need to do as far as empowering the chair in the motions to sign on behalf of the County. Some documents are required in the Ordinance, such as bond documents, where the Chair is the signatory and granted the authority through the bond ordinances. Many cases we just have the chair sign, the Chair without specific authorization and direction from the County has no additional authority to sign. I'm concerned about some of our contracts being legally binding. That's the reason some of this has changed.

Chairman Schwebach: Motion to approve Sub-contract with Ware Resources as amended and allowing the County Manager to sign.

Commissioner Sanchez: Seconds the motion.

All in favor: MOTION CARRIED

C. MANAGER: Motion to authorize Commission Chair and County Manager to execute EVEDA service contract for FY20 thru FY22.

Wayne Johnson – County Manager: The original contract was for 3 years that would have been \$75,000. This would have violation of the procurement code, we would have had to go out for RFP. We reduced the term to 2 years. This brought to our attention that we need to update our LEDA Ordinance. Myra and Betty are willing to proceed with the contract and will be a part of the LEDA ordinance review, if there is a problem in the contract at that time then we will address it at that time and bring it before the Commission.

John Butrick - County Attorney: The changes that were made to the contract as follows. Torrance County was identified as a Municipal corporation that was removed. Middle of page where it says: Whereas the county has adopted Ordinance 2003-01, we removed reference to Ordinance 2003-01. The Ordinance was passed several years ago and is in need of revamping. Bottom of page 2; we reduced it from 3 years to 2 years and end no later than June 30, 2021 instead of June 30, 2022. Top of page 3, under section III Term; we reduced it to an automatic renewal, unless terminated pursuant to Section VII (Right of Termination) or Section VIII (Appropriations) sufficient funding. Activities conducted by EVEDA since the effective date of this contract but before the date of the expiration date of the contract shall be deemed to have been performed by EVEDA in compliance with this contract. The way this reads to the County Manager and I, suggested that anything EVEDA did would be automatically considered in compliance with this contract. We felt it would be better if we take that out. Section VIII, appropriation; we covered. Section IX, Status of EVEDA; makes it clear that EVEDA is considered an independent contractor not an employee of the county and won't accrue any benefits of the county. Section X, Assignment; EVEDA shall not assign or transfer any interest. This prohibits them from transferring their interest without our approval.

Section XI, Severability; if there is one term unenforceable the other terms are still enforceable. Section XIV, Cooperation and Dispute Resolution; we added; the parties agree that the laws of the State of New Mexico shall govern this agreement and that venue will lie in the Seventh Judicial District Court in Torrance County. We also have all 3 Commissioners sign.

Commissioner Sanchez: Please elaborate section 1A, page 1.

John Butrick - County Attorney: Review applications for proposed economic development projects, including applications for industrial revenue bonds, within the County.

Commissioner Sanchez: The word application seems unnecessary.

John Butrick - County Attorney: Part of this contract is that its EVEDA's job to find projects and also review applications. They are looking at this with the best interest of the County and EVEDA.

Commissioner Sanchez: It implies there is an entity applying for something to someone. When it comes to EVEDA projects, what kinds of applications are we talking about?

John Butrick - County Attorney: Applications is what you would normally think of as an application. We would review it as well as have EVDA review it.

Myra Pancrazio – Director EVEDA: We need to review the LEDA Ordinance, some of your concerns can change. Right now the Ordinance states, EVEDA oversees the contracts/applications. When a client comes to us, we have an application process, we send that application to the state. The state reviews it and sends it through to Taxation and Revenue. My job is to make sure the application is complete and sent to the proper entities. Another item in the ordinance is, in order for you to enter into a public/private partnership, the ordinance allows the anti-donation, so we can get around that. It's a living document. We would like approval for the contract with the understanding we still need to review the LEDA Ordinance.

Commissioner Sanchez: This has to do with applications that are handled through your office.

Myra Pancrazio – Director EVEDA: Yes

Chairman Schwebach: Are you needing authorization for the chair and manger to execute the contract or are we are we changing this to all of us to execute the contract?

Wayne Johnson – County Manager: The motion would be to approve and you all would sign. It's a contract that we are a signatory on approved by the Commission. Its stronger if all 3 of you sign this.

Chairman Schwebach: Motions to approve with the understanding that our County Attorney and Manger reviewing LEDA with amendments down the road.

Commissioner Sanchez: Seconds the motion.

All in favor: MOTION CARRIED

13. DISCUSSION

A. MANAGER: ICIP List, NOTE: Public Hearing on August 14, 2019
Cheryl Allen - Grant Coordinator: I provided 2 lists, one in color and one in gray scale. The colored copy is the current ICIP list, showing in green items that should continue on the list, red items are completed. This is for you to review and make any changes on what you think should be included or removed. We have also requested from our employees for their submission of new items to be added to the worksheet. The gray scale list is a compilation of all the items in green and items submitted by staff members. The 3 senior centers have been called out individually, the state feels the senior centers have been overlooked throughout the state. The McNabb road project has been expanded to include the entire mileage and a repaving. The Duran water system needs to be moved up on the list and made a priority. Their situation is growing dire. The department yard shop has been updated. Mescalero dam mitigation project, we are looking to reduce the height of the dam to 6 ft., to remove the dam from the OSE inventory. We need you to look at this and advice if there are projects you want added/deleted or rerank projects. There is a public hearing set for August 14, 2019 and has been submitted to The Independent and our website.

Commissioner Sanchez: I have 3 to 4 projects I will be adding to this, I have not received the worksheets back to submit.

Wayne Johnson – County Manager: Make sure they are in the packet, I would like for them to be a part of the public discussion.

Commissioner McCall: What are the new submissions?

Cheryl Allen - Grant Coordinator: The 3 senior centers, Mescalero dam mitigation project, the country road improvement is revised, new road department, yard shop is revised and road equipment revised.

B. PLANNING: PNMR Solar Project Update

Steve Guetschow – Planning & Zoning Coordinator: Last week I had the opportunity to visit the PNMR site for the Moriarty Solar project. The chain-link perimeter is complete, the underground electrical cable were being laid over the whole site. The erection of the pedestals assemblies were being conducted on the SW quadrant of the area. 2 water trucks conducting dust control. I arrived on site at 3PM, at around 3:15 a large number of employees were gathering around the construction shacks, must have been the end of the shift. One is for Affordable Solar and the other is for PNMR's shack. I met with Steve Homburg he is the large commercial superintendent for Affordable Solar and Tom Lajuense the commercial

site Administrator for Affordable Solar. We discussed in general their procedures for security, dust control and hiring practices. They are giving preferential consideration for qualified applicants from the Moriarty and Torrance County area. Last night I attended the EMWT meeting and public hearing for their 2021-25 ICIP. Guests attending include Stephane Garcia-Richard for the New Mexico Land Commission, Donsal Worthington and Angela Vosigolupa from Bohannon Huston, Mayor Dial, representatives from EBRA, the land grants, Mrs. Pancrazio from EVEDA and citizens from the valley and mountain communities. During the public hearing land grant representatives expressed their concerns about the proposed water line routing plan showing extensions to their communities without their consent and concern shared my Mayor Dial about water being exported outside of the Estancia underground water basin. How increased residential sprawl would affect the communities and measures to enforcement of the no exportation rule. Mayor Dial expressed his view that the regional water system should be limited to Torrance County rather than serving the Estancia Basin. Citizens expressed concerns over domestic wells drying up and questions how the regional water system would serve the residence. EBRA Representatives expressed their concerns for the depletion of the basin water supply and support the regional water system. Chairmen Ortiz fielded questions to allay the concerns expressed, explaining how the system would provide service to existing residential developments and the enforcement committee topic will come up at their next regularly scheduled meeting. Mr. Worthington and Ms. Vosigolupa explained details of the regional water system plan. Land Commissioner Garcia-Richard informed the audience of the increased revenues from state land lease propagated by their new plans and benefits to the public.

***12. A Approval of revised grant Program Management Policies and Procedures.**

Wayne Johnson – County Manager: Proposed motion: Move to approve revised grant Program Management Policies and Procedures as amended to reduce the County match authority granted to the County Manger and County Attorney from \$20,000 to \$5,000 and require notification of all board members before the agreement is signed and to grant the County Manger authority to approve non match applications following notification of the board of County Commissioners. The grant management policy shall be brought back to the commission with the change indicated in today’s discussion at the next regularly scheduled board meeting.

Commissioner McCall: So moved

Chairman Schwebach: Seconds the motion.
All in favor: MOTION CARRIED

14. EXECUTIVE SESSION:

- A. **Manager:** Purchase of Torrance County Fair Grounds
(Closed pursuant to NMSA 1978 Section 10-15-1(H)(2).

Chairman Schwebach: Motion to go into Executive Session

Commissioner McCall: Seconds the motion.

Roll Call Vote: All in favor - **MOTION CARRIED**

Executive Session began at 10:18 AM

RECONVENE FROM EXECUTIVE SESSION:

Chairman Schwebach: Motion to return from Executive Session

Commissioner McCall: Seconds the motion.

Roll Call Vote: All in favor - **MOTION CARRIED**

Reconvened at 10:38 AM

Chairman Schwebach: We discussed the possibility of the purchase of the Torrance County Fair Grounds and nothing else in the Executive Session.

Chairman Schwebach: I make a motion to direct the County Manager to proceed with the direction from the executive session concerning the lease and/or purchase of the Torrance County fairgrounds.

Commissioner McCall: Seconds the motion.

All in favor: MOTION CARRIED

15. Announcement of the next Board of County Commissioners Meeting:

The next meeting of the Torrance County Board of Commissioners will be a Special Commission Meeting August 14, 2019 in the Commission Chambers of the Torrance County Administrative Building.

16. Signing of Official Documents

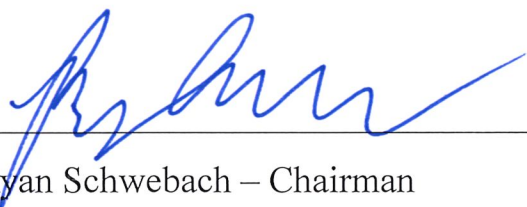
**Adjourn*

Chairman Schwebach: Motions to adjourn Commission Meeting

Commissioner McCall: Seconds the motion.

All in favor: MOTION CARRIED

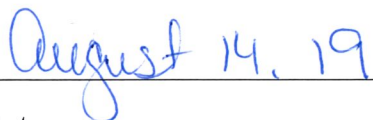
Meeting adjourned at 10:40 AM



Ryan Schwebach – Chairman
Assistant



Genell Morris – Administrative



Date

The Video of this meeting can be viewed in its entirety on the Torrance County NM website. Audio discs of this meeting can be purchased in the Torrance County Clerk's Office and the audio of this meeting will be aired on out local radio station KXNM.