

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy 180, Silver City, NM
December 11, 2012, 6:00 p.m.**

Present:

James R. Marshall, Mayor
Cynthia A. Bettison, District 1
Pauline N. Hassler-Cook
Jose A. Ray, Jr., District 3
Michael S. Morones, District 4

Also Present:

Ann L. Mackie, Town Clerk
Peter Russell, Community Development Director
Jim Coates, Town Planner
Anita Norero, Deputy Finance Director

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE** – Mayor Marshall called the meeting to order at 6:00 p.m.
- 2. CEREMONIES** – None.
- 3. PROCLAMATIONS** - None.
- 4. PUBLIC INPUT** – Sherry Clements, Jamie Thomson, Rebecca Summers, and Andrew Teagarden, individually provided their input and concerns regarding the draft Bicycle Routes Master Plan.
- 5. COUNCIL COMMENTS** – The Council commented on the following: thanks were given for the public input on the draft Bicycle Routes Master Plan; the success of the recent Tamal Fiesta downtown and how 320 people visited the Silver City Museum during the event; and encouraging the public to attend meetings.
- 6. CHANGES TO THE AGENDA** – None.
- 7. APPROVAL OF THE MINUTES – Regular Meeting on November 27, 2012** – Councilor Bettison moved to approve the minutes of the Regular Meeting of November 27, 2012. Councilor Cook seconded. Mayor Marshall stated there was a motion and a second to approve the minutes of the Regular Meeting of November 27, 2012. He asked if there was any discussion, and there was none. He asked all those in favor to say aye, and all 4 Councilors voted aye. He asked if any were opposed, and there were none. Motion carried.
- 8. REPORTS** –
 - A. Staff reports.** Clerk Mackie commented on the following: the upcoming election on March 5, 2013; that the candidate packets for Councilor in District 1 and Councilor in District 3 were available in her office at City Hall or on the Town's website; that candidates must declare their candidacy on January 8, 2013 from 8:00 a.m. to 5:00 p.m. in her office at City Hall; that she was looking for precinct workers; and the vacancies on Town boards and committees.
- 9. PUBLIC HEARINGS** –
 - A. Continued Public Hearing from the November 13, 2012 regular Town Council Meeting - Approval / Disapproval of Resolution No. 2012-27: Metropolitan Redevelopment Area Designation; making certain findings and determinations pursuant to the Metropolitan Redevelopment Code; and designating the Silver City Downtown Metropolitan Redevelopment Area.** Mayor Marshall read the procedures for the continued public hearing and stated that all persons interested in the matter would be permitted to be sworn and present evidence or opinion, etc. He said that at the previous hearing they left off discussing the issue of findings to be considered and adopted as support for the designation of the proposed Downtown Metropolitan Redevelopment Area, but it would not necessarily be limited to that issue. Clerk Mackie swore in 1 witness, Peter Russell.

Mayor Marshall stated that Councilor Morones had agreed to sponsor the legislation and he asked him to introduce it. Councilor Morones deferred to Charlie Deans. Mayor Marshall said Mr. Deans had the floor. Mr. Deans said he was

with CommunityByDesign in Santa Fe, New Mexico, and that he was there on behalf of the Town of Silver City and Silver City MainStreet. He said the Council had received a revised Designation Report after some of the comments and direction from the Council, but he said it would be beneficial to connect some of the dots of the background. He discussed the contract for the project; how the Silver City Downtown Action Plan was adopted in October 2010; the process involved in developing the plan; how they intended to come back to the Council in November or December 2010 to formally adopt the Downtown Action Plan as the Metropolitan Redevelopment Area (MRA) Plan; how it was delayed because the legislature at that time was looking at changing some of the gross receipts tax rules; how the Town staff, Silver City MainStreet, and New Mexico MainStreet recently agreed that it was time to finish the process; how there were 2 new Councilors so the Town staff decided to bring it back as a designation; how the Designation Report established the area and the MRA plan established the projects; how the MRA plan would come to the Council after the Designation Report was adopted; how he was back because the Town asked him to come back even though his contract was done; how they could discuss the changes that he made in the Designation Report that was based on the Council's direction; how the references to the term "slum" were deleted because they were not using that particular portion of the statute; how Silver City was not a slum and never would be; how the statute was broad in how they defined blight and it gave them some flexibility in how they wanted to apply the definition to the downtown area; how he simplified the report by reducing text and removing some photographs, but he did not change the boundary map; and how all 350 property owners were notified by mail about a community workshop. He said that he could address questions specifically about the report.

Mayor Marshall gave Councilor Bettison the floor. Councilor Bettison told Mr. Deans that she appreciated the work that he did, and that he did take most of the points that she and others recommended. She reviewed some of those points and commented on certain redundancies and awkward sentences that still remained. She said that she would recommend other changes if it was approved because it would strengthen the report. She said that she appreciated that he withdrew information about the sidewalks because they would never be changed. She said they needed to figure out how to make the downtown more friendly to folks with disabilities so they were able to negotiate the landscape, and that an MRA designation would enable them to look at solutions to that. She said she looked at the Downtown Action Plan and that it just said blighted areas rather than the whole downtown area being called blighted. She commended Mr. Deans for listening to the Council and her concerns.

Mayor Marshall said they were not adopting the report, and that the report was introduced as evidence in the hearing and was to be considered in making a decision on the adoption or the rejection of Resolution No. 2012-27. He said they were not admitting whether everything in the report was factual or if they agreed with it. He said their decision would be based on whether there was a preponderance of findings met that would qualify for the MRA and whether the area was of a desirable selection for the Council. Councilor Bettison stated that she would like the evidence of the report to be correct evidence. Mayor Marshall said he understood her desire, however, the hearing board did not create evidence. He said they would deal with the evidence that was put before them, and they had to make a determination on their own as to the credibility of the evidence. He said the report was a piece of evidence and they could discredit any portion of it that they felt should be discredited or value any portions that they felt would support the Resolution. He said that obviously if there was enough that was discredited that would raise a question, and that they would probably vote against the Resolution. He said if they found there was enough evidence that supported the definition and the code that was in the state statute for an MRA, and they were satisfied with the area that was proposed, that they would vote for it. He gave Councilor Bettison the floor. She said that she was still concerned about the boundary because it was a fairly large area of Silver City and encompassed a number of residential areas. She said that she would like to see it narrowed, and recommended that it be narrowed primarily to a corridor that focused on the artery streets. She asked Mr. Russell for assistance on the streets of the map. There was further discussion.

Mayor Marshall asked if there were other questions for Mr. Deans. He gave Nick Seibel the floor. Mr. Seibel said he was the Silver City MainStreet Project Manager and he commented on the 18 month process. He said that a substantial part of the 18 month process was devoted to the discussion of what the boundary should look like, and that a good cross-section of the community was involved in the decision. He said that they devoted many meetings to discuss where the line ought to be and why and how it ought to be drawn. He said the decision was ultimately the Town Council's decision, and they would be willing to work with whatever decision they made. He said that he looked at the

MRA process as a real opportunity for downtown and that the residential properties did not have a great deal of impact on it. He commented on some of the goals of MainStreet that could be achieved by the MRA.

Councilor Bettison offered some boundary changes and asked Mr. Russell to assist her again with the streets. Mayor Marshall said they should take a short recess. Councilor Bettison moved for a short break at 7:00 p.m. Councilor Cook seconded. Mayor Marshall said there was a motion and a second for a short break. He asked all those in favor to say aye, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried. Mayor Marshall called the meeting back to order at 7:20 p.m. Councilor Bettison said that she worked with Mr. Russell, Mr. Deans, and Mr. Seibel, and she proposed new boundaries for the MRA designated area on the map. She said her sole purpose for proposing the changes was to try to remove as many residences as possible and to focus primarily on the commercial corridor. She said it was up to the Council to do what they wished with it. Mayor Marshall gave Councilor Cook the floor. She asked Mr. Deans if changing the boundaries to make the area smaller would make there be less money available. Mr. Deans said it would not affect any funding amounts or funding qualities, but the areas that would be excluded under Councilor Bettison's proposal would not have the economic development tools that the statute allowed. The Mayor gave Councilor Morones the floor. Councilor Morones said it took a long time to develop the lines and it was through a lengthy process. He asked what the driver was to include the areas and if it was to allow more tools to be available to those areas. Mr. Russell commented on the zones and character of the historic area and how lines were typically drawn in mid-block for infrastructure work to be done. Mr. Deans said that 2 years ago they followed the commercial zoning on the zoning map. There was further discussion about zoning; how only 1 property owner wanted to be excluded from the MRA; requests for zone changes; how the MRA allowed an automatic qualification and the CDBG (Community Development Block Grant) process required a certain percentage to be low income; how it might be the case that if properties were not in the MRA then they might not be able to benefit from a CDBG project; how every infrastructure project with Colonias or CDBG monies required a means survey of a neighborhood to assure they met the income limits; how the MRA would secure the areas to a greater toolbox; how areas designated as a MRA were eligible for CDBG funds as opposed to previously being only based on income levels, i.e. Chihuahua Hill and Brewer Hill neighborhoods; and how keeping areas under the MRA designation would give them access to CDBG funding for infrastructure and other improvements.

Mayor Marshall announced that Kurt Albershardt wanted to be sworn in, and he stated that it was the last call if anybody else wanted to be sworn in. Clerk Mackie swore in Kurt Albershardt. Mayor Marshall asked Mr. Russell, Mr. Deans, and Mr. Seibel if there was any negative impact on any single lot that was included within the area that was presented by designating it within the MRA. Mr. Deans said no. Mr. Russell said that he did not believe there was any negative impact that would occur on any property included, but there was the issue of perceptions and how they felt about their property. Mr. Seibel said no. Mayor Marshall said he wanted to address some of the discussion from the public hearing held on November 13th. He said that he had no objection to calling an area blighted that was blighted. He said the definition was very clear and there was evidence presented within the Designation Report that demonstrated that there were areas that were blighted. He used Attorney Scavron's phrase from the November 13th meeting and said there were areas that were ugly and they needed help. He said to ignore that and just go on with the wonderful Chamber of Commerce statements was burying their heads in the sand. He commented on the decision making process and how you weigh the pros and cons and unintended consequences. He said 3 people just testified that there were no cons, that there was opportunity. He said by narrowing the guideline they would be removing some areas from having that opportunity. He said that history has shown that they function better if they focus better, and that was where the line narrowing had a positive aspect to it. He said it was a small geographic area when you look at Silver City overall. He said that when you look at the potential, and when you look at the fact that it did not mean anything to any single lot within the designated area until they developed a project. He said they did not have to use any of it. He said it did not indicate that every property and project that had gone on in that area was blighted, but it indicated that the area had some qualities that could impact the economic viability and support within the town. He said that he hoped the Council would consider that as they made their decisions.

Mayor Marshall gave Mr. Albershardt the floor. Mr. Albershardt said he was a participant in the downtown process and said there was a lot of public input. He said there were lengthy discussions on the boundaries of the map. He asked Mr. Deans if it had relationship to Tax Increment Financing (TIF). Mr. Deans said the TIF financing would come in the future, and the statute required that the areas within the TIF district had to fall within the area that was designated

in the Designation Report. He said those were the properties that would contribute to the increment and the special fund and were also the beneficiaries of that fund. He said the money was collected within the MRA designated area and spent within the MRA designated area.

Mayor Marshall gave Councilor Bettison the floor. Councilor Bettison thanked the Mayor for the questions that he asked. She said that her experience in life was that perception was 99 percent reality for many people, and that was why she proposed what she proposed. She commented further on the perception of individuals if their property was included in an area that was designated as blighted. She said that you cannot change perception. She said it was a Resolution and may not go any further. She said there was the weighing of people's perception and the Resolution would affect the perception. She said that she made the recommendation and the Council could decide what they wanted to do with it. She said that it did not mean that she was necessarily married to it, but she was trying to accommodate people's perceptions and their desires. She stated that it was important to acknowledge that because it did affect people greatly, and it was very hard to change perception. Mayor Marshall argued that with the testimony heard during the hearing it was that the reality of a blighted property that may cause more harm than the designation of the area in need of work. He said excluding them would eliminate them from potentially fixing the neighbors areas. He said Councilor Bettison had the floor. Councilor Bettison said that she went through the processes so she could hear the comments of others, and that she could readily change her mind. She withdrew her recommendation and thanked Mr. Deans and others for taking their time. She said the Mayor's last comments convinced her that the neighbor across the street may not be able to put as much time and effort into their property as another neighbor, and the MRA would provide opportunities for them to do so.

Mayor Marshall asked if there was any other discussion, and there was none. He asked if there were any other witnesses in support of the Resolution, and there were none. He asked if there were any witnesses to testify against the Resolution, and there were none. He asked Mr. Deans if he had anything else to reflect in the record. Mr. Deans said no, and he thanked Councilor Bettison. He said he did not consider it a waste of time, but it solicited a great discussion of how it worked. Mayor Marshall agreed and said it was very important that there be open discussion, and to make sure they captured the intent of the designations. He asked if the Council was ready to render a decision, and they said yes. He said that he would entertain a motion. Councilor Morones moved to approve Resolution No. 2012-27 and he read the agenda item description. Councilor Ray seconded. Mayor Marshall said there was a motion and a second to approve Resolution No. 2012-27 and there was no further discussion. He said there was a motion and a second to approve Resolution No. 2012-27: Metropolitan Redevelopment Area Designation; making certain findings and determinations pursuant to the Metropolitan Redevelopment Code; and designating the Silver City Downtown Metropolitan Redevelopment Area. He asked for a roll call vote. Councilor Morones voted aye; Councilor Ray voted aye; Councilor Cook voted aye, and Councilor Bettison voted aye. Motion carried. Mayor Marshall stated that the entire town had not been declared blighted; that it was just within that area. He said the designation of a Colonia within a town had very specific guidelines that only qualified on border states that were within 150 miles of the Mexican border. He said it was basically for developments that were pre-1990 and made sure that those areas were able to acquire the necessary and functional infrastructure that were needed to maintain the safety and health of the residents that lived there. He said they did not declare the whole town blighted nor have they ever.

B. Approval / Disapproval of Appeal #AP 12-01: an Appeal of the Community Development Director's interpretation of the Municipal Code, Section 48-22, relating to a request by Bruce McKinney to exchange Town-owned property for parcels in Rio Vicente Subdivision. Mayor Marshall said the appeal by Bruce McKinney was of an interpretation by Community Development Director, Peter Russell, regarding the classification status of certain parcels of Town-owned land sought for exchange by Mr. McKinney. He said that upon inquiry Mr. Russell had informed Mr. McKinney that the particular parcels were presently classified as "present and future parks and open spaces" or "park land or open space land donated to the Town under use restrictions". He said that Mr. Russell argued that Town-owned land so classified could not be sold, leased or exchanged by the Town under the provisions of Section 48-22(b) of the Town's Municipal Code, and Mr. McKinney had appealed that determination. Mayor Marshall read the procedures for the appeal process, and said the appeal would be limited to the consideration of 2 issues. He said the first issue was that they must consider whether the code provisions generally regulating the sale, lease or exchange of Town-owned land was constitutional and within the Town's permitted powers. He said that the Town Attorney had taken the position in the affirmative, but notwithstanding, Mr. McKinney would be permitted to argue

and present evidence to the contrary. He said the second issue was whether the parcels sought for exchange by Mr. McKinney fell within those land classifications mentioned in Section 48-22(b) which were barred from sale, lease or exchange. He said if the parcels were so classified, then Mr. McKinney would be forewarned that no application for sale, lease or exchange made by him, or any other person, regarding those parcels would be accepted by the Town. He said if it was the decision of the Council that the parcels were not so classified, and Mr. McKinney would be free to submit appropriate applications for purchase, lease or exchange. He said that nothing in the appeal would indicate to Mr. McKinney any predisposition toward such application if later submitted. He asked the Town Clerk to swear in all persons intending to testify or otherwise offer evidence in the proceeding. Clerk Mackie swore in Bruce McKinney, the appellant, Peter Russell, Community Development Director, and Jim Coates, Town Planner.

Mayor Marshall told Mr. McKinney, that as the appellant he had the floor to present his case, but he asked him if he had represented his appeal properly. Mr. McKinney said that he asked staff whether he would be able to make his argument in favor of making the exchanges so there was the question of whether the exchanges were legal and the question of whether they were wise. He said his understanding was that both of those questions could be addressed at the same hearing. He asked the Mayor if he was saying they were only talking about whether they were legal or not and not whether they were a good idea. He said it was hard to separate those two. Mayor Marshall said the appeal was based on the interpretation that the property in question was designated as open space or fell under open space and parks area. He said there was no purpose in discussing whether anything was a good idea if the designation, and Mr. Russell's ruling and decision stood as is, but if not, then at that point it would be appropriate. He said that he had an opportunity to file an application for that property. Mr. McKinney said it had been going on for 4 months with continuous process, and that his understanding from what the Mayor said was that they would have to do 3 separate meetings: first to decide the appeal, second on whether they wanted to do the land swaps, and third on whether they wanted to do the vacation. He said that he asked staff specifically whether he would be able to address these questions at the meeting so his presentation included more than the legal issue, but the context of the swaps themselves. Mayor Marshall said he was looking at his application for the appeal filed on November 2, 2012, and it was an appeal based on the determination by the Community Development Director that the land fell on the restricted criteria. He said that he had his proposals that supported the appeal and where he was headed. Mr. McKinney discussed the contents of the package. Mayor Marshall said the only thing that they were legally allowed to address was what was noticed on the agenda. Mr. McKinney said for the record that he would address just that issue, but he had asked the question of staff and that they did not answer it correctly. Mayor Marshall said his point was taken.

Mr. McKinney displayed a map and said he was the owner of Esperanza Hills. He told the Council that their package included 3 different proposals and the maps were included. He said that for several years he had been struggling unsuccessfully to develop the area as a green cluster housing community, and to do it at a profit. He said that secondly he was a citizen activist for trails in Silver City, especially, but not only the San Vicente Trail, and he pointed at it on the map. He said that sometimes there was a conflict between being a developer and being a public activist, but he tried to walk the line. He said that he was surprised to be there in conflict with what he considered to be a minor part of his proposal. He said that he described the area and the idea in general to the Community Development Director several years ago, and that he was in favor of it. He said that he submitted his proposal in August 2012 with the expectation that there might be some negotiations over boundaries and details, but he never expected that 4 months later there would be a thick and confusing package with every email exchange and every draft of his proposal. He said it was way too much information, too much process, and way too much time for a simple boundary adjustment. He said that he wanted to show that the land swap was simple, inexpensive, legal, and mutually beneficial. He said that if they approved it that they would get more benefit than he would, but if they did not then they would risk losing something more important. He said that he would skip over the money aspect of it because it did not matter. He said that he understood that swapping land was illegal and that they could not do it no matter how advantageous it was. He said it was not illegal because the Director's ruling was that the land could not be exchanged because the Town could not lease, sell or exchange land that was a present or future park or open space or land that was donated to the Town with use restrictions. He read parts of Resolution No. 2005-11 that the Town authorized and accepted the donation of property, and he pointed at the tract of property on the map. He said there was no dedication of land as open space and there was no use restriction. He said it was not in the Resolution, but the Director's claim was that the title of the Resolution was equivalent to a dedication, and he read the title of Resolution No. 2005-11 that stated the donation was for the purpose of enhancing the Town's trails and open space network. He said that he was not a lawyer, but in most

legal documents the title and the preface explained a Resolution, but they did not have legal affect unless the intent of the Resolution was unclear. He said Resolution No. 2005-11 was perfectly clear, that it was not a dedication for open space and was not a use restriction, and even if they considered the title, the phrase “enhancing the trails and open space network” was not a dedication of open space and did not say adding to or becoming part of an open space. He said it could just as easily mean acquiring land to swap for more useful land which was what he was proposing. He said it would not even make sense to dedicate a park or trail before it was even designed. He pointed at the map and said there was no trail and no design. He said that all of the trail and markers were designed by himself, Rick Miller, and Joseph Gendron with the Town, and that he was buying the Esperanza Hills property simultaneously. He said that they went and looked at the lines with the surveyor and they set where the lines were, and they made mistakes. He said the Town’s trail went on to his property in several places, and he accidentally gave the Town several pieces of land that he would like back. He said they were not of any use to the Town and that they were basically talking about an exchange. He said he was giving land that was no value to him, but was of value to the Town, and he was asking for land that was a value to him, but was of no value to the Town. He gave an example of a steep bank and vegetation, and that people that were using the trail could not get to that area except through his property. He said it would not have made sense to dedicate a park before the trail was designed, and fortunately the Council did not do that. He said the Director’s interpretation was inaccurate because it was not supported by evidence and was not accepted at the time. He said that a few months after the donation was made, that Joseph Gendron came to him and said they were actually designing the trail and that in several places the trail came on to his property, and he pointed at 2 places on the map. He said that he told Mr. Gendron not to worry about it because they could work it out later with some exchanges. He said that a year or so later when he was planning the planned unit development, that he discussed it with the Director. He said that he proposed swapping the pieces so their trail would be on their property. He said the Director did not say at that time that they could not do that because it was illegal; that he did not interpret it that way at that time, and neither did Joseph Gendron. He said the interpretation was an afterthought. He discussed a piece of property near Boston Hill that was owned by Becky Smith. He said Community Development was misinterpreting open space policy throughout Silver City, and used examples from the Town’s Open Space and City Parks map. He described what open space was and what abandoned space was, and gave examples. He said that open space policy should be made by the Council after public discussion, and not by Community Development ruling. He commented on a 29 year old subdivision that they should get rid of because it tied up the whole area.

Peter Russell, Community Development Director, said the Council had the report with the proposals made by Mr. McKinney and a staff report that was generated by him. He said it was true that in the town there were lots of nuances about the meaning of open space, and the map that Mr. McKinney held in his hand was something that was generated by a previous planning director. He said there was a Trails and Open Space Plan and a lot of what was on the map was on the Trails and Open Space Plan, but it was an informal designation. He said it was true that they had an open space zoning category, but they had not actually applied it to any specific piece of ground. He said that when he made the interpretation about what was open space and what qualified for exchange or sale, that he relied on the Resolutions accepting the First New Mexico Bank donation that was for the purpose of open space, and he pointed to the map. He said the second parcel that Mr. McKinney’s exchange proposal involved was for the Alcorta Tract which also had a Resolution under the auspices of receiving it for open space, but it was purchased with a grant from the State Energy Minerals and Resource Department specifically for that purpose. He said that Mr. McKinney’s proposal included exchanges on the donation property, and he pointed to the map. He said that Mr. McKinney was proposing acquisition or exchange on properties from the donation that was received from the Town for the purposes of open space, and the Alcorta Tract which was acquired for the purposes of open space and trails with money specifically to that purpose. He said that there was only one other tract of land that he would interpret of having the limitation of parks or open space which were acquired and were in the general open space category, and that was Boston Hill which was acquired with a bequest that was made to the Town specifically for the purpose of acquiring or developing parks. He said that those were the only 3 parcels that he would interpret that currently had the restriction about the open space; the others were in fact at the discretion of the Council and were waiting for some kind of formal open space designation or zoning designation. He stated that he did rely on the Resolution purposes and that was the basis of his interpretation.

Mayor Marshall asked if there were any questions for either of the witnesses. Councilor Bettison said to Mr. McKinney that in his presentation he stated that he gave the land, in reference to the tracts of land that were so designated as a First New Mexico Bank donation, and that he stated that he gave the land to the Town and that he

made a mistake. She asked him if it was not correct that the donor to the Town was First New Mexico Bank of Silver City, who was the owner of said property at the time to foreclosure, and that they were the owners prior to his purchase of the property. He said right, and that he was sorry if he misstated that because he always thought of it that way, but she was absolutely correct. He said that in 2004 the Council considered a donation from the bank and the donation that they were going to make was different than what was actually made. He pointed to the map to describe it and discussed a Resolution that never happened, etc. Mayor Marshall gave the floor to Councilor Bettison. She commented on some of Mr. McKinney's testimony about how he stated that he gave the land to the Town and that he made a mistake. She asked him if it was not correct that the donor to the Town was First New Mexico Bank of Silver City who was the owner of said property at the time to foreclosure; that they were the owners prior to his purchase of the property. He said she was absolutely correct. He told the story of how it happened, and pointed to the map to describe it. There was further discussion about the donation of property by First New Mexico Bank for the purpose of enhancing the Town's trails and open space network; Resolution No. 2004-17; the agenda and minutes of December 14, 2004; and Mr. McKinney's appeal statement versus his testimony. Mr. McKinney said that Mr. Russell made a good point on the little section in the Alcorta Tract and he was willing to withdraw that little piece off of the end because it was part of a grant for open space acquisition. He said the rest of it was a valid proposal that should be considered on its merits and not on the legalistic interpretation that it was illegal. Mayor Marshall asked Mr. McKinney to confirm that for the record he was withdrawing any objections to the determination of the Alcorta property as open space. Mr. McKinney said yes.

Mayor Marshall gave Councilor Bettison the floor. She asked Mr. Russell about his interpretation of Town Code, Section 48-22. He said that his interpretation of the Code was that if in fact the minutes and resolutions were evidence for the classification of the particular properties, then the word "shall" applied because it was the Code for the purchase and exchange of Town properties. He commented on the Rio Vicente Subdivision and how in 1998 the Town was interested in part of it being a park, and he pointed to the map. He said the Rio Vicente Development Agreement was never executed and that the bank acquired it in foreclosure and made the donation. He said the Town had expressed an interest in that area because it had a high knoll with a beautiful view looking down into the creek and that it might be a benefit to the Town when the area developed. Mr. McKinney pointed to the map and how they could make arrangements for parks, but they could not do that if they did not want the other swaps.

Mayor Marshall gave Councilor Morones the floor. Councilor Morones said he was troubled with the facts presented in regards to the donation of the land, and commented on the Resolution and how the "Be it resolved" paragraph did not cover the title of the Resolution so they might have a problem that may be better suited for legal counsel to address. He said if the motion actually read the title then they might be covered, but the minutes just say it was moved to approve so they did not know if the motion specifically said the title. He said the minutes did not give a specific motion that designated the property as open space and the part that they resolved did not clearly designate the open space. He said the title illustrated the intent and discussion to motivate a motion, but he did not see a motion or a resolution that truly designated it. He asked Mr. Russell if he was satisfied that it did. Mr. Russell said yes from the minutes, the resolution, and the nature of the donation itself. He said there was an element of interpretation, and that it was his interpretation that the intent of the donation, and the purpose of receiving it, was to create trails and open space. He discussed the various designations in the Land Use Code; the acquisition of Boston Hill; and how a particular sale proposal generated the ordinance that restricts the sale and lease of Town property and limited the categories of property that could be considered. Councilor Morones asked if there were other specific ways of dedicating open space other than by resolution. Mr. Russell said not at that time, and the new means to do it would be to designate it with the zoning category. He said that if they wanted to engage in the transactions they could affirmatively declare that it was not open space, and then they could swap it out. He said the danger would be the precedent that it established for future Councils on Boston Hill or other areas. Mr. McKinney agreed that it was a very bad precedent, but it was a bad precedent the other way to say that they could not swap land that they did not need for land that they did need. He commented about the vague resolution that was not clear, how it was forever and ever, and that a future Council could not reassess it. He said if they had legal questions it would be easy for them to declare the spaces that they wanted to swap as not open space, and then they could make the exchanges. He said if they did not make the exchanges then what would they do about their trail that crossed over into private areas, and what were the legal and practical consequences of having their trail on private property. Mr. Russell said that he asked Jim Coates, Town Planner, to go with Mr. McKinney to look at the encroachments, and that they had not been presented with any

documents that there were encroachments, and that Mr. Coates told him it could be done in half a day. Mr. Coates spoke and said it could be done, but how quickly it could be done depended on the trail crew. Mr. Russell said the encroachments were minor and easily remedied, and there was no impediment to the trail itself. Mayor Marshall said the encroachments on the ground, and the trail being in jeopardy, were irrelevant to the issue at hand. Mr. Russell commented on the Boston Hill acquisition, and there was further discussion.

Mayor Marshall gave the floor to Councilor Bettison. She commented on minutes and said they were a legal record of the meeting that occurred. She read the minutes regarding Resolution No. 2005-11 and how it referenced the Resolution title. She commented on how minutes were written then and how they were currently written. She said the agenda and the minutes and the Resolution title together were what were under consideration for the Council to look at and for the public to understand. She said that she leaned toward taking the Resolution, the preface, and the title in its entirety to give indication to everyone concerned what it was that they were doing as a Council. She asked the Mayor if she could move for a short break and he said yes. Councilor Bettison moved for a short break at 8:56 p.m., and Councilor Ray seconded. Mayor Marshall said there was a motion and a second for a short recess. He asked all those in favor to say aye, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried. Mayor Marshall called the meeting back to order at 9:06 p.m.

Mayor Marshall talked to Mr. McKinney about the minutes of December 14, 2004, and how the item for Resolution No. 2004-40 was published, and said that Mr. McKinney made a point on how enhancing was the key word. He then read 2 of the Whereas paragraphs from Resolution No. 2004-40 that discussed how the Council passed Resolution No. 2002-07 on February 6, 2002 that adopted a Trails and Open Spaces Plan, and how the subject property met the criteria for the establishment and protection of trails and open spaces outlined in the Plan and helps to achieve one of the Plan's recommended projects. Mayor Marshall asked Mr. Russell if he knew if that portion of the Code changed when they did the sale of Town land ordinance. Mr. Russell said when they did the ordinance in 2006 it made the sale of land more rigorously reviewed and established categories of land that should not be sold. He said that he did not believe the kind of restrictions that were in Code prior to the 2006 ordinance were as restricted or specifically prohibited the sale of any category of land. He said he would be happy to research it. Mayor Marshall said to Mr. McKinney that knowing the Resolution was out on the books with the intent of the Council as to providing the establishment and protection of trails and open space, and that the property that First New Mexico Bank donated needed protection; he asked him how he would respond that it did not fit under open spaces when both justifications for the Resolution stated that it was. Mr. McKinney said both of the Resolutions had the same wording that for the purpose of enhancing the Town's trails and open space network, and that a normal reading of that was that enhancing a network could include purchasing land to trade for better land. He said it did not say enhancing meant to become a part of trails and open space, but it was to enhance the trails and open space network. He said that in fact the donation did enhance the trails because the trails would not exist without it. He said being able to trade for better property was part of enhancing. He said the word enhancing was not the same as being dedicated as open space. Mayor Marshall said that Mr. McKinney was addressing the title, but was not addressing the 4th Whereas paragraph in Resolution No. 2004-40. Mayor Marshall said the Whereas paragraphs were an expression of intent of the Council in justifying why they were doing something and gave a record for future Councils to understand why they did something. He said that Whereas paragraph was saying the subject property, not that they wanted to use it later for some other sales or exchange. He said that it specifically said this property. Mr. McKinney read the 4th Whereas paragraph and said it was a legalistic interpretation, and furthermore Resolution No. 2004-40 was never implemented. He said the whole thing was pretty legalistic to try to shoot themselves in the foot. Mayor Marshall said that he may not like the law that was on the books, and it was totally irrelevant to the issue, but their job was to interpret whether the law was legal and whether that land met open space criteria. He said if it met open space criteria, then the land could not be sold, and he asked Mr. McKinney if he agreed. Mr. McKinney said that he agreed if it was dedicated as open space then it could not be sold. He said he did not think it was a wise policy, but it was the law. He said the people involved in it did not consider whether it was open space and they were just trying to enable the trail, and they did. Mayor Marshall said they voted on a resolution that stated the subject property met the criteria for the establishment and protection of open space so they could not debate whether they read their packet that night or understood it. He said they had to debate what they actually passed which was the record of the Town. Mr. McKinney said they did not even know what they were going to adopt because the map of what was being donated for Resolution No. 2004-40 could not be found. He said that Resolution No. 2004-40 was irrelevant to anything because it was never implemented and the land was never

purchased. He said the land was purchased under Resolution No. 2005-11. Mayor Marshall said it could be recreated because the legal description was in both resolutions. He said that in Resolution No. 2005-11 it stated they made the boundary modifications to the property to be donated so to satisfy the above referenced conditions by eliminated the causes therefore, which meant they got rid of the potentially contaminated land. Mr. McKinney said there was a difference between 18.451 acres and 17.87 acres, and it was not clear exactly. He said it was just legalisms, and he still did not think either resolution dedicated that land as open space, and the Whereas paragraph that was cited was vague. Mayor Marshall asked him how it was vague because the particular Whereas did not seem vague to him at all. Mr. McKinney read it and said he did not see it as a dedication. Mayor Marshall asked him if he saw that it was the intent that it be used for trails and open spaces. Mr. McKinney said yes it would be, and trading it for better land would be included as part of that. He said the ordinance that was cited did not exist at that time so how could they have intent when there was no ordinance that said once they dedicated it that they could not change it. There was further discussion. Mayor Marshall said they were faced with the laws that were on the books that day and they had to use a legal interpretation of the laws on the books that day. He said it had absolutely no reflection of the Council's opinion of the subdivision as it had stood for the last 28 years or the desire to dispose of it or the support of the proposals that Mr. McKinney put forward because they were in a box as well. Mr. McKinney said that he did not think they were in a box, but if he thought they were in a box then that was all that mattered so they should go ahead and do what they had to do. Mayor Marshall asked if there were any other questions for any other witnesses, and there were none. He asked if Mr. Russell had any closing statements. Mr. Russell said he wanted to reassert that his interpretation was based on the resolutions, the minutes, and the history of it. He said it was confusing and that he took Councilor Bettison's point to heart because the idea of open space had evolved over time. He said initially you only heard trails and open space as a category and it was beginning to separate a little bit. He said that in terms of interpreting the application of the land, sale, and exchange ordinance to these particular properties, that his interpretation was that the shall not be exchanged was the ruling thought. Mayor Marshall asked if Mr. McKinney had any closing statement. Mr. McKinney said that was it. Mayor Marshall asked if the Council was prepared to render a decision, and they said yes. He reminded them that they had 2 areas of decision: first was whether the law, Section 48-22(b), was a legal law, and the second decision was to uphold or decline Mr. Russell's interpretation. Councilor Bettison asked the Mayor for assistance in phrasing the motion. She moved that 48-22(b) was within the powers of the Town Council and also moved to uphold Mr. Russell's interpretation of 48-22(b). Councilor Morones seconded. Mayor Marshall said there was a motion and a second and there was no discussion. He said there was a motion and a second that Code 48-22(b) is within the powers of the Town Council and uphold Mr. Russell's interpretation of said Code. He asked for a roll call vote. Councilor Bettison voted aye; Councilor Cook voted nay; Councilor Ray voted aye; and Councilor Morones voted nay. Mayor Marshall said there was a tie which meant he could vote, and he voted aye in favor of the motion. Motion carried.

10. UNFINISHED BUSINESS – None.

11. NEW BUSINESS -

A. Approval / Disapproval of Resolution No. 2012-30: authorizing the execution and delivery of a Colonias Infrastructure Project Fund Grant Agreement. Peter Russell, Community Development Director, presented the details of Resolution No. 2012-30. He said it specifically supported a regional water support system that the Town had been working on with the other municipalities of Grant County. He said that it involved a well field in the vicinity of the Grant County Airport and a transmission line that would link Hurley, Bayard, Santa Clara, and Silver City together. He said it specifically was to support the development of a preliminary engineering report to analyze how the transmission line might be constructed, what kind of storage tanks might be involved, and what kind of rights of ways might be required. He said it was being funded through the Colonias program and was awarded some time back, but the New Mexico Mortgage Finance Authority managed the programs and it was their first year of awards. He said an audit of New Mexico Mortgage Finance Authority had delayed some of their projects. He said the project was funded for \$128,099 and included all of the municipalities of Grant County. He said that it did not include Hanover and the Vanadium area because they made a separate application and were awarded as well. He said the 2 applications would be merged and addressed together. He said the Town of Silver City was the fiscal agent, but it was for the benefit for all of the other Colonias communities of Grant County. He said it evolved under the auspices of the Grant County Water Commission where the rules, roles, and responsibilities were discussed. He said the grant required a 10 percent match which was funded through work that had already been done by Balleau Groundwater that had already been done, etc. Mayor Marshall commented that Hurley really had the urgency that they proceed with the project because

they owned no water rights and had a deadline to find a new source. He said they could take another step closer to completing the regional system as well as resolving Hurley's dire situation. He said he would entertain a motion. Councilor Bettison moved to approve Resolution No. 2012-30 and she read the agenda item description. Councilor Morones seconded. Mayor Marshall said there was a motion and a second to approve Resolution No. 2012-30: authorizing the execution and delivery of a Colonias Infrastructure Project Fund Grant Agreement. He asked for a roll call vote: Councilor Bettison voted aye; Councilor Cook voted aye; Councilor Ray voted aye; and Councilor Morones voted aye. Motion carried.

B. Approval / Disapproval of Bid #12/13-7: Home Rehabilitation Project. Anita Norero, Deputy Finance Director, said 1 bid was received and it was staff's recommendation to award the project to Fiesta Homes for a base bid of \$63,399.50 with gross receipts tax of \$4,793.11 for a grand total of \$68,192.61. Mayor Marshall asked if there was any discussion. He asked for a motion. Councilor Ray moved to approve Bid #12/13-7: Home Rehabilitation Project per staff's recommendation to Fiesta Homes for \$68,192.61 with gross receipts tax. Councilor Morones seconded. Mayor Marshall asked if it met the 10 percent, and Ms. Norero said yes. He said there was a motion and a second and no further discussion to approve Bid #12/13-7 for Home Rehabilitation Project with staff's recommendation to Fiesta Homes for \$68,192.61 which included the gross receipts tax. He asked all those in favor to say aye, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried.

C. Appointment to the Planning and Zoning Commission. Mayor Marshall said they had 2 applicants and 2 openings and he was prepared to present one of them for reappointment, Sherry Ann Clements. He said with no objection she would be appointed. There was no objection.

D. Appointment to the Mayor's Climate Protection Agreement Citizens Advisory Committee. Mayor Marshall said an application was received from Christopher Aquino, and the Chair reviewed his application and recommended his appointment. He said that he found him to be qualified and recommended his appointment if there was no objection. There was no objection.

E. Approval / Disapproval to cancel or re-schedule the regular Town Council Meeting scheduled for Tuesday, December 25, 2012. Mayor Marshall said that he spoke with the Town Manager and there would be no urgent need for them to meet on Christmas Day or in the near vicinity. He said that he would propose and entertain a motion to cancel the meeting for December 25, 2012, and the next meeting would be in the next calendar year. Councilor Bettison moved to cancel the regular Town Council Meeting scheduled for Tuesday, December 25, 2012. Councilor Morones seconded. Mayor Marshall said there was a motion and a second to cancel the regular Town Council Meeting scheduled for Tuesday, December 25, 2012. He asked all those in favor to say aye, and all 4 Councilors said aye. Motion carried. He said if they needed to they could schedule an emergency or special meeting in the interim.

12. ADJOURNMENT – Mayor Marshall asked for a motion to adjourn. Councilor Morones moved to adjourn at 9:41 p.m., and Councilor Cook seconded. Mayor Marshall stated there was a motion and a second to adjourn. He asked all those in favor to say aye, and all 4 Councilors said aye. He asked if there were any opposed, and there were none. Motion carried.

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk