

SANTA FE COUNTY

BOARD OF COUNTY COMMISSIONERS

SPECIAL MEETING

March 22, 2021

Henry Roybal, Chair - District 1
Anna T. Hamilton, Vice Chair - District 4
Rudy Garcia - District 3
Anna Hansen - District 2
Hank Hughes - District 5

SFC CLERK RECORDED 04/29/2021

SANTA FE COUNTY

SPECIAL MEETING

BOARD OF COUNTY COMMISSIONERS

March 22, 2021

1. A. This special meeting of the Santa Fe Board of County Commissioners was called to order at approximately 4:32 p.m. by Chair Henry Roybal.

In accordance with the Public Health Emergency Order issued by the State of New Mexico, this meeting was conducted on a platform for video and audio meetings.

[For clarity purposes, repetitive identification and confirmations of those on the phone have been eliminated and/or condensed in this transcript.]

B. Roll Call

Roll was called by Deputy County Clerk Evonne Gantz and indicated the presence of a quorum as follows:

Members Present:

Commissioner Henry Roybal, Chair
Commissioner Anna Hamilton, Vice Chair
Commissioner Rudy Garcia
Commissioner Anna Hansen
Commissioner Hank Hughes

Members Excused:

None

The Commission welcomed the new Deputy Clerk to the County.

C. Approval of Agenda

CHAIR ROYBAL: Are there any changes or additions to the agenda? If not, what's the pleasure of the Board?

COMMISSIONER GARCIA: Mr. Chair, if there are no changes to the agenda I'd like to make a motion for approval.

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: I'm going to go to a roll call vote.

The motion passed by unanimous [5-0] roll call vote.

SFC CLERK RECORDED 04/29/2021

2. ACTION ITEMS

A. Request Approval of Agreements Concerning Buckman Direct Diversion Energy Conservation Measures: (A) Cost Sharing Agreement for the Lease-Purchase of Energy Efficiency Equipment and Improvements to Reduce the Energy Use of the Buckman Direct Diversion Project and (B) Energy Efficient Equipment Project at the Buckman Direct Diversion Facility Agreement Between the City of Santa Fe and the Buckman Direct Diversion Board

CHAIR ROYBAL: From the County Attorney's Office we have our County Attorney, Mr. Greg Shaffer and also we'll have from our Utilities Division, Mr. John Dupuis, our director.

GREG SHAFFER (County Attorney): Thank you, Mr. Chair, Commissioners. Before you today are two separate agreements. One is a cost sharing agreement between the County of Santa Fe and the City of Santa Fe as well as the Las Campanas Water and Sewer Cooperative and the Club at Las Campanas. That's the agreement that sets forth how the benefits and cost of the BDD energy conservation measures will be allocated amongst the parties.

The second agreement in front of the Board is what we call the separate City-BDD agreement, and this is an agreement between the City and the BDD Board whereby the BDD Board, among other things, authorizes the City to actually make the energy conservation measures, and the City agrees to transfer title to those energy conservation measures to the BDD Board subject to the security interests of Sterling National Bank.

The Board of County Commissioners is being asked to approve that agreement because the net effect of it is that assets owned by the BDD Board will be encumbered by that security interest.

So with that by way of overview, the Board is generally familiar from past meetings about the BDD energy conservation measures that are being pursued with regard to BDD facilities. They consist of LED facility improvement measures, what we call LED FIMs well as solar facility improvement measures or solar FIMs at two lift stations and booster stations at BDD and the LEDs will be at several different facilities.

So again, back in February of this year, on the 23rd, the Board of County Commissioners passed an authorizing resolution, Resolution No. 2021-022, which generally authorized the County Manager to finalize the cost sharing agreement before the Board tonight, and authorize the County to pledge for debt service its share of BDD utility cost savings. Since the Board passed the authorizing resolution on February 23rd, County staff has been working with City staff as well as representatives of Las Campanas Club to work out the details of the cost sharing agreement, and I'm pleased to report that what is in front of you this evening has been blessed by both representatives of the Club as well as the City. So I believe that we have a final product for the Board to consider.

So focusing on the cost sharing agreement, it does a variety of different things. I'm going to focus on the highest level detail in terms of what it accomplishes. The cost sharing agreement that's in front of you would have the parties share all the benefits and costs attributable to the BDD energy conservation measures at a specific facility based upon their proportionate water usage at that facility in the building period. It would

pledge the City's, County's, Club's and Cooperative's share of BDD utility cost savings, if any, to the City via the BDD for debt service with the exception of initial payments into the BDD special revenue fund to be created at the BDD. The County's, Club's, and Cooperative's contributions are limited to the amount of their actual BDD utility cost savings.

It would require, subject to appropriations, the City, County, and Club to make initial payments into the BDD special revenue fund to cover lease payments that are attributable to the BDD energy conservation measures in the event that utility cost savings are inadequate for that purpose, as are guarantee payments from Yearout. It would make the BDD Board responsible for the operation, maintenance, repair and replacement of the BDD energy conservation measures, the cost of which would be allocated amongst the parties depending upon the type of energy conservation measure. OMR&R costs for the LED FIMs will be allocated amongst the parties pursuant to their existing arrangements and the major repair and replacement fund policy as well as in the so-called FOPA, and OMR&R for the solar FIMs would be allocated amongst the parties based upon their water usage, as well as a policy yet to be developed by the BDD Board for major repair and replacement of the solar FIMs in particular.

There would be two things that I would want to highlight relative to the cost sharing agreement before I stand for any questions, as well as John Dupuis. First, I do want to bring to the Board's attention that implementation of the energy conservation measures will not be entirely budget-neutral to the County. All utility cost savings are pledged by the County for debt service, so those utility cost savings, at least during the term of the lease-purchase agreement between the City and Sterling bank will not be available for OMR&R costs. We don't believe that the OMR&R of the LEDs will be materially different than any existing costs associated with those fixtures. However, the OMR&R for the solar arrays, they do represent new, additional cost. We estimate, and it is just that, an estimate, that the new costs associated with the solar FIMs will be approximately \$20,000 annually, and again, the County's share of that will vary based upon water usage. And our rough estimate is that could be in the order of magnitude of \$5,000 to \$6,300 or higher, again, depending upon our proportionate water usage.

So we did want to highlight that fact to the Board for consideration. In addition, while we don't necessarily think that this is a likely outcome by any stretch, we did want to highlight the possibility that BDD utility cost savings as well as guaranteed performance payments from Yearout could be insufficient to cover debt service under the lease-purchase. While Yearout does guarantee the performance of the energy conservation measures there are exceptions to their guarantees. Force majeure, acts of god, so to speak, are one such exception as well as, as I understand it, poor performance due to maintenance of the energy conservation measures.

So again, it is possible that the amount of utility cost savings would be insufficient to make or cover debt service. In that event, the parties are not obligated to contribute other funds toward debt service but they may choose to do so in the sole and absolute discretion. But we did want to highlight that as a risk, albeit one that we don't necessarily score as being very high.

So I'll stand for any questions on the cost sharing agreement. Mr. Chair, if you want to take them one at a time, or I can continue on and give a brief overview of the

separate City-BDD agreement, whatever the pleasure of the chair is.

COMMISSIONER GARCIA: Mr. Chair, I have some questions.

CHAIR ROYBAL: Let's go ahead and treat them individually. So we'll go ahead and go to Commissioners after each one. That would probably be best. Go ahead, Commissioner Garcia.

COMMISSIONER GARCIA: So really quick, just for the record. The BDD, because my grandma doesn't know what the BDD is. So that's the Buckman Direct Diversion. That's actually the City, Las Campanas, as well as the County's water? Every time you turn on that tap? When we get the water out of the Rio Grande it goes through all these pipes and so on and so forth. That's actually what the Buckman Direct Diversion is? Once again, because my grandma doesn't know what the BDD is.

And then also, just for the record, thank you, Mr. Shaffer. Also, in regards to what's the difference between Las Campanas and the Clubhouse of Las Campanas, is one of my questions. And then the other question I have, Attorney Shaffer, is the placement – this might be for John Dupuis – the placement of these solar – and all this stuff, we're going to actually improve this Buckman Direct Diversion. Are they going to be located in an area where – I hate to say – where people are not going to shoot at them? Because in that area down there people are unfortunately shooting at all of our – all the stuff we have out there. So have we already decided on placement for this stuff? Are they going on roofs? Are they going to be separate? What's happening with that?

And once again, for Yearout, Yearout actually does a good job. They've done a lot of stuff for the schools and I just want to congratulate them for helping us out. And for the debt of \$10,000, we're going to do \$10,000 every year? Or how does that work? I understand – can you explain a little bit more? We're going to put up \$10,000 up front and then we will be hopefully reimbursed as we have savings for the Buckman Direct Diversion project? Thank you, Mr. Chair.

MR. SHAFFER: Mr. Chair and Commissioner Garcia, I'll try and take those in order. So the Club at Las Campanas, as I understand it, is the entity responsible for the golf course and amenities at Las Campanas. The Cooperative actually is the entity responsible for delivering potable water to residents within Las Campanas. They purchase potable water from the County. They're a high volume – so-called high volume water user/wholesale customer of the County but ultimately it's the Cooperative that delivers potable water to the residents of Las Campanas. So that's my understanding of the distinction.

COMMISSIONER HANSEN: Mr. Shaffer, the Cooperative also does the sewer system for Las Campanas and that whole area. So they're a water and sewer facility. Thank you.

MR. SHAFFER: With regard to the location of the solar arrays, I don't have that information. Top of mind, I have a general sense of where they might go. We do have Regina Wheeler from the City who is present on the call. She might be able to provide you with more specific information on that score. And with regard to the \$10,000 figure that I mentioned, that's a one-time payment, separate and apart from utility cost savings. The idea was to provide a small amount of upfront cash if you will to the BDD special revenue fund so that there would be some cash on hand in the event that utility cost savings come up short, but that is a one-time payment. The lion's share of the debt

service, overwhelming share, is going to come from regular annual utility cost savings that all of the parties pledged for purposes of debt service.

So I hope that I answered all of your questions and again, I would defer to Ms. Wheeler if she wanted to provide any insights into tentative locations as to the solar arrays.

COMMISSIONER GARCIA: Mr. Chair, thank you. Attorney Shaffer, appreciate that. I just want to make sure that whoever the project manager is or the team, because we have a lot of stuff that happens out there in the middle of nowhere. So just as long as they look into that and keep that in mind. But thank you, Attorney Shaffer. Thank you, Mr. Chair.

REGINA WHEELER(City Public Works Director): Chairman, Councilor, I was here to provide additional information. Thank you for working with the City of Santa Fe, Public Works. Yes, there's one array actually out at the Buckman Direct Diversion project now that isn't that far from the one that will be built. There's the one at Booster Station 2A. It's a megawatt and a half. And it has not been vandalized terribly by gun shot and part of the way that was taken care of was a fence with slat in it, and so that will definitely be part of the final design and implementation is the proper security around the array.

COMMISSIONER GARCIA: Thank you, Mr. Chair. Thank you, Ms. Wheeler. Appreciate that.

MR. SHAFFER: Mr. Chair, if there are no other questions then I'll just briefly touch upon – sorry. I believe Commissioner Hansen has her hand up.

COMMISSIONER HANSEN: Thank you, Mr. Shaffer. Thank you, Mr. Chair. We have another solar array out there. I don't think that we have been losing money on that solar array at all, so I just wanted to state that for the record. I don't know if anybody wants to contradict me but I believe that that solar array has been paying for itself. And Mr. Garcia, what happened in the 2008 recession, the Great Recession, is that the Las Campanas Club and the Las Campanas Co-op split and became two separate entities, and that is why there are two separate entities out at Las Campanas. Just a little bit more information. And that's all I have.

COMMISSIONER GARCIA: Thank you, Commissioner Hansen.

CHAIR ROYBAL: Are there any other questions or comments from the Commissioners on this item? Okay, hearing none, we can move on to the next one, Greg.

MR. SHAFFER: Thank you, Mr. Chair. So the second agreement in front of the Board this evening is what we've defined as a separate City-BDD agreement. The Board of County Commissioners is being asked to approve that in a limited capacity. Under the separate City-BDD agreement, in a nutshell, the BDD Board would authorize the City and Yearout to install the BDD energy conservation measures at the BDD facilities. In addition, the agreement would require the City to transfer title to the BDD energy conservation measures to the BDD Board once title vests in the City when the measures are installed, subject to the lessor's security interests and all rights and remedies of the lessor included in the lease-purchase agreement.

So it is that provision that triggers the Board of County Commissioners' need to approve the agreement, and that's because the joint powers agreement provides that the BDD Board shall not obligate itself or encumber the BDD project or any other real

property or assets held or owned by the BDD Board without the approval of the governing bodies of the City and the County. So again, this is how the Board of County Commissioners would signify its approval of that encumbrance.

As it's currently drafted, the separate City-BDD agreement is contingent upon the cost sharing agreement being executed. We recommend – we don't believe that that will pose a problem, given the way things have developed, but we do recommend that the Chair be authorized, after consulting with the County Manager and the County Attorney to remove that provision from the agreement if it's determined to be necessary to allow the City to close on the lease-purchase agreement and/or that that revision and any other revisions that may come up do not materially change the terms of the agreement or expose the County to unacceptable risk.

So that's really it with regard to the separate City-BDD agreement. Overall, our recommendations at the staff level are that both agreements be approved by the Board, and I again would note the following: First, the County Manager, even if the cost sharing agreement is approved by the Board, would retain her authority under the authorizing resolution, to execute, acknowledge and deliver the cost sharing agreement with such changes, insertions and omissions as are consistent with the authorizing resolution and as may be approved by the County Manager. So again, if there are final revisions that prove necessary as we move between now and the closing the County Manager would retain the authority to agree to those changes. And secondly, as indicated, we would respectfully recommend that the Chair be authorized to likewise agree to revisions to the separate City-BDD agreement so long as he determines after consultation with the County Manager and County Attorney that those changes are necessary to allow the City to close on the lease-purchase agreement and/or that the revisions do not materially change the terms of the agreement or expose the County to unacceptable risk.

So that would be my summary on all of the agreements and I'd be pleased to answer any questions with regard to the separate City-BDD agreement.

COMMISSIONER GARCIA: Mr. Chair.

CHAIR ROYBAL: Thank you, Mr. Shaffer. Commissioner Garcia?

COMMISSIONER GARCIA: Yes. If I may, Mr. Chair, I'd like to make a motion to approve the agreements as stated by Attorney Shaffer, and if I do get a second, I would actually just like to ask Attorney Shaffer, so this still has to go from the City Council? Or it has gone before the City Council? And if the City Council does not approve this are we liable for all this stuff? Or if the City Council does not approve it we would not move forward on this agreement? So I'd like to make a motion. If I get a second if somebody can second after discussion.

COMMISSIONER HANSEN: Mr. Chair and Commissioner Garcia, I'm not sure I'm correct on this but I believe we might need to do these each separate agreement. Is that correct, Mr. Shaffer? Or can we do these together? I was asking Greg if we needed to approve these items separately or if we can approve them together?

MR. SHAFFER: Mr. Chair, Commissioner Hansen, in my estimation, absent an objection from any individual Commissioner to considering them together, I don't see any legal reason that you could not consider them both at the same time.

COMMISSIONER HANSEN: Okay. Then I will second it.

CHAIR ROYBAL: Okay, so we have a motion and a second. Under

discussion, Commissioner Garcia, I believe you had a question for Attorney Shaffer.

COMMISSIONER GARCIA: Yes. Thank you, Mr. Chair. I just want to – has the City Council actually looked at this or approved this, or it still hasn't come before the City Council? And if they do not approve this, then it just becomes null and void?

MR. SHAFFER: Mr. Chair, Commissioner Garcia, my understanding is that the City Council has approved and/or delegated authority to City officials to finalize these agreements. And so I believe that the City Council has already taken the necessary action to approve the agreements, is my understanding. The next step in the approval process is for the agreements to be approved by the Buckman Direct Diversion Board, which is scheduled to have a special meeting tomorrow night for that purpose. So that's my understanding of where things stand vis-à-vis the other governmental entities.

COMMISSIONER GARCIA: Thank you, Mr. Chair. Thank you, Attorney Shaffer. So my motion stands. Thank you, Mr. Chair.

CHAIR ROYBAL: Thank you, Commissioner Garcia. And I believe probably your second would stand as well, Commissioner Hansen. Correct? Then I'll go to Commissioner Hughes. Go ahead, sir.

COMMISSIONER HUGHES: Just following up on Commissioner Garcia's question, which was basically my question, but is it my understanding that these documents were developed in cooperation with City staff, so that they're pretty much familiar with what's in them?

MR. SHAFFER: Thank you, Mr. Chair, Commissioner Hughes. Yes. The parties, I think it's fair to say, worked certainly in good faith and expeditiously to come up with terms that everybody could recommend and I did receive confirmation from one of the attorneys for the City that the form of the cost sharing agreement in front of you is acceptable to the City, and we also received such confirmation from a representative from the Club. So, yes, is the short answer. This has been a very collaborative process and all parties are well informed as to the contents of these documents.

COMMISSIONER HUGHES: Okay. Thank you. That was my only question.

CHAIR ROYBAL: Thank you, Commissioner Hughes. Commissioner Hansen, I saw your hand up just a minute ago.

COMMISSIONER HANSEN: Thank you. I just want to take a moment to thank Attorney Shaffer for the hours and hours and hours of work that he has put into these agreements. Of course I thank City staff and County staff and John Dupuis, but I know that Greg has done a tremendous amount and I am grateful to all of his work and I just want to express that, because I know this was a collaborative effort but I also know that Attorney Shaffer did a tremendous amount of work, and so thank you. Thank you for making this happen.

CHAIR ROYBAL: Thank you, Commissioner Hansen. I couldn't agree more. We can't express the gratitude for the time that you've taken to come up with these agreements and work with the City. Any other comments from Commissioners?

COMMISSIONER GARCIA: Really, really quick, Mr. Chair. Once again, thank you to all the entire staff that has done this, because people don't realize our water shortage this year is going to be hard in Santa Fe County and the mountains up there and this is just a good agreement that we have with the City officials and Las Campanas

because it's going to be hard this summer. Great job, Greg, you and your team and everybody else you worked with at the City. Appreciate you all. Thank you.

CHAIR ROYBAL: Thank you. I'm going to go to a roll call vote.

The motion passed by unanimous [5-0] roll call vote.

CHAIR ROYBAL: Thank you very much. Did we have anything else, Greg, or are we good to move on to Concluding Business?

MR. SHAFFER: Mr. Chair, Commissioners, we're good to move on to Concluding Business, and I appreciate the kind words, but again, I would echo that there's a lot of hard work put in by a lot of folks, both at the County and the City and the Club. And so I would be remiss if I didn't acknowledge that again, because I don't want to take more than my fair share of any credit. And if there's anything wrong in the agreements, then that was John Dupuis' fault. [laughter] So thank you.

CHAIR ROYBAL: Thank you very much.

3. CONCLUDING BUSINESS

A. Adjournment

CHAIR ROYBAL: Are there any announcements or anything else that any of the Board members would like to announce on Concluding Business?

COMMISSIONER HANSEN: I just want to let the Board know that tomorrow the BDD Board will be meeting to approve these same agreements.

CHAIR ROYBAL: Okay. Great. Thank you for that update.

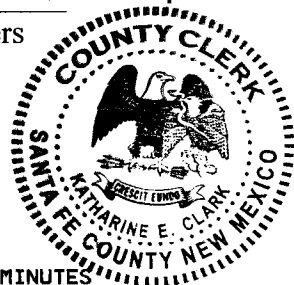
Upon motion by Commissioner Garcia and second from Commissioner Hansen, Chair Roybal declared this meeting adjourned at 5:05 p.m.

Approved by:


Board of County Commissioners
Henry Roybal, Chair


ATTEST

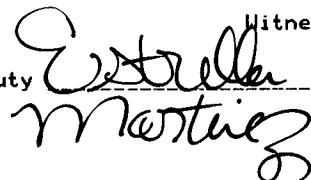

KATHARINE E. CLARK
SANTA FE COUNTY CLERK



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC MINUTES
PAGES: 10

I Hereby Certify That This Instrument Was Filed for
Record On The 29TH Day Of April, 2021 at 10:43:22 AM
And Was Duly Recorded as Instrument # 1951454
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark
Deputy  County Clerk, Santa Fe, NM

SFC CLERK RECORDED 04/29/2021

Respectfully submitted:



Karen Farrell, Wordswork
453 Cerrillos Road
Santa Fe, NM 87501

SFC CLERK RECORDED 04/29/2021