

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy 180, Silver City, NM
February 28, 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
Jim Coates, Town Planner
Peter Russell, Community Development Director

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE** – Mayor Marshall called the meeting to order at 6:02 p.m. Councilor Morones read the Town’s Mission Statement.
- 2. CEREMONIES** – None.
- 3. PROCLAMATIONS** - None.
- 4. PUBLIC INPUT** – Lori Ford, Executive Director of CATS (Community Access Television Silver City), commented on the recent audio problems of the public meetings and that a new audio board had been purchased by Grant County. She also commented on the community radio station, KOAT 88.1 FM, the programming of the channels on CATS, and that CATS would be taping the Silver City School Board meetings soon. Jason Amaro commented that he had been working with the New Mexico Game and Fish Department on the serious deer problem in the Indian Hills area for 3 years, and that as a sportsman and advocate for the outdoors he hoped that hunters would be part of the solution. He said that he fully supported the New Mexico Game and Fish Department.
- 5. COUNCIL COMMENTS** – Councilor Bettison commented on attending the New Mexico Municipal League's Special Tax Task Force meeting about separating municipal taxes from state taxes and the collection and management of those taxes; pole placements by PNM that were in the middle of sidewalks and other unusual places; and she encouraged citizens to exercise their right to vote at the upcoming municipal election. She thanked Councilor Thomson for being part of the Council and that she appreciated the discussions they had over the past couple of years. She said that she wished good luck and good fortune to everyone that was running.

Councilor Thomson said it was his last day on the Council and he thanked the Council. He said Mayor Marshall was very welcoming when he first came on the Council and he remarked on an experience that the Mayor shared with him about his time as a paramedic and that it really stuck with him because it became an important metaphor for him on how to attack any sort of problem. He said Councilor Ray had confirmed his suspicions that bikers were kind people because he was the newest guy on the Council, but would help him out. He said Councilor Morones was a pleasure to talk to and how both Councilor Morones and Councilor Ray grew up here and were active young men and that their perspectives were critical in a leadership capacity. He told Councilor Bettison that he truly respected her work ethic and that nobody worked harder than she did. He said the last 6 months were hard on him, but Ann Mackie, Town Clerk, and the employees at Town Hall were always so pleasant to talk to and that they all worked really hard. He said that Alex Brown, Town Manager, always had his door open and that he believed he knew what it was like to struggle as a young family. Councilor Thomson said that one of his concerns was that young families had it hard now and having a Town Manager that understood those struggles was critical. He said that he was impressed with the departments and that Peter Pena, Public Works Director, was the one that he talked with the most and that he was spectacular and great to deal with because he was always available. Lastly, he said that he spent a year on the animal ordinance and that the over arching goal was to reduce nuisance problems and expenditures by 50 percent in a 5 to 6 year period by proposing to use market mechanisms and community policing. He said they had a work session and that he did the numbers and that the staff and the Council were not too enthusiastic about it so he dropped it.

Councilor Ray told Councilor Thomson that it was very enjoyable being on the Council with him and he wished him good luck. He also told the public to be sure to vote. Councilor Morones said it had been an honor working with Councilor Thomson. He said they came on the Council together and had to learn a lot at the same time. He said it was always refreshing to get Councilor Thomson's perspective on things with his very profound questions and comments that helped to lead them in the right direction in the last 2 years.

Mayor Marshall said the Town had intervened in PNM's filing of closing their payment centers and that the Town of Silver City was the only municipality in the state that intervened. He said they would be getting the latest settlement offer in a few days, but the payment center would close on March 15th, and that the current offering would be that PNM would waive all of the fees for paying by check, etc. He talked about rate increases and an upcoming PNM info fair in April. He commented on how the Town was working diligently with the Grant County Water Commission's proposal for a regional water system; how they had gotten through the Tier 2 review and scoring; and about future Interstate Stream Commission meetings. He thanked Peter Russell, Community Development Director, for going above and beyond and how he knew the issues, engineering, and extremely technical issues on the topic. He said Mr. Russell represented the public very, very well, and that they could not find a better person to represent the Town and the public. He said Mr. Russell takes a lot of heat because he asks a lot of tough questions that were always appropriate. He said Mr. Russell worked with him and the rest of the staff very well in making sure their ducks were in a row and their arguments were solid.

6. CHANGES TO THE AGENDA – None.

7. APPROVAL OF THE MINUTES –Regular Meeting, February 13, 2012 - Councilor Bettison made a motion to approve the minutes. Councilor Ray seconded the motion as stated. All were in favor. Motion passed.

8. REPORTS –

A. Deer management for the Silver City area by the New Mexico Department of Game and Fish. Ray Aaltonen, Chief of the southwest area of New Mexico Department of Game and Fish out of Las Cruces, New Mexico, reported on the deer issues in Silver City and Grant County. He discussed goals and objectives to reduce the deer population; minimize human safety concerns; reduce the deer complaints; minimize vehicle collisions and disease concerns; educate residents on the negative impact of feeding wildlife; biology; and wildlife complaints. He said the control methods in the county would include a department kill permit; recommended hunt zones; archery only hunts; and a focused harvest on the female segment of the population. He said the county's control methods would not occur within the city limits of Silver City because of the Town's rules on discharging firearms and weapons, and the density of people. He said the control methods in Silver City would include trapping and transplanting that was allowed under New Mexico statutes and department policy; to focus in residential areas; to use 20 feet by 20 feet suspended drop nets and clover traps; and a hard release into the wild. There was further discussion.

Clerk Mackie commented that early voting for the upcoming municipal election would end at City Hall on March 2nd, and she announced the polling locations for each of the 4 Council districts.

9. PUBLIC HEARINGS –

A. Approval/Disapproval of Ordinance No. 1199: A Zone Change request for a parcel addressed as 1412 N. Bennett Street, Silver City, NM. The request was to amend the Official Zoning Map for that property described as Lots 6 and 8, Block 267 of the Fraser Addition from Commercial District to Mixed-use District. The applicant was Darlene Dawn Gray. Mayor Marshall stated 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. Mayor Marshall asked all parties and witnesses, including staff members, to come forward to be sworn in to testify by the Town Clerk. The Town Clerk swore in 4 witnesses for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted. Jim Coates, Town Planner, read some of the details of the Staff Report and stated the Planning and Zoning Commission recommended approval based on Findings 1, 2, 4, and 7, and he read them. He said that none of the neighbors testified or offered opposition to the case. There were no questions from the hearing board on the staff report. Mayor Marshall asked the applicant if they would like to present their case. Applicant Darlene

Dawn Gray said she was the owner of 1412 Bennett Street and learned that it was in a commercial zone after purchasing the property. She said the commercial zone made it difficult to sell the building as a residence or to get financing to rebuild in the case of a fire because a commercial loan had a considerably higher interest rate. She said there was a restriction of 25 per cent if she wanted to increase the size of the building under the current zoning and if it was rezoned she could respond to the maximum size allowed by the Town. She said she had no objections to the findings and believed that the proposed rezoning was in substantial compliance with the Town's Comprehensive Plan and would not adversely affect the public or anybody. There were no other persons in support of the applicant's case, and no opposition to the applicant's case. Ms. Gray indicated that she had nothing else to reflect into the record. There were no questions from the hearing board. Mayor Marshall asked if the hearing board was ready to render its decision. Councilor Morones made a motion to approve Ordinance No. 1199 under Finding #7: the proposed amendment provided additional flexibility in meeting the objectives of the Land Use Code without lowering the standards of the Land Use Code. Councilor Bettison seconded the motion as stated. There was no further discussion. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Ray - aye; Councilor Thomson; and Councilor Bettison - aye. Motion passed.

B. Approval/Disapproval of Ordinance No. 1200: A request for a Map Amendment/Zone Change for a tract of land addressed as 503 Spring Street, Silver City, NM, which was currently in two zoning districts. The parcel was described as part of Lots 1, 3, 5, 7, 9, 11, 13, and 15, Block 27 of the Fraser Addition. The request was to amend the Official Zoning Map for that portion of the property within the Commercial District to Historic Downtown Commercial District. The applicants were Robert and Marian Reimann. Mayor Marshall stated 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. Mayor Marshall asked all parties and witnesses, including staff members, to come forward to be sworn in to testify by the Town Clerk. The Town Clerk swore in 4 witnesses for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted. Jim Coates, Town Planner, said it was to change part of 503 Spring Street that was in the commercial zone to the historical downtown commercial zone. He said it had 2 zones in the property, and that there were 8 lots with 4 lots commercially zoned and 4 lots residentially zoned. He said the house was in the commercial part of the property and was in an area of Town that they were looking at eventually bringing about a major change in the zone from commercial to historic downtown commercial. He discussed the difficulty in making a broad sweeping zone change from commercial to the historic downtown commercial district. He read some of the details of the Staff Report and stated the Planning and Zoning Commission recommended approval of the map change based on Findings 1, 2, 4, and 7. Councilor Morones asked if there was opposition from the neighbors, and Mr. Coates said no one was opposed to it and they were satisfied with the explanation. Mayor Marshall asked the applicant to present their case. Paul Ciano, licensed real estate agent, said he represented Mr. and Mrs. Reimann in the matter and he had a written listing agreement with them to sell their property. He said that by law they had to state the zoning that the property was in and because the residence was in commercial it significantly limited the number of people that could buy the house because they could not get it with a residential loan. He said a couple of contracts on the property fell through because of the inability to get the proper financing on it so that was why they were applying for such. He commented further on the house and property. There were no other witnesses in support of the applicant's case, and no witnesses in opposition to the case. Mayor Marshall asked if there was anything else that Mr. Ciano would like to be reflected in the record. Mr. Ciano thanked the Community Development Department for being very helpful in the matter and treating it in a very professional manner. The hearing board had no questions for the witness. Mayor Marshall asked the hearing board if they were ready to render its decision. Councilor Ray made a motion to approve Ordinance No. 1200 based on Finding #7: the proposed amendment provides additional flexibility in meeting the objectives of the Land Use Code without lowering the standards of the Land Use Code. Councilor Morones seconded the motion as stated. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Ray - aye; Councilor Thomson; and Councilor Bettison - aye. Motion passed. Mayor Marshall stated to Peter Russell, Community Development Director, that they needed to have discussions because there was an application fee for all of the zone changes and it was no fault of the landowner that the map was wrong, and until the map was amended that money should not be collected from people to have to jump through hoops. Mr. Russell said he was anxious to move forward at a larger scale and described why it was complicated. He suggested that the Council could direct staff on the individual zone changes to waive the fee so that there would still be a process in place, neighbors would still have an opportunity to be heard, and the people would

not be penalized. Mayor Marshall talked about how the map was wrong and it was the Town's doing. There was further discussion.

Councilor Bettison made a motion for a short break at 7:28 p.m. Councilor Ray seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 7:45 p.m.

10. UNFINISHED BUSINESS -

A. Approval / Disapproval of 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 stated that it was the second reading of the ordinance to ratify the agreement between the Town of Silver City and NRG Solar Silver City, LLC for the purchase of solar power to run the wastewater treatment plant for a period of 20 years at a set price of 6.9 cents per kilowatt hour over the next 20 years. He said there would be no increase to the cost for the purchase of the power from NRG, and that the Town was only dedicating the water and sewer funds to pay for electrical costs for the operation of the wastewater treatment plant itself. He said they could pay NRG a set price over the next 20 years or pay PNM whatever rate they get from the Public Regulation Commission (PRC) for the next 20 years. He said the calculated savings would be in the range of \$4,000,000 over the next 20 years by entering into the agreement. There was further discussion about how there was no risk to the Town; NRG's corporate stability and how the contract was freely assignable by NRG; details and remedies of the contract; how Ordinance No. 1196 was tied to Notice of Intent Ordinance No. 1195; how the Industrial Revenue Bond (IRB) Ordinance No. 1195 would provide a mechanism to take the property off the tax rolls and allow the Town to have the 6.9 cent per kilowatt hour rate; how if there were no IRB then the rate would be re-calculated to cover the expense to the company to pay the property taxes and the savings to the Town would still be well above \$3,000,000; and how the IRB had no value if the Power Purchase Agreement (PPA) for Ordinance No. 1196 was not signed. Councilor Morones made a motion to approve Ordinance No. 1196. Councilor Bettison seconded the motion as stated. There was no further discussion. 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.

11. NEW BUSINESS -

A. Approval / Disapproval of Notice of Intent Ordinance No. 1195: an Ordinance authorizing the issuance and sale of the Town of Silver City, NM Industrial Revenue bond (NRG Solar Silver City LLC Project), Series 2012 in the maximum principal amount of \$4,000,000 to provide funds to finance the acquisition, construction and equipping of a solar power facility for the purpose of generating electricity; authorizing the execution and delivery of an indenture, a lease agreement, a bond purchase agreement, bond, and other documents in connection with the issuance of the bond and the project; making certain determinations and findings relating to the bond and the project; ratifying certain actions taken previously; and repealing all actions inconsistent with this Ordinance. Manager Brown introduced the Town's bond counsel, Eduardo A. Duffy, from the Sutin, Thayer, and Brown Firm. Mr. Duffy said he was the issuers counsel in connection with the proposed Industrial Revenue Bond Issuance in Notice of Intent Ordinance No. 1195. He said they were not typical bonds where the city used its own funds to finance its projects, but they were more of a device that cities had at their disposal to provide tax incentives for certain projects. He said the bonds were not paid back by the city since the city did not use its own funds to pay the bonds. He said the bonds were paid by monies paid by the developer to the city and the city would transfer those monies to the bond purchaser. He said the city was not the financing party, but the party asking for an IRB had to bring its own financing to the table. He stated the city would give a tax abatement to the developer as part of the IRB transaction. He said the developer would transfer title to the land and project to the Town, then the assessor would title the property to the name of the Town and there would be no tax. He stated the Town would hold title for the purposes of the tax abatement, and the project would not be listed as an asset on the Town's balance sheet, but would be an asset on the developer's balance sheet. He said that with the title, the Town would lease the project to the developer, and the developer would pay rent equivalent to the debt service on the bonds to the bond purchaser. He said there were no administrative duties imposed on the Town, and the Town's primary responsible was to hold the title for the term of the bonds. He said the ordinance should be clarified in 2 sections. He referred to page 2 of 10, in the second Whereas

paragraph after "... to be located within the Town" to add "and within 15 miles of the corporate limits of the Town." He also referred to page 4 of 10, under Section 2. B. 4 after "The Project Property is located within the Town" to add "and within 15 miles of the corporate limits of the Town." There was further discussion about how the School Board had to approve industrial revenue bonds that were for electrical generation facilities by approving the project and whether they would want payment in lieu of taxes. Mr. Duffy said the School Board was considering it and the Council should have the School Board's decision before the March 27th Council meeting. There was further discussion about the School Board. Public input was received by John Crow with Gila Regional Sustainable Community News. He commented that there was no entity known as SPP Silver City Bond Purchaser LLC with the Public Regulations Commission. Mr. Duffy responded and said it was due to the structure of the bonds, called self-purchase. He said an entity formed in New Mexico or qualified to do business in New Mexico as a developer, i.e., NRG Solar Silver City LLC, would independently create a special subsidiary to act as the bond holder; that entity would not conduct operations in New Mexico, but would function as the bond holder. He said there was no independent third party financing because NRG would use its own funds to finance it, but the industrial revenue bond transaction required them to set up a subsidiary as the bond holder. Mayor Marshall asked if they were required to register with the PRC as a corporation. Mr. Duffy said it depended on their level of activity in New Mexico, but a lot of times they would not register in New Mexico because their only function was to hold the bond issued under the IRB transaction and would have no real operations in New Mexico so they would not qualify to do business in New Mexico. Mayor Marshall said they were still an important part of the partnership. There was further discussion and Mr. Duffy and Attorney Scavron provided further explanation. Attorney Scavron stated that he already made the suggestion to Bryan Cassatt of NRG to have the bond holder register with the PRC. Mayor Marshall said they needed to be able to ensure that all of the Town's partnerships were above board and decent, and how they needed to ensure everybody and the public that it was an above board company that the Town was getting into business with. He said they needed to make sure that they have their security in these companies that they do business with, and that they have a vested interest in their stability as well. Attorney Scavron said if they wanted to pass the NOI they could add a provision providing that it registered with the PRC, but he said that he did not know what the consequences of that would be because there may be a tax issue. He said if a company registered with the PRC then they were required to have an in state agent to receive process so it may not be a bad idea to insist that the bond purchasing LLC file with the PRC merely for the purpose of having an agent within the state to receive process. He said that he could not see that it would be a stumbling block. Mayor Marshall asked Mr. Duffy for his recommendation on whether it should be an addition to the NOI or if it would be a deal breaker. Mr. Duffy said it would be what the Town was comfortable with, and he agreed with Attorney Scavron that the only question that he was not sure of was if the filing fee or annual franchise tax on the LLC would be significant enough to be an issue. Attorney Scavron said that fundamentally whether the company was registered in the state or not was an issue for the developer and there was no liability on the Town if that company collapsed or whatever happened. He said that it was the developer's problem and the developer was the owner of the LLC so they would not let that happen. He said that all of the devices were responsive to a very poorly written state statute, the IRB statute. Attorney Scavron and Mr. Duffy provided further explanation. Mr. Duffy said he would be happy to recommend to the developer to qualify to do business in New Mexico in order to buy the Town some comfort. Mayor Marshall said they should at least have an answer from the developer; yes or no whether they were willing or not, and if not, then why. There was discussion on how the partnership would work. Attorney Scavron suggested amending the NOI after the reference to the bond purchaser title by adding the words, "which shall be registered in the State of New Mexico." Mayor Marshall said it was not a substantial change in the intent of the document to find the most appropriate places to put that in the document. He said they should just ask them the question and make sure that wherever they inserted the language that it was the appropriate place and not to leave out any places where it absolutely needed to be. Mr. Duffy discussed how the bonds would be taxed.

Mayor Marshall commented on how the project had been worked on for greater than a year with tons of hours of work and he commended Nick Sussillo, Mike Sauber, Peter Russell, Attorney Scavron, Manager Brown, and all of the attorneys involved. He said that they had discussions with several municipalities around the state and that they were all watching to see what the Town of Silver City would do, and what template the Town would produce for them to use. He commended Attorney Scavron because he knew the actual security on it was a very contentious debate. He said Attorney Scavron fought a good fight, had a great argument, and protected the Town overall. He said he limited the risk that the Town would take and that some of the issues were really tough. Mayor Marshall said that he knew the work that had gone on and that he did appreciate it. Councilor Morones made a motion to approve Notice of Intent

Ordinance No. 1195. Councilor Bettison seconded the motion as stated and asked if they were going to make some amendments. Mayor Marshall said they could make them on the tail end. All were in favor, motion passed.

B. Approval / Disapproval of Resolution No. 2012-07: a Resolution supporting an application for New Mexico MainStreet Capital Outlay Fund Grant Award. Councilor Morones presented the details of Resolution No. 2012-07 that would support an application for a grant to help them purchase the Silco Theater. He talked about MainStreet's history and how it was mandated to have a strong relationship with the Town of Silver City. He specifically said the Silco project would have a tremendous cultural benefit to aid the performance arts community and the community at-large. He said there was also an economic benefit because the theater had generated a tremendous amount of traffic over the last 6 years, and stated 14,000 people had gone through the theater. He said bringing in that traffic as a cornerstone venue on Bullard had kept doors open downtown and had kept gross receipts taxes coming into the community like no other venue. He commented on the importance of the Silco Theater to the Downtown Action Plan, and how MainStreet's continued lease payments to the Town for the Silco Theater would probably pay every dollar back to the Town within 10 years. Nick Seibel, Silver City MainStreet Project Manager, provided further details on the grant application for capital outlay funds. He said they were applying for \$200,000 with a match by the Town, and that they were exceptionally well placed to bring the funds home to the community. Mayor Marshall asked if there were questions from the audience, and there were none. Councilor Bettison said she appreciated the passion and commitment that Councilor Morones and Mr. Seibel brought to it, but she said that she worked in a historic building and that she knew how much they cost to run and to renovate. She said her concern was to question the feasibility of the Town acquiring another property that was historic because the Town already owned several historic buildings: the Town Museum, the Waterworks building, Town Hall, and others. She said she was concerned with the wording in the Resolution because it completely bound the Town to providing \$169,000 in matching funds to complete the acquisition of the Silco Theater should the grant funding be awarded. She said she would like to include the line, "subject to available funds" as was typical in other grants. She said to add the phrase in the 6th paragraph after , "... provide \$169,000 in matching funding". There was further discussion about the grant application and Manager Brown said the state's constitution specifically said that as long as the funds were available and that the Council had the authority to budget or not budget the funds if they were or were not available. There was further discussion. Mayor Marshall asked if the funds were available, and why and where. Manager Brown said as of that date, \$169,000 was not available to commit, but as things changed and at the end of the fiscal year and beginning of the next fiscal year it would depend on revenues and current projects. Mayor Marshall said the gross receipts projections showed that they would have the funds, and the Council could choose to do a budget adjustment to do it. Manager Brown said they were on pace to be approximately \$600,000 over projected revenues. There was further discussion. Attorney Scavron suggested adding wording to the Resolution as follows: in the 6th paragraph after "..., and further commits" add ",to the extent legally permissible, ...". There was further discussion. Councilor Morones stated his reasons for supporting the Resolution and made a motion to approve Resolution No. 2012-07 with the correction on the Now, Therefore, Be It Resolved paragraph. He read the paragraph that included ", to the extent legally permissible, ..." after "..., and further commits". Councilor Bettison seconded the motion as stated. There was no further discussion. 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.

C. Approval / Disapproval of Request for Proposal #11/12-1P: General Engineering Support. Manager Brown presented the details and said the Town received 5 proposals. He said it was staff's recommendation to enter in to negotiations with Engineers Inc. and Smith Engineering for the services. Councilor Bettison moved to approve Request for Proposal #11/12-1P per staff's recommendation. Councilor Ray seconded the motion. There was further discussion. All were in favor, motion passed.

12. ADJOURNMENT – Councilor Ray made a motion to adjourn at 9:18 p.m. Councilor Thomson seconded the motion. All were in favor. Motion passed.

Attest:

_____/s/_____
Ann L. Mackie, Town Clerk

_____/s/_____
James R. Marshall, Mayor