

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING**

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

November 9, 2010, 6:00 PM

Present:

James R. Marshall, Mayor
Cynthia Ann Bettison, District 1
Jamie K. Thomson, District 2
Simon W. Wheaton-Smith, District 3
Michael S. Morones, District 4

Also Present:

Alex C. Brown, Town Manager-Finance Director
Robert L. Scavron, Town Attorney
Ann L. Mackie, Town Clerk
Robert Esqueda, Utilities Director
Peter Russell, Community Development Director
Roger Groves, Code Enforcement Supervisor

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND READING OF MISSION STATEMENT – Mayor Marshall called the meeting to order at 6:03 PM. Councilor Morones read the Town's Mission Statement.

2. CEREMONIES – Presentation of Municipal Arterial Project (MAP) Funding check to the Town of Silver City by Adrian Apodaca, NM Department of Transportation. Mr. Apodaca from NM DOT, District 1 in Deming, presented Mayor Marshall with a check in the amount of \$228,019.00 for re-construction work, project development, and design work on College Avenue. He said it was approved during their June 2010 State Transportation meeting and that the formal agreement was entered into on September 23, 2010.

3. PROCLAMATIONS – None.

4. PUBLIC INPUT – Mary Ann Marlar and Lois Duffy commented on how 7 parking places were abruptly terminated in their neighborhood and they asked to meet with the Police Chief in order to compromise on parking places. Jackie Frank asked for the possible easement for walking across the William Scott Homestead historic site to be limited, and asked the Council if it were possible to recognize Anita Scott Coleman for her writings and poetry, etc, and William Scott for his service as a buffalo soldier on the western frontier. Susan Aumann commented that she had been in jail 5 times; how there may be a class action against the Detention Center; and how there were criminal trespass charges against her at Western New Mexico University. Terry Timme, member of the Town's Recycling Advisory Committee, invited everyone to "America Recycles Day" on November 13th, and commented on the types of materials that would be collected. Roland Stone commented on how he would like to see the rule abolished for swiping drivers licenses at the landfill.

5. COUNCIL COMMENTS - The Council commented on the following: recently attended events; keeping up with the different propositions that would be going to the legislature; how the Town's gross receipts taxes and lodgers taxes were increased by a recent Leadership New Mexico event; barking dog issues; thanks and well wishes were given to Paul Montes for his retirement and 20 years of service with the Silver City Police Department; thanks were given to Lori Bonomo for her work as a Planning and Zoning Commissioner; how the MainStreet Program was looking for float entries for the upcoming Christmas Parade; how the Western New Mexico University Museum was a great asset to the Town; the drivers license requirement at the dump and how other methods should be looked at; announcement of the openings on Town Boards and Committees; and the Town Manager was asked to have the manager at the landfill make a presentation on why the process was changed.

6. CHANGES TO THE AGENDA – None.

7. APPROVAL OF THE MINUTES – Work Session, October 22, 2010 - Councilor Thomson made a motion to approve the minutes. Councilor Morones seconded the motion. Councilor Bettison abstained from voting since she did not attend the meeting. Councilor Thomson, Councilor Wheaton-Smith, and Councilor Morones were in favor, motion

passed. **Regular Meeting, October 26, 2010** - Councilor Bettison made a motion to approve the minutes. Councilor Morones seconded the motion as stated. All were in favor, motion passed.

8. REPORTS – None.

9. PUBLIC HEARINGS -

A. Approval / Disapproval of an application to extend Town water outside Town limits. The request was for the extension of a 12" water line to the proposed Grant County Detention Center to be constructed near the intersection of Ridge Road and Filaree Road. Applicant was Grant County Government; Authorized Representative was Jon Saari, County Manager. Mayor Marshall stated that the Town Council would serve as the hearing board and he would serve as the presiding officer. He asked if any member of the hearing board had ex-parte discussions with any person regarding the subject, or had any communication from any party to the case, and none had. The Town Clerk swore in 6 witnesses for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted. Robert Esqueda, Utilities Director, presented the details of the application, location, how the application was in compliance, etc. He said the funding for the extension of both the water and sewer lines was funded through the Grant Count GO Bond Series 2005. He read the findings and said the request did not affect the Town's required water reserve of 456 acre feet or 10%. He stated the Utilities Department recommended approval with 3 conditions: 1) Grant County Government must provide the Town with final plans and specifications, stamped by a professional engineer, for both the water line and sewer line, and obtain approval of the plans and specifications from the Utilities Department prior to bidding and construction, 2) acquisition of sewer easements must be secured prior to bidding and construction of the sewer line, and 3) Grant County Government must provide a 1-year construction warranty for the water line and sewer line extensions. There were no questions about his report from the hearing board.

The applicant's authorized representative, Jon Saari, County Manager, said the extension would serve a lot of residents, the Detention Center, and that the residents of Tyrone would benefit from the sewer line. He said the new Detention Center was greatly needed in Grant County, and the water line extension with 12" line would boost the service and fire service, and allow for future development in the extraterritorial jurisdiction (ETJ). He answered questions from the hearing board and there was further discussion. Manager Brown stated that during negotiations the County upgraded on the minimum requirements for the operation of the jail, fire suppression requirements for a sprinkler system, and for future growth. He said the County would upgrade the infrastructure at the Town's request to accommodate the community, not just the jail, and the upgrade would cost \$640,000. He said the Town would own the infrastructure and since they were upgrading the infrastructure at the Town's request, it was his recommendation to waive the water acquisition fee and sewer fee, and contribute \$100,000 towards the construction of the water line. Mayor Marshall asked Mr. Saari if he was satisfied, and Mr. Saari said yes. Manager Brown said the Town would be working with them to assist them on the acquisition of easements for the sewer lines, but they would be primarily responsible for the construction of the sewer line. He said the easements would be to the Town, and the Town would own all of the infrastructure and thus accommodate any future growth in that direction. There was further discussion about whether the \$100,000 was budgeted, etc. Mayor Marshall asked if there were any other witnesses in support of the application, and there were none. Mayor Marshall asked if there were any witnesses in opposition. Susan Aumann made comments about the jail, and said she was in favor of giving water and sewer to the new Detention Center. Mayor Marshall asked again if there were any witnesses in opposition to the application, and there were none. Mr. Saari had nothing else to add to the record. He answered questions from the hearing board and there was further discussion about development in the ETJ. Mayor Marshall asked the hearing board if they were ready to render a decision. Councilor Wheaton-Smith made a motion to approve the application with the 3 conditions. Councilor Morones seconded the motion as stated. There was no further discussion. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

B. Approval / Disapproval of recovery of costs of demolition associated with the demolition of the A-frame building that was located at 1308 N. Pope St. (aka old Smoke Shop), Silver City, NM. Mayor Marshall stated that the Town Council would serve as the hearing board and he would serve as the presiding officer. He asked if any member of the hearing board had ex-parte discussions with any person regarding the subject, or had any communication from any party to the case, and none had. The Town Clerk swore in 3 witnesses for the hearing.

Mayor Marshall read the procedures of how the hearing would be conducted. Roger Groves, Code Enforcement Supervisor, said they were there to recover the costs of demolition and he reported that the costs totaled \$2230.29. He asked the Council to order that the charge be assessed against the property as a special assessment per Section 905.3 of the 1997 Abatement of Dangerous Buildings code that the Town had adopted. There were no questions from the Council. Peter Russell, Community Development Director, and Manager Brown supported the case. Mr. Russell stated the Smoke Shop had been abandoned for many years and had been a nuisance, etc., and he supported the action that Mr. Groves had taken and to recover the costs. There was no other testimony from Mr. Groves, and there were no witnesses in opposition. Mayor Marshall asked the hearing board if they were ready to render a decision. Councilor Morones made a motion to approve the recovery of costs of demolition and to put a special assessment on the property. Councilor Wheaton-Smith seconded the motion as stated. There was no further discussion. All were in favor, motion passed.

Councilor Bettison moved for short recess at 7:20 PM. Councilor Wheaton-Smith seconded. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 7:32 PM.

C. Approval / Disapproval of Appeal # AP10-2: an Appeal of the Planning and Zoning Commission's decision to approve a request for a Variance to allow a 950 square foot accessory building where the maximum allowable is 600 square feet at a property located at 1202 Mississippi Street. Appellants were (1) Alan Wagman and (2) Diane Barrett. Mayor Marshall stated that the Town Council would serve as the hearing board and he would serve as the presiding officer. He asked if any member of the hearing board had ex-parte discussions with any person regarding the subject, or had any communication from any party to the case. Councilor Bettison stated that Ms. Barrett was the caterer of a Leadership New Mexico event that was held at the Western New Mexico University Museum, and that she and Ms. Barrett did not discuss the subject. She also said that she was friends with Mr. and Mrs. Adams, but she did not discuss the matter with them. Mayor Marshall commented that Mr. Wagman sent an email to the Council regarding the process, and he said that none of the matters were disqualifying. The Mayor stated that all of the Council were qualified to participate. The Town Clerk swore in 11 witnesses for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted.

The public hearing was held to hear the appeal. The hearing board passed motions for several recesses during the hearing and at approximately 10:04 PM Councilor Bettison made a motion to go into **Executive Session pursuant to N.M.S.A. 1978, Section 10-15-1 (H) (3) for the deliberations by a public body in connection with an administrative adjudicatory proceeding**. Councilor Morones seconded the motion. A roll call vote was taken with the following results: Councilor Bettison - aye; Councilor Thomson - aye; Councilor Wheaton-Smith - nay; and Councilor Morones - aye. Motion passed 3 to 1 in favor. Mayor Marshall called the hearing back to order at 10:46 PM and he stated that they had been in Executive Session pursuant to the motion that was made, that there was nothing discussed outside the motion, and no decisions were made.

Councilor Thomson made a motion to remand the case back to the Planning and Zoning Commission with instructions. Councilor Bettison seconded the motion as stated. There was no further discussion. A roll call vote was taken with the following results: Councilor Bettison - aye; Councilor Thomson - aye; Councilor Wheaton-Smith - aye; and Councilor Morones - aye. Motion passed and Mayor Marshall said it concluded the hearing.

10. UNFINISHED BUSINESS – None.

11. NEW BUSINESS

A. Approval / Disapproval of Memorandum of Agreement between the Town and Hidalgo Medical Services, Inc. for the lease of Town-owned property. Manager Brown presented the details of the Memorandum of Agreement and said the Town was awarded \$1,000,000 to go towards the purchase and construction of a public health facility for Hidalgo Medical Services (HMS). He said the money was finally secured with 2 stipulations: 1) to use enough funds necessary that was required to purchase property, and he said the Town did that with the purchase of the Ridgewood Motors property, and 2) before any more of the funds could be used, the Town had to enter into a lease agreement with HMS. There was further discussion. Councilor Morones made a motion to approve the Memorandum

of Agreement between the Town and HMS for the lease of Town-owned property. Councilor Bettison seconded the motion as stated. There was no further discussion. All were in favor, motion passed.

B. Approval / Disapproval of Resolution No. 2010-32 for the Regular Municipal Election to be held on March 1, 2011. Clerk Mackie asked for the Council's approval of Resolution No. 2010-32 and presented the details of the upcoming election for elected offices for one Councilor in District 1 and one Councilor in District 3. Councilor Wheaton-Smith made a motion to adopt and approve Resolution No. 2010-32. Councilor Bettison seconded the motion as stated. Councilor Wheaton-Smith commented that he would run again for a 3rd and last term. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

C. Approval / Disapproval of Notice of Intent Ordinance No. 1174: an Ordinance repealing Ordinance No. 1017 and all succeeding supplements and amendments thereto (1999 Land Use Code); renaming title of Chapter 8; deleting Chapter 8, Article VI., Section 8-112 of the Town's Municipal code; creating a new Chapter 9 within said Municipal Code; and adopting a revised Land Use Code to be entitled "Land Use Code of 2010". Peter Russell, Community Development Director, commented that the Land Use Code revision was initiated by the Town Council in 2007 through the creation of a task force and the hiring of a consultant. He commented on the process involved and the number of public meetings, etc. by the task force, the Planning and Zoning Commission, and the Town Council. There was further discussion about the index and citations; the deadline for adopting the FEMA code; lighting; water harvesting; and removing or holding the RB1 and RB2 concepts in abeyance or to make a moratorium on any procedures involving rezoning to RB1; portable sandwich signs, etc. Councilor Wheaton-Smith made a motion to approve NOI Ordinance No. 1174. Councilor Bettison seconded the motion as stated. There was no further discussion by Council, but a member of the audience, Alan Wagman, commented on variances in the proposed Code, and he requested that the Land Use Code would be one that the Council would be willing to enforce, etc. Mr. Russell concurred with Mr. Wagman's remarks, and Councilor Wheaton-Smith commented that there was an amendment process to the Land Use Code. Mayor Marshall asked if there was any other discussion, and Councilor Wheaton-Smith asked for a formal agenda item. Mayor Marshall stated that they should take care of the motion on the floor. All were in favor, motion passed.

Councilor Wheaton-Smith requested a formal agenda item for the next Council meeting which would propose to hold a moratorium on the RB1 district concept until such time as the Council would have more time to review that specific subject matter. Mayor Marshall said he would place it on the agenda.

ADJOURNMENT – Councilor Wheaton-Smith made a motion to adjourn at 11:22 PM. Councilor Bettison seconded the motion. All were in favor. Motion passed.

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk