

**CITY OF ALAMOGORDO, NEW MEXICO  
JOINT CITY/COUNTY COMMISSION SPECIAL MEETING MINUTES  
OTERO COUNTY COMMISSION CHAMBERS  
1101 NEW YOUR AVE., ROM 123, ALAMOGORDO, NM  
TUESDAY, OCTOBER 15, 2013 – 6:00 P.M.**

The County of Otero Commissioners held this Public Hearing and some of the City of Alamogordo Commissioners were seated in the audience for comments only. The following are the minutes as prepared by the County Clerk's office.

**CALL TO ORDER, ROLL CALL, INVOCATION & PLEDGE OF ALLEGIANCE**

The Board of County Commissioners, in and for the County of Otero, State of New Mexico, met in a Public Hearing at the Administration Building in Alamogordo County and State aforesaid. Meeting called to order by the Chairwoman at 9:00 a.m. (**correct to 6:00 p.m.**) October 15, 2013; and she announced that reasonable notice was given to the Alamogordo Daily News and Radio Stations, KYEE, KZZX and KINN.

Present:

Susan Flores	Chairwoman
Tommie Herrell	Vice-Chairman
Ronny Rardin	Member
Pamela Heltner	County Manager
Stephanie Hale	Administrative Assistant
Dan Bryant	County Attorney
Christina Nuno	Deputy Clerk

**Roll call was taken as follows:**

Commissioner Flores	Present
Commissioner Herrell	Present
Commissioner Rardin	Present

Commissioner Rardin gave the invocation and Commissioner Herrell led the Pledge of Allegiance and Salute to the flag of the State of New Mexico.

Commissioner Flores welcomed everyone to the meeting and acknowledged that present in the audience were Trustees from Tularosa and Cloudcroft, and Alamogordo City Commissioners as well as the Mayor of Alamogordo. The following introduced themselves.

Susie Galea	Mayor of Alamogordo
Nadia Sikes	City Commissioner District #2
Jim Talbert	City Commissioner District #6
Josh Rardin	City Commissioner District #4
Jim Staley	City Manager
Kurt Tyler	Tularosa Trustee
Bruce Smaga	Cloudcroft Trustee

**PUBLIC HEARING**

**1. Discuss, hear public comments and consider adoption of a Hold Harmless Tax in Otero County.**

The time being 6:00 p.m. the Chairwoman called the Public Hearing to order and stated the purpose of the hearing is to hear public comments and consider adoption of a Hold Harmless Tax in Otero County.

Commissioner Flores gave a summary of how the Hold Harmless Tax came about. In 2002 Governor Richardson took away the food and medical taxes. When that happened, municipalities and counties started hurting because they were used to having that revenue. The state at that time decided to give a provision and provided the Hold Harmless Tax. In March of this year, the state legislature at the final hour passed a bill to take back that provision for a 17 year period beginning in 2015's budget. What the state legislature allowed is for local governments to implement a 1/8<sup>th</sup>, 2/8<sup>th</sup> or 3/8<sup>th</sup> countywide gross receipt tax. The municipalities can also implement those increments of a gross receipt tax. She stated that is what the discussion is about tonight and where the county wants to go with this. The county will be losing a 6% decrease every year.

Commissioner Herrell stated for the past couple of months the Board of County Commissioners have been discussing what the possibilities are and if they implement a gross receipt tax, how can they generate more revenue. Mr. Mark Valenzuela, Vice-President of George K. Baum & Company, is the county's bond representative, and he has visited with the commissioners on several occasions to discuss the obligation bonds and what they will do to the county. He stated the county's revenues are being reduced in the county's gross receipt tax money, and expenses are going up. Commissioner Herrell discussed the different projects that the county needs improvements on and by implementing the Hold Harmless Tax or doing an Obligation Bond, that will give the county the resources it needs to be able to do them. He stated doing a gross receipt tax is the fairest way to do it for taxation. It lets everyone participate whether you have a lot or disposable income, you pay taxes on the portion that you spend. The total approximate amount needed for the county's projects is \$25,800,000. Commissioner Herrell stated Commissioner Flores has another project for consideration and the City of Alamogordo is considering an entertainment center for the citizens of Otero County and Alamogordo.

