

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy 180, Silver City, NM
February 13, 2012, 6:00 P.M.**

Present:

James R. Marshall, Mayor
Cynthia A. Bettison, District 1
Jamie K. Thomson, District 2
Jose A. Ray, Jr., 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
Peter Pena, Public Works Director
Peter Russell, Community Development Director
Robert Esqueda, Utilities Director

1. **CALL TO ORDER/PLEDGE OF ALLEGIANCE** – Mayor Marshall called the meeting to order at 6:06 p.m. Councilor Bettison read the Town’s Mission Statement.
2. **CEREMONIES** – None.
3. **PROCLAMATIONS** - None.
4. **PUBLIC INPUT** – None.
5. **COUNCIL COMMENTS** – Councilor Ray thanked the Town Clerk, Ann Mackie, for doing a wonderful job, and he commented on a newspaper article that made accusations without proof. Councilor Bettison commented that she attended the Prospector’s Legislative Day, the Annual Municipal Day, and the New Mexico Municipal League’s Board of Director’s meeting. She said she was recently appointed by the New Mexico Municipal League’s President to serve on a Special Tax Task Force with a focus to design Gross Receipts Tax Legislation that would clearly separate state and local taxes. Mayor Marshall provided an update on the legislative bills, how the State needed to improve their own transparency before increasing it in local government, and how PNM was closing most of their payment centers around the state. He thanked Attorney Scavron for doing a fine job regarding PNM and that they held PNM’s feet to the fire and made them responsible to the citizens of the Town of Silver City. He encouraged people to watch what was going on in Santa Fe and on their website.
6. **CHANGES TO THE AGENDA** – None.
7. **APPROVAL OF THE MINUTES –Regular Meeting, January 24, 2012** - Councilor Bettison made a motion to approve the minutes. Councilor Thomson seconded the motion as stated. All were in favor. Motion passed.
8. **REPORTS** – None.
9. **PUBLIC HEARINGS** – None.
10. **UNFINISHED BUSINESS** - None.
11. **NEW BUSINESS** -
 - A. **Approval / Disapproval of Resolution No. 2012-06: relating to the Town of Silver City, New Mexico Gross Receipts Tax Improvement Revenue Bonds, Series 2012; establishing the exact aggregate principal amount of the bonds of \$800,000, maturity dates, rates of interest, redemption features and price with respect to such bonds in accordance with Town Ordinance No. 1192 adopted on January 10, 2012; approving documents relating to the bonds; and ratifying action previously taken in connection therewith.** Councilor Morones disclosed
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that he was on the Board of Directors of Western Bank that was part of the purchase agreement, and that he did not know if that weighed on his participation or not. Mayor Marshall said he did not believe it did, that the disclosure was sufficient as long as Councilor Morones felt confident that he could act in an unbiased manner as a Councilor in that role. He asked if there were objections from the Council and there were none. The Town's bonding attorney, Chris Muirhead of Modrall, Sperling, Roehl, Harris & Sisk, P.A. presented the details of Resolution No. 2012-06. He said it was the third and final step related to the issuance of the 2012 bonds that was anticipated in Ordinance No. 1192 from January 10, 2012. He said Mark Valenzuela, the Town's financial advisor, sought out various potential lenders or purchasers of the bonds and had determined that the local bank, Western Bank, had the most favorable terms. He said the Sale Resolution established the exact principal amount of \$800,000 which was below the \$1,000,000 par amount maximum in the Parameters Resolution. He said each maturity over the 6 years of the bond had a 2.32 percent interest rate, beginning June 1, 2012 annually through 2017. He described the principal amounts for each of the 6 years. He said the interest rate was substantially lower than the statutory maximum rate of 12 percent. He said Resolution No. 2012-06 also proved the Bond Purchase Agreement, and the agreement created a contractual relationship with the Town and Western Bank from this date until the closing date in 2 weeks. He said there was no option to pay them off earlier because of the short term. He said the provisions of the bond purchase agreement were traditional and consistent public finance provisions.

Mayor Marshall asked Manager Brown to discuss the purpose of the bonds. Manager Brown said the purpose of the loan was to purchase a piece of property and to do additional work on College Street. Attorney Scavron told Manager Brown he could disclose the property, and Manager Brown said it was the Shamrock Station. Mayor Marshall said it was the last meeting that they could disclose that and it was important to describe why the Town would buy a gas station. Manager Brown said the Town owned most of the property in those couple of blocks downtown and they wanted to close on that final piece. He said that he had discussions with the County and School District to use the gas station in the mean time as a fueling station for the Town of Silver City vehicles and County vehicles. He said the Town would be able to purchase gas at rack prices in bulk and avoid the extra cost so it would have a savings for the Town and County. There was further discussion about the debt service and that it would be \$140,000 to \$145,000 annually for the next 6 years. Mayor Marshall said that he wanted it made clear that the Town was not adding debt that they did not already have for many years because they resolved most of their debt in this fiscal year and the last fiscal year which allowed them to re-encumber that money to different purposes. Mayor Marshall said he wanted it made clear that the Town owned the entire block from Pope to Main and 12th to 11th with the exception of the piece of land that the Shamrock was sitting on. He said there had been many talks for a number of years about developing that area around the park as a city center to consolidate services and make more efficiency for operations and the public when they did business with the Town, and that not having that property would be in the way of that plan. He said they definitely did not have the finances to actually implement that plan at that time, but they did have finances available to set them on that course, and that this may be the only time to get on that course and complete that project at a later date. Manager Brown said that 5 years ago the same piece of property was \$750,000 and the current price was \$354,000.

Councilor Bettison asked what they were doing on College Street. Peter Pena, Public Works Director, said that later in the agenda they were looking at awarding a bid for College Avenue. He said that they were looking at doing a street and drainage project west of Texas Street all the way to Cooper Street to re-do sidewalks, handicap ramps, ADA drive pads, new asphalt, and to incorporate drainage improvements since there was a lot of flooding. Councilor Bettison made a motion to approve Resolution No. 2012-06. Councilor Ray seconded the motion. There was no further discussion. A roll call vote was taken: Councilor Bettison - aye; Councilor Thomson - aye; Councilor Ray - aye; and Councilor Morones - aye. Motion passed. Mr. Muirhead said he would be back in a couple of weeks to go over the documents and to have them signed by Town officials and Western Bank for the closing at the end of February.

B. Approval / Disapproval of Notice of Intent Ordinance No. 1197: an Ordinance granting to Public Service Company of New Mexico, a New Mexico Corporation, its successors and assigns, the right, privilege and franchise to furnish electricity within the Town of Silver City, New Mexico, and granting to Public Service Company of New Mexico, a New Mexico Corporation, the right to use any public highway, street, alley, road or other public place. Attorney Scavron presented the details of Notice of Intent Ordinance 1197. He said it was for 25 years and was very standard and resembled the franchise that was issued before to TNMP (Texas-New Mexico Power

Company) and to the predecessor to TNMP. He said the franchise fee of 2.5 percent was in line with the rest of the state. He commented that there was some hesitancy on the part of PNM to sign a franchise agreement that required specific types of behavior in parks, trails, and open spaces because other municipalities in the state did not have those laws. He said the Town wanted to take an unusual step in protecting parks, trails, and open spaces from all franchisees and that later on the agenda there was another Notice of Intent Ordinance that was about how all franchisees would operate in the Town's parks, trails, and open spaces. He said it was not part of the electric franchise, but it would apply to all franchisees. He said that PNM said they were okay with it, but they had pointed out that it was the first in the state. Attorney Scavron said once again the Town of Silver City was leading the state in something by putting a higher value than most on the Town's parks, trails, and open spaces. There was further discussion about how the Notice of Intent Ordinance No. 1197 referred to the planning and zoning ordinances, but also stated that they would comply with all of the laws of the Town. Manager Brown said the intent was that as the Town changed its ordinances they would be incorporated into the franchise. Mayor Marshall said there were concerns about poles and the removal of poles in sidewalks, and the clear sight triangle blocking pedestrian signaling or other signaling. He asked Attorney Scavron if he was confident that the franchise would protect the Town from any of those violations in the future. Attorney Scavron described a particular situation and how the Land Use Code had provisions about not obstructing the clear sight triangle. He commented further on the pole issue and the compliance generally with all of the laws of the Town, and he made a suggestion to change planning and zoning ordinances to municipal ordinances in the document. Mayor Marshall agreed and commented on poles that needed to be removed from out of sidewalks. He said that he wanted to make sure the agreement incorporated those desires going forward. There was further discussion and public input was received from Kathy Anderson. Attorney Scavron suggested that Article VI, Section 2 entitled as Excavations should be changed to Excavations and Pole Placements, and in the same section after "subject to the limitations provided herein this Electric Franchise Ordinance" to add "and the Town's Municipal Code." He said that would take care of the poles. There was no objection to the changes suggested by Attorney Scavron. Mayor Marshall said that it was important with the changes that were made that PNM understood that it was debated by the Council, that public input was received, and that it was the direction that the public and the Council in representing the public, felt that they needed, and if PNM objected then things would get difficult for them to maintain a relationship. Attorney Scavron said he would convey that exact message to PNM. There was further discussion. Councilor Morones made a motion to approve Notice of Intent Ordinance No. 1197 with the amendments that were agreed upon; every phrase that said "planning and zoning ordinance" shall be replaced with the words "Municipal ordinances" and Article VI, Section 2, title would change from "Excavations" to "Excavations and Pole Placements", and in the 4th line down after "herein this Electric Franchise Ordinance", the words, "and the Town's Municipal Code" should be added. Councilor Bettison seconded the motion as stated. Mayor Marshall asked if everybody was confident that they fully understood the amendments, and the Councilors said yes. All were in favor, motion passed.

Councilor Bettison moved for a short break. Councilor Thomson seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 7:30 p.m.

C. Approval / Disapproval of Notice of Intent Ordinance No. 1196: an Ordinance authorizing the execution and delivery of a Power Purchase Agreement by and Between the Town of Silver City and NRG Solar Silver City, LLC for the purpose of obtaining guaranteed savings in the Town's cost of electricity during the term of the Power Purchase Agreement; and providing for the pledge of utility cost savings for the purpose of securing payment of amounts due under the Power Purchase Agreement; ratifying action previously taken in connection therewith; repealing all action in conflict herewith. Manager Brown said it has been a long time since they awarded the bid to Solar Power Partner, but they were bought out by NRG. He said they spent a year negotiating the Power Purchase Agreement (PPA) to install a solar array at the wastewater treatment plant which would lock in for the Town of Silver City a rate of 6.9 cents per kilowatt hour for the next 20 years. He said the pledge for the payment of the bills for the use of the solar power was the water and sewer fund, and the operating costs would also be paid from that fund. He said they were also working on an industrial revenue bond so they could build the facility, and that it required that they work with the County and the School District. He said the Town would waive their ability to charge property tax on the facility, and the School District would waive its right to receive the payment in lieu of taxes which was a minimal amount. Manager Brown said there would be a \$4,000,000 savings over the 20 years. There was further discussion. Manager Brown said the industrial revenue bond would not be the Town's debt, but it would be the debt of the company. He said it was a mechanism so the property would become tax exempt. Mayor Marshall asked if there

were comments from the audience, and there were none. He commended the staff, Manager Brown, Attorney Scavron, Peter Russell, Nick Sussillo and the Joint Office of Sustainability. He said the team worked on an extremely complicated project and he believed the Town was setting the stage for the rest of the state on how other municipalities and divisions of government would address their needs for energy efficiency projects. He said there were a multitude of issues that came up that required negotiations in protecting the Town and that current and future revenue sources were addressed. He said the team did an exceptional job, as well as the vendor in working towards agreements that ensured stability. Manager Brown said the PPA would be a model agreement throughout the state. He said Nick Sussillo, Peter Russell, and Attorney Scavron did a very good job. He also thanked Bryan Cassutt, Project Developer of NRG Solar, LLC, and the initial evaluation committee. Nick Sussillo, Director of the Joint Office of Sustainability, said it had been a long time since the award was made in January 2011. He said they were supported during the selection process by Robert Esqueda, Utilities Director, and also by volunteers Kurt Albershardt and Jim Kerstetter from the Mayor's Climate Protection Citizens Advisory Committee. Attorney Scavron said the negotiations were longer because it was the company's first foray into New Mexico. He said they had contact with other municipalities on what their concerns might be. He said the negotiations were for what was best for the Town, but it also would prove to be best for many other municipalities in New Mexico. He said the ramrod for the project was Nick Sussillo, that he did the heavy lifting, and that it was incredibly complicated. He said there was a negotiation on every part of it, that he believed it would set a good precedent for the rest of the state, and that Alamogordo, Las Cruces and Deming wanted to use the Town's PPA as their template. He said it was a credit to the Town.

Mayor Marshall acknowledged Jim Kerstetter and he said that he was very thankful that he stepped forward when the Town was advertising for positions on the Mayor's Climate Protection Citizens Advisory Committee. He said it turned out that he was not just a volunteer, but was truly an expert and that he could be proud that he represented the Town very well and did an exceptional job in fulfilling his role on the Committee. He said he was truly an example of what they looked for when soliciting for volunteers, and he wanted to publicly thank him for his service. He commented further on the importance of advisory committees. Mayor Marshall also thanked Kurt Albershardt and said he was an expert in many areas, not just energy efficiency. He thanked Mr. Albershardt for making himself available to help advise, and he said that he appreciated it. Mayor Marshall said the team was together and they all brought their expertise and made sure the proper checks and balances were in place and made sure the projects would truly benefit the citizens of the town. He thanked all of the staff that took their time, energy, and expertise and applied it to the project.

Councilor Ray made a motion to approve Notice of Intent Ordinance No. 1196. Councilor Bettison seconded the motion as stated. Councilor Morones said they had a private company putting in the infrastructure at their expense with very little cost to the Town, except for maybe foregoing a couple thousand dollars of tax over 20 years. He said they were saving \$4,000,000 just to allow the company to do so, and commented on energy resources. He said he supported it. Mayor Marshall said the \$4,000,000 savings was almost the entire amount that they did on the 2011 Series Bonds. Councilor Bettison pointed out that it was energy efficiencies and solutions like these that enabled the Town to keep its water rates, etc., constant without increasing them, and they were able to increase efficiencies while providing services and diversifying resources to ensure that those services always came through. She thanked the Town staff and the Office of Sustainability staff. All were in favor, motion passed.

D. Approval / Disapproval of Resolution No. 2012-02: a Resolution of the Council of the Town of Silver City, NM, authorizing the submission of a WaterSMART Water and Energy Efficiency Grant Program application to the U.S. Department of Interior, Bureau of Reclamation; and authorizing the Mayor as the Town of Silver City's Chief Executive Officer and authorized representative to act in all matters pertaining to the Town of Silver City's participation in the WaterSMART Water and Energy Efficiency Grant Program to install a "SMART" irrigation system at the Ben Altimirano Ball Field Park. Mayor Marshall said the next 3 items on the agenda were for the same project so he introduced Items D, E, and F in order to allow Denise Smith, Joint Office of Sustainability, to make one presentation. Ms. Smith said she had training from the Bureau of Reclamation and they advised her to separate the projects into 3 separate applications so there would be a better chance to get funded. She said the irrigation system at the ball park would save 14.5 acre feet of water per year which would amount to \$19,277.00 per year in savings, and the savings in electricity would be \$21,180.00 annually. She described the "SMART" irrigation system and said it was run by a computer and would have a weather station and soil moisture

sensors. She said it would only water what was necessary to keep the grass alive rather than coming on in certain intervals, even when it was raining. Mayor Marshall said the ball park was one of the top water users in Silver City. Ms. Smith said perhaps they could do some of the municipal parks in the future if the application was approved. She said the Town would spend about \$20,000.00 on the project and they would get \$26,000.00 in funds from the Bureau of Reclamation. She said it was \$20,000.00 plus indirect costs. Councilor Bettison said the funds from the Town would come from the water and sewer fund. There was further discussion. Mayor Marshall asked what the life was for the SMART irrigation system, and Ms. Smith said it was 15 to 20 years. Councilor Bettison made a motion to approve Resolution No. 2012-02. Councilor Morones seconded the motion as stated. A roll call vote was taken with the following results: Councilor Bettison - aye; Councilor Thomson - aye; Councilor Ray - aye; and Councilor Morones - aye. Motion passed.

E. Approval / Disapproval of Resolution No. 2012-04: a Resolution of the Council of the Town of Silver City, NM, authorizing the submission of a WaterSMART Water and Energy Efficiency Grant Program application to the U.S. Department of Interior, Bureau of Reclamation; and authorizing the Mayor as the Town of Silver City's Chief Executive Officer and authorized representative to act in all matters pertaining to the Town of Silver City's participation in the WaterSMART Water and Energy Efficiency Grant Program to replace pump motors at the Town's municipal well booster stations. Refer to Item D above. Denise Smith, Joint Office of Sustainability, said the Resolution No. 2012-04 was to replace the pump motors at the municipal well booster stations with higher efficiency pump motors that would give about 5 percent more efficiency. She said the Town would save \$8,700.00 per year overall for all 3 of the pumps. She said the savings was not as significant as the "SMART" irrigation system (Item D above), but it would upgrade the municipal well pumping system. Ms. Smith said the Town was requesting \$178,250.00 of grant funding, which was \$155,000.00 plus \$23,250.00 indirect costs and provide a 50 percent cost share of \$169,500.00 or \$154,500.00 in direct funds and \$15,000.00 in-kind labor to install the pumps for a total project cost of \$347,750.00. Mayor Marshall asked what the life of the pumps would be. Robert Esqueda, Utilities Director, said the life would be between 15 and 20 years. Councilor Bettison confirmed with Ms. Smith that the funds would come from the water and sewer fund. Ms. Smith said it was a project that the Town needed to do and would be doing anyway whether they received funding or not. Councilor Morones said the first year of savings would pay for the Town's share, then they would have 19 years of making money. He confirmed with Manager Brown that replacing the pump motors would be in the budget anyway. There was further discussion. Councilor Morones made a motion to approve Resolution No. 2012-04. Councilor Ray seconded the motion. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Ray - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

F. Approval / Disapproval of Resolution No. 2012-05: a Resolution of the Council of the Town of Silver City, NM, authorizing the submission of a WaterSMART Water and Energy Efficiency Grant Program application to the U.S. Department of Interior, Bureau of Reclamation; and authorizing the Mayor as the Town of Silver City's Chief Executive Officer and authorized representative to act in all matters pertaining to the Town of Silver City's participation in the WaterSMART Water and Energy Efficiency Grant Program to replace water meters at the Town's municipal well booster stations. Refer to Item D above. Denise Smith, Joint Office of Sustainability, said Resolution No. 2012-05 was to replace the meters at the booster stations. She said there was no actual water conservation or savings, but it would provide additional accuracy in the measurement of the water pumped from the wells, compared to what was billed to people using the water. She said it would help to have a more accurate accounting of the unaccounted water which was the difference between what was pumped and what was billed. She said it was something that the Utility Department wanted. She said 2 of them were not working at all, and 1 was an older meter, and that meters lose their efficiency over time. She said the Town was requesting \$40,250.00 of grant funds which was \$35,000.00 plus \$5,250.00 indirect, and the Town would provide a 50 percent cost share of \$35,500.00 or \$27,500.00 direct fund and \$8,000.00 in kind labor for a total project cost of \$75,750.00. There was further discussion. Mayor Marshall asked if there were any comments from the audience, and there were none. Councilor Bettison made a motion to approve Resolution No. 2012-05 with one correction to page 1 of 2 under #4 to include after "will provide 50 percent cost share of \$35,500.00" to include "(\$27,500.00 direct fund and \$8,000.00 in kind labor)". Councilor Morones seconded the motion as stated. A roll call vote was taken with the following results: Councilor Bettison - aye; Councilor Thomson - aye; Councilor Ray - aye; and Councilor Morones - aye. Motion passed.

G. Approval / Disapproval of Notice of Intent Ordinance No. 1198: an Ordinance amending Chapter 42, by adding a new Article VII to the Town of Silver City Municipal Code, relating to the use, improvement and development of Town-owned parks, trails and open spaces by franchisee's within the Town limits of the Town of Silver City, Grant County, NM. Mayor Marshall said it was discussed in Item B above to add protections to the parks, trails, and open spaces as protected areas that deserve to maintain their current integrity. Councilor Bettison asked if it would also protect historic or archaeological sites, i.e., Boston Hill. Mayor Marshall said he believed it would allow them to protect those sites as open space, and they might fall under other protections at another level (state and federal). Mayor Marshall asked if there were any comments from the audience, and there was none. Councilor Bettison made a motion to approve Notice of Intent Ordinance No. 1198. Councilor Ray seconded the motion. All were in favor, motion passed.

H. Approval / Disapproval of Bid 11/12-17: Pope & 12th Street Signalization Project. Manager Brown said the Town received 3 bids and it was staff's recommendation to award the bid to R T Electric, Inc. of Las Cruces, NM for a base bid of \$210,267.72 plus gross receipts taxes of \$15,507.24, for a total project cost of \$225,774.96. He said the grant was awarded for a total amount of \$297,000.00, but they had a remaining balance of \$255,862.00 because of engineering costs that were paid out of the grant so the grant was more than enough to pay for the project. There was further discussion. Councilor Morones made a motion to approve Bid 11/12-17 per staff's recommendation to R T Electric, Inc. for a total of \$225,774.96 including gross receipts tax. Councilor Thomson seconded the motion. All were in favor, motion passed.

I. Approval / Disapproval of Bid 11/12-9: College Avenue Roadway and Drainage Improvements. Manager Brown said the Town received 3 bids on the project, one bid was non-responsive, so there were 2 bidders. He said CMC Construction Inc. from Truth or Consequences, NM was the low bidder, but because of the 5 percent local preference Southwest Concrete and Paving Inc. was the company they were recommending to award the bid to. He said it included their base bid plus the additive alternate for a total project cost of \$523,369.71 plus gross receipts taxes of \$38,598.52 for a total project cost of \$561,968.23. He said it was partially being paid from a grant that they had a match for, as well as some of the bond proceeds that they will be closing on (refer to Item A above). Councilor Ray made a motion to approve Bid 11/12-9 per staff's recommendation to Southwest Concrete and Paving Inc. for a total of \$561,968.23 including gross receipts tax. Councilor Morones seconded the motion as stated. All were in favor, motion passed.

J. Appointment of 1 member to the Mayor's Climate Protection Agreement Citizen's Advisory Committee Mayor Marshall said Debaura James had been an active participant and had reapplied. He said if there was no objection he would like to reappoint her. There was no object from the Council.

K. Appointment of 1 member to the Recycling Advisory Committee. Mayor Marshall said they had 1 applicant, Connie Glenn, that appeared to be qualified and that he received no objections from the Committee. He said if there was no objection he would like to appoint her. There was no objection from the Council.

12. ADJOURNMENT – Councilor Morones made a motion to adjourn at 8:32 p.m. Councilor Bettison seconded the motion. All were in favor. Motion passed.

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk