



**STATE OF NEW MEXICO
COMMISSION FOR DEAF AND HARD OF HEARING PERSONS**

Wednesday, November 13, 2013

*Albuquerque Marriott
2101 Louisiana Blvd. NE
Albuquerque, NM 87110
1:00 p.m.*

I. CALL TO ORDER AND ROLL CALL

Chairman Mark Apodaca called the meeting to order at 1:07 p.m.

Present:	Mark Apodaca, Chair	Luis Quinonez
	John Johnson	Dr. Ron Stern
	Deb Hambel	James DeBee

Chair Apodaca said that Commissioner Austin Welborn would be attending, but would arrive later.

Nine staff members from NMCDHH were present: Interim Director Lisa Dignan, Sam Martinez, Jason Siergey, Corina Gutierrez, Nathan Gomme, Deborah Romero, Cheryl Padilla, Lori Neubauer, Joyce Croker, and Roger Robb. Five interpreters were present: Rhiannon Sykes-Chavez, Julayne Feilbach, Olivia Jabaay, Andrea Ginn and Ariane Buchanan. Twenty-five members of the community were in the audience.

II. APPROVAL OF AGENDA

Chair Apodaca asked for a motion to approve the agenda.

14.12

Commissioner James DeBee made a motion to approve the agenda.

Commissioner Luis Quinonez seconded.

Commissioner John Johnson asked if there could be public input on action items and Sally Malavé from the Attorney General's office clarified that that is fine as long as the member of the public raises their hand, is recognized by the chair, and comments on that particular item without any change to the agenda.

Motion passed.

III. DCC CAPITAL OUTLAY – Sally Malavé

Attorney Sally Malavé stated that the reason why the DCC Capital Outlay was placed on the agenda was because she was not aware that the Commission as a whole had ever discussed the issue and the appropriations which were transferred to the Commission in 2011. Ms. Malavé estimated that, based on the various appropriations, there was over \$300,000 appropriated to CDHH. A portion of that money has been expended on a feasibility study, which was sent to the commissioners at the end of September.

Ms. Malavé explained that the notion of a deaf multipurpose center was spearheaded by the Deaf Cultural Center (DCC), a private nonprofit organization, and they have worked closely with Senator Nancy Rodriguez to look at the possible development of the center. The New Mexico Constitution does not allow the State to make an appropriation directly to a private entity such as the DCC, which is the only reason why the money has been allotted to CDHH.

There are still challenges in the law in terms of how the money is expended and who can participate in the decision-making on how it is expended. The expenditures need to happen in accordance with the State Procurement Code, which requires competitive bidding for the various stages.

The next step is the development of the architectural plan for the site. Ms. Malavé stated that the Albuquerque Rail Yard was named as a potential site in the feasibility study, however that appropriation was signed off by a former Executive Director at CDHH, and the Commission as a whole did not seem to be aware or taking any kind of direction proposed by the feasibility study.

One of the legal challenges is that CDHH by statute does not have authority to own land or real property, the design of a building needs to be State owned, and therefore it is imperative that CDHH works with the Property Control Division since they have authority to hold property. Moving forward, CDHH has to work with Property Control to examine the feasibility study, site selection and they may propose developing a multipurpose culture center on State property as opposed to the Rail Yard.

Ms. Malavé suggested the Commission start considering what its responsibilities are with respect to this project. Coming up in December, there is another severance tax bond sale going out. In order for the Commission to get any of the funding to go towards architectural plans, it needs to ask for a draw request later this month.

At the end of September, Ms. Malavé responded to a questionnaire from the State Board of Finance, because the acquisition and expenditure on real property by a State agency must have State Board of Finance approval. The capital outlay appropriation only authorizes the sale of those bonds for this purpose when the Commission shows that it is ready to proceed with this project and there is a need for this project.

If it is the will of the Commission to work on an RFP, Ms. Malavé asked that it be a consensus from the board in a vote, and apart from the RFP, that CDHH make the withdrawal request in this next session. If it doesn't happen now, one set of funding; approximately \$20,000 will expire in June 2014. Lisa McNiven, who has been involved in the project from the onset, added that the other \$180,000 won't expire until June 2016.

Interim Director Lisa Dignan stated she was concerned about doing another RFP while CDHH is understaffed and has no Executive Director. Also there is no one on staff who is an expert at what this RFP would be for to effectively write the scope of work. Sally Malavé responded that the General Services Department (GSD) could assist because they have the expertise of procuring architectural services.

Commissioner Deb Hambel also expressed a concern as to whether this could happen in time. Having written an RFP herself, she said that it is not a quick process. Ms. Malavé stated that the GSD Property Control Division was aware of this situation and is essentially waiting for CDHH to initiate contact. She also mentioned that in the spring there was a meeting with Pam Nicosin, Deborah Romero, and former Director Ellen Roth. Some of the discussion at that meeting was more appropriate for a board meeting, because with the direction of the Board the project can then move to the Property Control Division with what you want to have accomplished.

There were several other comments and questions but Ms. Malavé clarified that this is very early in the evolution in the building of the deaf culture multipurpose center. The important points of her request were:

- The DCC or Deaf Cultural Center, a nonprofit organization in Albuquerque, worked closely with Senator Nancy Rodriguez about the possible development of a deaf culture multipurpose center.
- Because the Constitution doesn't allow the State to make an appropriation directly to a private entity such as the DCC, the money was allocated to the CDHH to overcome the constitutional hurdle.
- At this point in time, the DCC and the deaf culture multipurpose center are completely separate entities.
- The first step, the feasibility study is complete and each commissioner has a copy.
- The next steps are the RFP for architectural design for the deaf culture multipurpose center only, and draft the draw request of the appropriated funds.
- Items to be decided later will be who is to run the deaf culture multipurpose center, the actual name of that center, and other plans such as the apartments.

Chair Apodaca stated the board had two options:

1. To have the Chair find three people to collaborate and get more information so they can make a presentation to the Board.
2. Go ahead and make a proposal to support the RFP process for the Deaf Culture Multipurpose Center.

Ms. Malavé replied that the first option was not possible because the draw request would need to happen in December, and the RFP should be in the works by the time the draw request is made.

14.13a

Commissioner John Johnson made a motion to move forward with the RFP and authorize a drawdown request.

Commissioner James DeBee seconded.

Discussion followed.

Commissioner Luis Quinonez wanted to make it clear that the motion did not include the apartments mentioned in the feasibility study. Chair Apodaca agreed that this would be for the multipurpose center only.

Commissioner Hambel raised a Point of Order: Since the motion was made and seconded, there needed to be an amendment to address Commissioner Quinonez's concern.

14.13b

Commissioner Deb Hambel made an amendment to the motion to complete the development of the RFP for the architectural design with the understanding that if the motion is approved, it only includes the development of the Deaf Cultural Multipurpose Center.

Commissioner Johnson seconded.

Amendment passed.

Chair Apodaca called for the vote on the main motion.

Motion Passed

Ten Minute Break

Upon returning from break, Chair Apodaca asked that he appreciates the audience being quiet. He noticed some conversation and asked that discussions be done in the hallway so that everyone in attendance can follow the meeting without distractions and confusion to interpreters and the captioner.

IV. ACTION ITEMS**a. Contracts over \$20,000****14.14a**

Commissioner DeBee made a motion that any contract that is \$20,000 or above be approved by the Board.

Commissioner Ron Stern seconded.

Discussion followed.

Commissioner Hambel requested more information regarding what generated that motion and why. Chair Apodaca clarified that when he first joined the Board, it was the practice to approve any contract over \$20,000; anything under that was approved by the former Executive Director. However, through the years, that practice fell through the cracks. The purpose of the motion is to make that a permanent practice and when we complete the policies and procedures that will be on the record.

Commissioner Hambel added that while on break, she had a discussion with several of the Commission Staff that the commissioners are not giving them the opportunity to speak regarding what they are able to do in the timeframe that they are allowed to do it in. Commissioner Hambel wanted to put on record that the Board needs to be mindful of their needs as well, and needs to be addressed with every motion that is made.

Chair Apodaca asked Interim Executive Director, Lisa Dignan, if there were any comments regarding the current motion. Ms. Dignan first thanked Commissioner Hambel for asking for the input of the Staff. Regarding the current motion on the floor, there was no issue. The only clarification that she wanted to make is that the Board would have the authority to approve our moving forward to work on the contract, not the approval of the final contract. She explained that the contract must adhere to the procurement code. Ms. Dignan said that she had a proposed contract later in the agenda that she is bringing before the Board for approval to move forward, and then the appropriate contractor would be selected according to the procurement code.

Chair Apodaca asked if then the board would approve just RFPs and invitations to bid (ITBs), not the official contract. Ms. Dignan replied that would be another approach however the threshold for RFP is now \$60,000, which was a change at the last legislative session. Commissioner

DeBee stated that if it was \$20,000 or above, whether it is an RFP or not, he would want to make sure CDHH was following the State Use Act ensuring that a letter of certification is received if it is turned down before it is open to the public. DeBee explained that the people from the State or members are supposed to get the first opportunity. If they don't meet the needs of what is proposed then it moves onto the public. Chair Apodaca stated that was already the practice, however if Mr. DeBee wanted to make an amendment to the language of the motion that would be fine. At the New Mexico School for the Deaf, the policy is \$60,000 for approval.

14.14b

Commissioner Ron Stern made a motion to amend the current motion to change the amount of \$20,000 to \$60,000.
Commissioner DeBee seconded.
Motion passed.

14.14c

Commissioner DeBee made a motion to amend the current motion to say that it must go through the State Use Act, to get the certification letter that turns down those RFP's.
There was no second; motion failed.

Sally Malavé explained to Commissioner DeBee that there was no need to amend the motion because the law is that all State agencies must follow the State Use Act. For a contract of any amount, the State has to first bring that through Horizons and find out whether or not there is an available vendor who can perform the services. If not then that letter is provided. It is already a requirement.

Commissioner Johnson stated that only having the board approval on expenditures over \$60,000 is putting a lot of faith in an Executive Director. There could be four or five expenditures back to back without Board approval.

14.14d

Chair Apodaca called for a vote on the motion that the Board needs to approve contracts over \$60,000.
Majority was opposed.
Motion failed.

Commissioner Johnson asked Interim Director Dignan how often she experienced a contract over \$20,000 that could not wait for a Board Meeting for approval. Ms. Dignan replied that it probably doesn't happen often, but currently there is a vacancy in the Las Cruces office and there needs to be a contractor for that position. She definitely would be limited in doing that contract quickly if she needed to wait for the next Board Meeting.

14.15

Commissioner DeBee made a motion for the Board to approve any contract over \$20,000.
Commissioner Johnson seconded.
After brief discussion, motion passed.

b. DVR MOU

Chair Apodaca said the next item was regarding the DVR MOU which has been reviewed, but the Board needed to have it documented that it was approved. He asked for a motion to approve.

14.16a

Commissioner Ron Stern made a motion to approve the DVR MOU.
Commissioner DeBee seconded.
Discussion followed.

Commissioner Hambel was concerned over the fact that the Board was trying to approve the MOU that they do not have the authority to approve. Ms. Hambel clarified that the MOU is in effect a gentleman's agreement between CDHH and DVR, and there is no legal mandate for it to be in place at all. It is the agreement between the two agencies that DVR will be as transparent as possible in providing information to CDHH about our quarterly activities. Ms. Hambel added that she had several meetings with her supervisor, John Fullinwider, Lisa Dignan and Nathan Gomme in which the concerns of CDHH were addressed.

Commissioner DeBee said that he was not satisfied with the numbers. There are no details about hiring someone who is able to communicate with Deaf clients. He stated he felt like the Board needed to make sure that CDHH is getting their money's worth of what they provide to DVR.

Commissioner Hambel responded that the information provided in the board report has the exact numbers of the individuals that are served and the number of various categories. They work with CDHH, their Executive Director and the Director of Public Policy and Advocacy, and make sure that DVR is not over-projecting or under-projecting what DVR is capable of providing to the Commission. Ms. Hambel stated again that the intent is for DVR to be transparent and the Commission receives specific numbers as to what the end-of-year outcomes were, which should clearly address any concerns.

Commissioner Stern asked Interim Director Dignan what her position was on the Board's support of the MOU, should the motion pass. Ms. Dignan responded that it is true what Commissioner Hambel stated about it being a gentleman's agreement, but it would be wonderful for the Board of Commissioners to show support of the collaboration between CDHH and DVR.

There was further discussion regarding issues with DVR, however Chair Apodaca stated it had nothing to do with the motion on the table, and due to time, closed discussion.

14.16b

*Chair Apodaca called for a vote on the motion to approve the DVR MOU.
Motion passed.*

c. RLD MOU

14.17

Commissioner Stern made a Motion to approve the RLD MOU.
Seconded.
Motion passed.

d. Title 9 Human Rights Statute 63-9F-4 Specialized Telecommunications Equipment Program

Commissioner DeBee explained that this action item was about the salary cap of \$50,000 per household for the Telecommunication Equipment Distribution Program and that should be removed. Lisa Dignan responded that the Commissioners do not have the authority to remove the income cap, because it is part of a statute, but they are able to change the cap, as the specific amount is in rule. The Commissioners could propose rule changes then hold a Rule Hearing as part of the next meeting, and accept public comment related to that rule change.

Ms. Dignan also suggested that the Board look at what other states are doing. Currently in New Mexico the cap is set as \$50,000 for the household whether that household is one person or six. That is not equitable, so a change to the cap should happen. Ms. Dignan suggested that the Board form a subcommittee, do some research with the help of the staff, and then move forward in making a motion to change it during a rule hearing.

Commissioner DeBee wanted to make a motion that the equipment distribution is made so that any Deaf or Hard of Hearing resident can qualify because other states have that. Ms. Dignan reminded Commissioner DeBee that he could only look at changing the cap, but not eliminating the cap because the cap exists in statute. Only a legislator can change that. The dollar figure exists in rule, and a motion can be made to change that rule, but that requires a multi-step process and we would have to include proposed rule changes and a rule hearing at the next meeting. Ms. Dignan also clarified that most states do have a cap, which varies depending upon the state.

14.18

Commissioner DeBee made a motion to form a committee to further research and gather information on the TED program income cap.
Commissioner Austin Welborn seconded.
Motion passed.

e. Proposed Contract

Chair Apodaca introduced the last action item which was a proposed contract. Interim Director Dignan explained that a contractor in the Las Cruces office has left. She stated she would like approval from the Board to post that contract position so it could be filled with someone who would assist Sandra Williams with providing services in the Las Cruces Office. This contract would be over \$20,000 which is why she needed the approval of the board.

14.19

Commissioner Johnson made a motion to post the contract for the position in the southern part of the state.
Commissioner Welborn seconded.
Motion passed.

V. NEW BUSINESS

a. Staff Report

The Board noticed the condensed Board Reports and was in agreement that it was much easier to page through the new report.

b. Interpreting for Federal Employees

Chair Apodaca asked if we needed to discuss this matter. Lisa Dignan stated she sent a memo to the board regarding whether or not the licensure requirement applies to the interpreters who are working for federal employees. That memo was included in the packet for the September meeting, but could be discussed at this time.

Commissioner DeBee said he had received a letter from the Deaf people who work for the federal government saying this needed to be discussed. He suggested postponing it for the next meeting. Commissioner Stern asked if the Commission staff was even involved with this issue. Ms. Dignan responded that it is not something that the Commission has any authority over. CDHH merely provides requested information for the community.

Commissioner DeBee stated that the employees were going to go to the Signed Language Interpreting Practices Board Meeting; however they need to be able to make comment and hear opinions at the CDHH Board Meeting.

VI. EXECUTIVE SESSION

Chair Apodaca stated they would not be going into Executive Session.

VII. ADJOURNMENT

Chair Apodaca informed the Board that they were informed by Sally Malavé that they are to have four meetings every year, and due to the holidays in December the next meeting would be about January or February. Ms. Dignan also reminded the board that they were provided with a calendar with highlighted weeks. The staff respectfully requested the meeting be held sometime within the highlighted dates so they could gather data and information from the previous quarter and get the report to the Commissioners in a timely manner. Chair Apodaca said they will work out the scheduling within the next week or two.

14.20

Commissioner Hamel made a motion to adjourn.
Commissioner Johnson seconded.
Motion passed.

The meeting adjourned at 3:54 p.m.

Respectfully Submitted,


Lori Neubauer, Administrative Assistant


Mark Apodaca, Board Chair