Mr. Mark Valenzuela stated the direction the county has gone in terms of lowering the county's cost of capital has been fantastic for the county. What the county has accomplished with the detention facility in Chaparral, is that the first set of bonds were refunded last year and saved the county more than ten million dollars, that will be realized over the next ten years. The county is in the process of refunding the second piece of that, which he anticipates will save another 2.5 million dollars, even slightly more than that over the ten year period. Commissioner Herrell has been the one pursuing the deal but this commission has been behind it 100%. It is about strategic financing for the lowest cost you can get. One benefit to the structure the county is looking at today is that interest rates are still very low and the county has the opportunity to lock in at a historic low rate. He stated the unfortunate reality is that federal and state have been pushing more of the financial burden on local governments. We are seeing it today with the hold harmless impact and we continue to hear messages that it might be worse and maybe accelerate these hold harmless reductions, if Santa Fe has their way. There is also uncertainty with regards to the federal PILT (Payment In Lieu of Taxes) payments, those payments that counties receive because of federal land that exists within the county which cannot be taxed. The opportunity to increase one, two or three eighths of a percent tax, provides the county to be ahead of those potential losses. It gives the county the opportunity to invest back into the community by taking on significant capital improvement projects all across the county. The proposal to be discussed will give the commission the opportunity to pursue some of those projects.

If the county were to issue 30 million dollars of bonds for the capital improvements, it would cost the county 2.4 million dollars per year that would equate to a 2/8<sup>th</sup> percent increase in gross receipt tax or 2/8<sup>th</sup> percent increments. If the county were to issue 20 million dollars over 20 years for those capital improvements, the annual cost would be 1.475 million dollars per year. He stated in the constitution of the State of New Mexico there is a "non-impairment clause". If the county were to go forward with this proposal to increase the gross receipt tax by any increment and use those revenues to pledge for the payment of bonds, anything that the legislature would do, would not have an impact on the county, the legislature could not revise that statute in a way that would impede bond holders.

Commissioner Herrell stated in ten years, if the commission at that time wants to repeal the taxes they possibly could because there is an option in the Hold Harmless Tax agreement for that. When taxes are increased, you have to look at the big picture and say what services can be provided and what is

the county going to do for our citizens and what do they want. A lot of people don't understand the issue of refinancing bonds and don't realize the benefit from it, but they will in ten years.

Janet White asked Mr. Valenzuela how the sales are doing of the bonds of the Detention Center and if it is completely sold. Mr. Valenzuela stated they haven't opened up the sale for this one for the second tranche of bonds. They completed the first tranche of 19 million dollars last year in December and the interest rate was 3.1%. Otero County was paying an average of 8.25% so it was a significant improvement over the existing financing.

Stephanie Dubois stated she thought that by imposing the tax, they will be able to put back the money that the county will be losing, if so, she doesn't understand all these other things that Commissioner Herrell has proposed. She doesn't think that now is the time to raise the taxes because of the sequester and the government shut down and we have no new businesses in New Mexico to pay for that.

Commissioner Rardin stated what Commissioner Herrell is posing, is for the county to go out for a bond and encumber the Hold Harmless money that is out there right now before the legislature goes back to session on January 19, 2014. If the county encumbers it, the state can't take it away for the length of the bond of 20 years.

Mr. Fred Tyler, Trustee for the Village of Tularosa, read his thoughts regarding House Bill 641. House Bill 641 was a last minute bill passed by the legislature which was design to do away with the Hold Harmless provisions of the tax code and give tax breaks to corporations. The Hold Harmless provision replaces revenues of cities and counties which was lost when Governor Richardson removed the tax on food and medicine in 2002. What House Bill 641 does is repeal the Hold Harmless provision beginning in 2015 for 17 years at the rate of 7% a year reduction. The problem is the way the current law was written that says both cities and counties can impose this tax. It allows counties to tax the citizens within the cities which will result in an increase of up to 6/8<sup>th</sup> of a percent or .75% tax increase on city residents. He urges the county commission to delay passing the gross receipt tax to see if the legislature will consider any of the proposals proposed by the Municipal League because they are working on it.

Commissioner Flores stated her thought is that the legislature wanted the counties to be whole by saying the counties can tax up to 3/8<sup>th</sup> of a percent. She would love to do the projects discussed with the tax money but is that making the county whole. Her thought on the issue is, being whole for Otero County is \$400,000, but that is what they are going to lose. The county needs a tax increase that is going to make the county whole and not a windfall, the 1/8<sup>th</sup> or 3/8<sup>th</sup> are windfalls. The projects that the county has discussed for improvements are things that need to be done. The Detention Center has to be expanded and the money is there for the Convenience Center. The county also wants to work with the City of Alamogordo for a transfer Station. There are projects that are listed in the county's capital outlay for next year, the question is, is this the time to do a tax increase to our citizens when there is a financial crises. There is a county wide 1/16<sup>th</sup> percent gross receipt tax available to the county that will bring in \$630,000. She stated Implementing the 1/16<sup>th</sup> is more reasonable to tax and it can be implemented in 2 years.

Janet White stated that she received correspondence from State Representative Yvette Herrell stating she did not vote for HB 641. Ms. White presented to the commission Representative Herrell's written response of why she did not vote for it. Ms. White stated State Representative Zack Cook did not vote for it either. Senators Ron Griggs and Bill Burk did vote for it and according to Ms. White, she stated that Mr. Burk indicated that he was not aware that there was a "no referendum clause" in the legislation and if he had known that he would have not voted for it.

Bruce Smaga, Cloudcroft Village Council, asked the commission where will the county put a new convenience center since that is what is on the county's wish list for a new facility and equipment. Will the county use the same property or relocate?

Commissioner Herrell stated they would use the same property where the Convenience Center is located on Gravel Pit Road.

Mr. Smaga stated the commission should consider a new location for the fairgrounds because it is getting crowded with the businesses and housing around it.

Commissioner Herrell stated the county has already invested approximately 3 to 4 million dollars in the fairgrounds and to put it a new location would cost approximately 10 to 12 million dollars. There is plenty of land behind the fairgrounds to accommodate the expansion and the county is not utilizing that property at the moment.

Mr. Smaga asked why not use DFA (Department of Finance) for the Road Department's equipment purchase?

Commissioner Herrell stated they could use DFA but the county would have to pay it back and Mr. Smaga stated he understands that but it would be at a lower rate than what can be borrowed through a bond. He stated he likes the county's wish list but he is not certain that we need to borrow money right now even though the county has done well by refinancing the bonds from the Detention Center.

Joshua Rardin, City Commissioner, stated his biggest concern is the way the bill was written that it allows the county to tax city citizens if the tax is imposed. He stated the city had a conference call with Senator Bill Burk and they have been trying to get in contact with Taxation and Revenue and their attorneys to determine if they could give the city a ruling or interpretation if the tax could be imposed only on the outlying areas of the county the way it was intended to be. If the county imposes this tax, the city's request is that in the county's ordinance that it states the taxes will only be imposed on the outlying areas.

County Attorney Dan Bryant stated the county is stuck on what the legislature says the county can do. In the process of the act, it says the county shall use the form provided by DFA. When the issue came up if it is countywide or just in the county area, he called and asked if he could change the form of the ordinance because he had prepared three ordinances 1/8<sup>th</sup>, 1.25% and 3/8<sup>th</sup> percent just in case and he would have prepared three more with the same increments just for the county area. However, DFA said no, the statute is mandatory and the form DFA has produced only allows for a countywide tax. He stated he has spoken to legislators, both members of the house and senate of both parties and one of the things they are looking into doing in January 2014, is getting the governor to change the county authorization to only tax in the county area.

Mayor Susie Galea thanked the commission for having this meeting and allowing the city officials to speak. She thanked Ms. White's opportunity to share State Representative Herrell's letter of response to passing the bill. She stated the City of Alamogordo and Otero County have been proactive against the legislation. The city sent a letter of what they called a "bad bill" that would harm local entities and one thing the city stated about House Bill 641, is that Alamogordo would see a tax revenue reduction of 2.7 million and will be likewise devastating to our rural areas of New Mexico. The Hold Harmless Tax in 15 years will be approximately 1/2 billion dollars in payments that the state cannot afford. The city commissioners in their meeting this morning decided unanimously they would not enact a tax, not even 1/8<sup>th</sup> of a percent. The city would have to reduce services to make it work. She can understand by enacting a 1/8<sup>th</sup> of a percent of gross receipt tax it will help with the county's Detention Center and help make the county whole. She understands that the county would like to work with the city on the Convenience Center and the city likewise would and she hopes the county will consider working with the city on PSAP. She would hope for the county to consider that it is an economic advantage that the city and county could have by keeping a lower gross receipt tax, and by not enacting a gross receipt tax, that it's an economic advantage by drawing more businesses to Otero County and Alamogordo.

Paul Sanchez stated Commissioner Flores's point that this opportunity to enact a tax is meant to replace what we have been getting for the Hold Harmless Tax. It is not intended to deal with windfall

to get more money to do more things. He stated Commissioner Herrell has a lot of great ideas in particular about a Family Fun Center. However, to enact a tax of this nature to pay for that seems like a back door way to do it. The 1/8<sup>th</sup> percent that is going to go away on the Indigent Fund, that is a problem with the State Legislature and not what this is about, it is about the Hold Harmless Tax. The best way, unfortunately, is to probably reinstate the food and medicine tax on some level and that would solve the problem. The commission has a tough choice because something has to get done.

Sam J. Woods stated this idea about obligating ourselves to bonds he finds offensive. There were projects discussed and how to go about paying for them by either imposing a tax or through bonds. The opportunity should be given to the people to vote if they want this or not. If we preemptively obligate ourselves to these bonds, we are paying for them for the next 20 years and we don't know what the economic conditions are going to be in those times. It is a good time to look at consolidating what we are doing now which may be too much.

Commissioner Rardin stated the second 1/8<sup>th</sup> percent gross receipt tax is the one that the state is considering taking away and it could only be used for Indigent funds. The 1/8<sup>th</sup> percent tax the county utilizes is put in a pool and goes to a federal match and comes back three times stronger and it helps our hospital approximately by 5 million dollars. This year it is higher than that and if everything keeps going the way it is, that is the projected number. If the state takes it, the county will be missing their 1.3 million dollars that we put in to match that. His question to the county attorney is if the county didn't have the 3<sup>rd</sup> 1/8<sup>th</sup> percent or the 4<sup>th</sup> 1/8<sup>th</sup> percent tax, can the county still invest it with the Federal Government on their Medicaid program and still be in the three to one match or would the county still have to go with what the state wants to do, put the money in a big pool and divide it.

Mr. Bryant stated the answer to that is a very complicated answer but the short answer is no, the county won't be able to do that. The state is taking counties out of the participation of that program and redefining the program and the county will not be able to do that.

Commissioner Rardin stated to help the hospital the county could implement one of the three 1/8<sup>th</sup> percent gross receipt tax, repeal the 1/8<sup>th</sup> percent and still have the others to fall on. Commissioner Herrell stated to Commissioner Rardin that is smart thinking but he disagrees with him. The way the bill is written the county has the opportunity to enact this without going to the voters. The way the economy is in Alamogordo a bond or tax issue will not get passed in the City of Alamogordo.

Commissioner Rardin stated what Mark Valenzuela does for this county is amazing it is his brain along with Commissioner Herrell who have saved the county millions of dollars. The county could raise the tax 3/8<sup>th</sup> of a percent and the city could raise it too. It needs more thought and they still have a couple of months to work on it.

City Manager Jim Stahel stated if this passes, the first year the city will lose \$200,000. By the time the 15<sup>th</sup> year comes around, it will be approximately 2.8 million dollars lost. He stated it will stop there and no money after that. As the commission knows, the city commission voted not to impose the tax. The city commission also directed their staff to look into how they might reduce their budget to handle the reduced funds. He stated as far as he is concerned, he believes sincerely in the spirit of cooperating and trying to figure it out together. They will be able to do a lot more if the city and county put their collective thinking together and work out something that respects each others situation.

Mr. Bryant stated he has attended these meetings for a couple of years and there have been times when a meeting such as this was mean spirited, critical and full of personal attacks and rancor. Those days made it very difficult to be a public servant. However, he wants to thank everybody from the bottom of his heart at the elevated, thoughtful and articulate discussion tonight. He stated "you made me proud to be an American and to be a citizen of Otero County and to be the county's lawyer".

Commissioner Rardin stated he needs to do more thinking because he is not convinced which way to go. He has heard the city, villages and the public loud and clear that they are all on the same page not to increase taxes.

Commissioner Flores stated the county commission needs to get more information and she can't implement anything tonight. They need to make themselves whole and not exploding a tax on our citizens.

**Commissioner Herrell made a motion to discontinue discussion on the Hold Harmless Tax. The motion dies for a lack of a second.**

Commissioner Rardin stated he feels it should be discussed some more, they just need to give it more thought and consider all aspects.

Commissioner Herrell stated everyone has voiced their thoughts and the consensus is that no one wants to implement taxes and there is no need to have other meetings on this issue. That way he or no one else is wasting their time on an issue that is not going anywhere.

**Commissioner Flores asked if anyone had any further discussion or questions on this issue, there being none, the Chairwoman ended the Public Hearing and the commission is now in Regular Session.**

**2. Request approval of Resolution #10-15-13/102-10 declaring an emergency in Otero County due to the Failure of the United States to fulfill its obligations and denying the public access to White Sands National Monument.**

Commissioner Rardin gave a brief summary on how the Federal Government came to own property or how it can own property. He stated what they discovered was that the Federal Government does not own White Sands National Monument. The Federal Government has chosen to shut it down and it is hurting Alamogordo, Cloudcroft, Tularosa and Otero County. He stated the Board of County Commissioners is in agreement with him to do a resolution that says to the Federal Government to open again White Sands National Monument Park. White Sands does not belong to the Federal Government it belongs to the State of New Mexico, which is an umbrella of Otero County. If the commission passes this tonight, tomorrow morning they will be on the phone with the Federal Government. He stated the county has the full authority under the constitution of the law to authorize the opening and the county is not breaking the law in any way. The county is simply moving forward with what the county thinks is best for citizens of Otero County and citizens of the United States.

**Commissioner Rardin made a motion to approve Resolution #10-15-13/102-10. The motion was seconded by Commissioner Herrell for discussion.**

Commissioner Herrell asked how much does it cost to operate White Sands National Monument. Commissioner Flores stated Governor Martinez stated it costs approximately \$4,500 a day to operate White Sands.

Mayor Galea asked how the county will provide for the short fall and how will they provide public safety. Commissioner Rardin stated the Sheriff has volunteered to use his staff and volunteers will manage it.

**Commissioner Flores asked if anyone had further discussion on this issue, there being none, the Chairwoman called for a vote. A vote was taken and the motion passed 2-0, with Commissioner Herrell abstaining.**

## **ADJOURNMENT**

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**There being no further business before the Board, the Chairwoman adjourned the meeting at 8:20 p.m.**

APPROVED:

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Susan Flores, Chairwoman

ATTEST:

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Denise Guerra, County Clerk

\_\_\_\_\_  
Mayor Susie Galea

ATTEST:

\_\_\_\_\_  
City Clerk Reneé L. Cantin