

MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY WORK SESSION

Grant County Administration Center, 1400 Hwy 180, Silver City, NM

October 22, 2010, 2:00 PM

Present:

James R. Marshall, Mayor
Jamie K. Thomson, District 2
Simon Wheaton-Smith, District 3
Michael S. Morones, District 4

Also Present:

Robert Scavron, Town Attorney
Peter Russell, Community Development Director
Yolanda C. Holguin, Acting Town Clerk

Not Present:

Cynthia Ann Bettison, District 1, and Alex C. Brown, Town Manager-Finance Director

1. Call to Order, Pledge of Allegiance, and Reading of the Mission Statement – Mayor Marshall called the Work Session to order at 2:08 PM. Councilor Morones read the Town’s Mission Statement.

2. Discussion to include, but not limited to the following: the draft of the revised Land Use Code (LUC). No action will be taken. – Mayor Marshall stated that some of the Council’s issues would be addressed and that the Council would hear from the public. Peter Russell, Community Development Director, provided documentation to the Council (copy attached to these minutes).

Councilor Thomson referred to page 180, Section 6.2.10 Public Hearings and page 219, Section 6.3.19 Variance, C) Review Procedures, and stated his concern with the consistency of the words "shall" and "may". Mr. Russell stated the use of the words "shall" and "may" were consistent; that the staff was required to provide a report; that staff may or may not make a recommendation; that the questions of judgment were deferred to the Commission; that procedures were segmented and that there were redundancies. Mr. Russell stated that it should state “and may make a recommendation” to the “shall make a report”. Discussion continued reference the Comprehensive Plan and LUC; staying in compliance with state and federal laws; the Town having a Territorial Charter; how staff was capable of describing and communicating the rules to the public so they could understand them; amending the Floodplain Ordinances to address the water harvesting proposal; and the probability of having handouts available to address run-off issues. Mr. Russell described and explained the process of a variance and the responsibility of the staff and the Commission, and the importance of communicating with the applicant.

Councilor Wheaton-Smith commented on his concern requiring private homeowners to do water harvesting and light shrouding, and he said that having handouts available for these issues would be a good practice. Attorney Scavron talked about the water conservation ordinances that were in place to address water harvesting. Mayor Marshall stated that on page 127 Section 5.2.3 D) Curb/Gutter and Shoulders, that water harvesting was not permissive. Mr. Russell explained the rural and urban differences. Discussion continued on D) 2). Mr. Russell suggested that the language could read “the Public Works Director could decide and accept a design in an alternative matter or alternative design drainage management features may be allowed if authorized by the Public Works Director.” Mayor Marshall stated the need to maintain the safety of pedestrians. Mr. Russell stated that the Public Works Director would rely on an analysis from engineers to make the distinction. Councilor Morones stated he agreed with Councilor Wheaton-Smith on the water harvesting issue and to have handouts, and he liked the suggestive language of staff on the lighting. Mayor Marshall commented about the area north of Silver City in the forest as being one of the last dark skies areas; stopping any increase in the brightness that Silver City emits; and to provide standards for future development.

Discussion continued in reference to the other codes and changes that would be adopted in the LUC, i.e. fire and building codes etc.; issues on sprinkler systems in homes; codes that were designed for safety and modern technology; the standing process when code amendments go to department heads for review, if there was anything controversial, then exclude those provisions from the code; that inspections reference plumbing, electrical, and mechanical were done by the state; having these codes in place to give notice or to give handouts to the public; how violating these

codes would be a municipal violation; not recommending a variance to a building, etc., code standard; the state having enforcement on the 2006 International Energy Enforcement Code; the Town's responsibility to enforce state standards; and how a policy should be put in place for staff to review the state code amendments, sign off on them to approve, and only bring them to Council if the staff did not agree with it or if it became a policy decision that staff would not be comfortable in making.

Mayor Marshall commented on Section 3.3.1 R) Mobile Home Parks and stated that the recreation area was changed from 5 percent to 15 percent. He stated that there was not a new large lot overlay zone definition, only standards. Mr. Russell talked about the different overlays, floodplain, historic, etc., but that a definition could be added. He stated that the consultant recommended that the $\frac{3}{4}$ acre rule be stated as part of the code. He talked about areas in Town that had covenants that restricted the lot size and how the people were alerted when they came in to do a subdivision. He talked about areas that were on a septic tank; narrow and unpaved roads that were considered large lot overlay; and he suggested that these areas had the required $\frac{3}{4}$ of an acre.

Mayor Marshall discussed Table 3.4.2 Density and Dimensional Standards, and the change on the minimum rural lot area size from 12,500 sq. ft. to 87,120 sq. ft. (2 acres). Mr. Russell explained that the rural category was a temporary zoning category and that the Task Force's idea was that if multiple small lot splits in the rural area were allowed, the de facto would fall into another category. He mentioned some of the rural areas in Town that would be affected. Mayor Marshall stated that the 87,120 sq. ft. was much more efficient in accomplishing the goal.

Mr. Russell stated that meets and bounds were still being used for surveys and that there was a need for the Planned Unit Development (PUD) Manual, but that one was not in place. He stated that when the Code was passed there should not be an issue with a PUD Manual because the criteria of the PUD would be clearly established. He gave examples of scenarios. Attorney Scavron suggested removing the sentence that the Town would provide a PUD Manual and that the Town Manager could give the department head a directive to provide the manual to help the people.

Mayor Marshall asked if they had gone through and checked that all references of the Municipal Code applied to the current Municipal Code, and not the previous Code. Mr. Russell said no, and the Mayor said it needed to be done.

Mayor Marshall discussed his concerns of the language in reference to billboards, Section 5.15.6 Off-Premise (Outdoor Advertising) Sign D), 1) and 2). Discussion continued on signs that were no longer allowed; signs over 200 sq. ft.; the grandfathered ten year period; signs that were grandfathered in, and case law that referenced the value of signs being removed. Mayor Marshall suggested removing 1) and 2) and that billboard signs were not allowed within Town limits over 200 sq. ft. and that on any existing ones the Town may request their removal. He suggested eliminating both paragraphs. Mr. Russell stated that the signs that had been rendered dangerous by natural forces or lawful demolition and shall not be reconstructed should remain. Mr. Russell understood that the sign maximum size was 200 sq. ft. and anything larger may, in the future, be asked to be taken down, but a new one could not be put up. Attorney Scavron discussed the idea of clearly banning any new billboards; what to do with pre-existing signs that were lawfully or unlawfully erected; the issue of signs that were grandfathered in and the ten year period; billboards being non-conforming structures and shall be removed at the insisting of the Town; burden of proof; and that signs painted on the side of a building were considered signs. Mr. Russell stated he would work with the attorney on the language.

Discussion continued on:

5.15.7 Temporary Signs, C) Portable Sandwich Board Signs - Mayor Marshall stated that he was in favor of 2), 4), 5), 6), 7), and 8), and to remove 1) and 3). He was in favor of 9) but suggested to include that there should be at least a 15 foot space between sandwich boards signs on the sidewalks.

5.15.8 Prohibited Signs, C) Public Property – Mr. Russell suggested removing the word sidewalk; the sign not being on the curb; and that people would be asked to go through the sign permitting process.

5.15.8 Prohibited Signs, F) Movable Signs – Mayor Marshall suggested to either remove F) or move it to the permitted signs section. Attorney Scavron stated that it was not referring to self propelled vehicles and that it was talking about a trailer. Mayor Marshall said that Section 5.15.7 Temporary Signs, C) Portable Sandwich Board Signs, 1) should state “be placed with the permission of the business owner where it was in front”. Discussion continued on the purpose of signs; public safety; signs on the right-of-way; temporary signs and signage allowance; signage being attached to a business; menu signs; and concerns of eliminating F). Mr. Russell suggested deleting F) or for it to be included in the temporary sign; limit it to one sign; not tying it to signage requirement; off premise signs; having permission of business owner; and working with the language.

Councilor Wheaton-Smith made a motion to recess at 3:36 PM. Councilor Thomson seconded the motion. All were in favor. Motion passed. Mayor Marshall called the work session back to order at 3:44 PM.

Public Input – Gilbert Morones provided documents to the Council about manufactured homes (copies attached to these minutes) and he commented on his concern of the verbage on Page 24 and 25 in reference to multi-section homes; the 1976 HUD standard; and if a single-wide would be considered as a manufactured home.

Mayor Marshall commented that the Town was not bound by HUD standards for zoning and that the section was used to separate what zone was allowable for a single-wide or multi-section homes on whether they were called a mobile home or manufactured home; residential zones; managing the location of single-wides; having HUD approval and how anything existing was grandfathered; removing the words "mobile home" and using "manufactured home" with the same restrictions on zoning. Discussion continued on the following: how on page 62, P) Manufactured Homes, Modular Homes and Mobile Homes, 2) should state all manufactured homes; the definition of manufactured home as a 24' x 36' with the HUD seal; and that the word mobile home was referred to per HUD. Shad Goldman, Senior Inspector with the State of New Mexico, stated he would work with Mr. Russell on the verbage and language.

Discussion continued on the zoning areas in Town; site built homes; issues converting a manufactured home as real property; allowing upgrades to a home; permanent features and foundations; mixed properties; slope for drainage; and that zoning, water, and floodplain plans would be reviewed by municipal authorities.

Tony Morones commented on policy versus Code regarding manufactured housing; that double-wides were permissible in site built areas; the RB1 language that excluded single wides; the recently adopted housing plan; the affordability of a single wide; RB1 zoning establishing a regulatory barrier to affordable housing, and his concerns reference owning land and not being able to install a home; and whether RB1 language was removing a vested land use right.

Mr. Goldman stated his areas of concerns: steps, garages, additions and other attachments; that the state had limited additions to mobile homes because of the two different codes abutting together; taking homes out of compliance; requiring a permanent foundation for real property; alternative foundations; the permitting process and state permit; working with utility companies for compliance when setting up manufactured homes; that inspections were available on the internet; and the drainage issue language.

Mr. Russell stated that Andrea Sauer was going to talk about the standards of how community gardens and the farmers' market would function; ideas that were good; allowing community gardens anywhere in Town; the need of a traffic impact analysis; and some recommendations that were not for inclusion in the LUC that were in reference to a street ordinance.

Mr. Russell responded to Tony Morones' comments and thought he understood his concern that single-wide manufactured homes were an important part of the mix of housing in Town; the different residential areas in Town and what was permitted; the grandfather rules; the holding category in the rural areas; and the process when creating categories, and concerns of the process being abused and safeguards to protect the process.

Mr. Russell stated that the Town was required to adopt the FEMA rules by January 1 and that the rules were included in the LUC. He stated that if the LUC was not adopted by January 1, that maybe the rules could be adopted as an ordinance. Mayor Marshall stated that it should be in the next meeting allowing enough time for advertisement.

Mr. Russell provided documentation to the Council (copies attached to these Minutes) and he discussed the issue with the definition of families and single household dwelling; the existing definition; the legal challenge of what a family was; using the term single family home instead of single household dwelling; and he asked for guidance from the Council. Attorney Scavron agreed with the first definition of "Family. An individual, or two or more persons related by blood or marriage, or a group of not more than ten persons (excluding servants) who need not be related by marriage, domiciled together in one dwelling unit whose relationship is of a continuing non-transient domestic character, and who are cooking and living together "intending" to be a single household". He said the definition addressed same sex families and the group of ten people who need not be related, so he added the word "intending" so it would cover all of the situations that he could think of, and that it was the most practical. The Council had no objections to the definition.

Mr. Russell stated he would work with Attorney Scavron reference signs and billboards, and with Mr. Goldman in terms of having a better definition of single and double wide. Mayor Marshall summed up what he thought was Mr. Morones' point; that he believed that there was a fundamental right to do what you want on your land regardless of your neighbor, neighborhood, or the community as a whole. Mr. Morones stated within reason and in regards to the dwelling structure that should be allowed on that property.

Councilor Morones stated he was glad that there was a process if the RB Zoning became a RB1Zone and that it would be difficult to change the RB to RB1. Discussion continued on the tiered handout on recycling; that the issues of grandfathering, the variance process, and the appeal process had been addressed; variances that dealt with hardship and those that had no hardship but no harm; to include in the Code an element that would allow for opportunity that had no consequence to anyone; the difference between equity and law in reference to the hardship but no harm issue; the responsibility of the appellant to prove no harm; and to craft a no harm clause for the Commission that would not be opened to abuse.

3. Adjournment – Councilor Wheaton-Simon made a motion to adjourn at 5:02 PM. Councilor Morones seconded the motion. All were in favor. Motion passed.

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk