

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy 180, Silver City, NM
September 10, 2013, 6:00 p.m.**

Present:

James R. Marshall, Mayor
Cynthia A. Bettison, District 1
Pauline N. Hassler-Cook, 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
Jaime Embick, Town Planner

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE** – Mayor Marshall called the meeting to order at 6:05 p.m.
- 2. CEREMONIES** – Mayor Marshall asked Ann Mackie, Town Clerk, to come forward. He said they received a letter on August 16th from Sam Ojinaga, Deputy Director of the State of New Mexico Department of Finance and Administration, that expressed appreciation for the assistance that Ms. Mackie provided to the Village of Wagon Mound, and that her courtesy and professionalism went above and beyond her normal duties. Mayor Marshall presented Ms. Mackie a Certificate of Exemplary Service on behalf of the Town Council and the Town Manager .
- 3. PROCLAMATIONS** – None.
- 4. PUBLIC INPUT** – William Joseph thanked the Mayor for the Office of Sustainability and that it was foresight at its best and would have dividends down the road. He also commented on noise and animal control issues.
- 5. COUNCIL COMMENTS** – Councilor Morones commented that the Volunteer Center would have a work party on September 14th to install a patio at the Common Center located at 13th and Corbin Streets and how it would be a great opportunity to volunteer. He also asked Manager Brown about the Inspection of Public Records Act and how the Town handled inspection of public records inquiries. Manager Brown said the Act was amended that year and that any written communication with the Town constituted a request; that the employees were urged to handle simple requests as quickly as possible; that there was nothing to hide within the government; and they worked with the requesters as best as they could. Councilor Morones said he was of the basic opinion that as long as the public was legally allowed to have the records then they should have the same information that the Council had to help them provide public input and such. He said that he appreciated the Manager's comments and that he would like to continue to articulate that and cultivate that with the staff.
- 6. CHANGES TO THE AGENDA** – None.
- 7. APPROVAL OF THE MINUTES – Regular Meeting on August 27, 2013** - Councilor Bettison moved to approve the minutes of the Regular Meeting of August 27, 2013. Councilor Ray seconded. Mayor Marshall stated there was a motion and a second to approve the minutes of the Regular Meeting of August 27, 2013. 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. 1. Manager Brown's report on the State of New Mexico Department of Finance and Administration, Local Government Division's approval of the Town's final budget for Fiscal Year 2013-2014.**
Manager Brown said that once the Town was given final approval of the final budget it was required by the State that the minutes of the next Council meeting indicate that the Town Council was notified that the budget was approved by the Department of Finance and Administration.

He also reported that the Comcast franchise agreement included a build out section, and he requested that anyone from the public within the Town boundaries to contact his office if they were having issues in getting access to Comcast Cable or if they did not have the ability to get cable in their neighborhood so the Town could make sure that it was addressed by Comcast per the agreement. There were no other staff reports.

9. PUBLIC HEARINGS –

A. Approval / Disapproval of Transfer of Ownership and Location of Liquor License #0735, Applicant Name: W & N Enterprises, Inc., dba: Walgreen #10808, Proposed Location: 100 N. Rosedale Rd., Silver City, NM.

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 all 4 Councilors said no. He qualified all of them to be on the hearing board. He 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 2 witnesses. Mayor Marshall read the procedures of how the hearing would be conducted. He asked the applicant to present their case. Linda Aiken said she was a lawyer and that she only handled New Mexico liquor license matters. She said she had done work for W & N Enterprises and Walgreens over the years. She said that Mr. Nennich with W & N Enterprises called her because he was entering into an agreement to buy the liquor license and he wanted to discuss an issue about the distance from a church from one of the possible locations of the liquor license. She said another location he had would have required more investment because it needed restructuring, etc. of the building. She told him that if he decided not to go down that road that her client Walgreens would probably be interested in buying the liquor license because they had a Retailer Liquor License currently in Silver City and a Retailer Liquor License was the only kind of liquor license that could be moved from one city to another city and did not lose its package rights. She stated that Walgreens was going to move their license that they currently owned in Silver City to Las Cruces for a new store in Las Cruces. She said it was nearly impossible to get a liquor license in Las Cruces and it would cost about \$800,000. She said it was a much better license for Walgreens to buy the W & N Enterprises liquor license and move their retailer license to Las Cruces. She said the City of Las Cruces approved the transfer of that license on September 3rd. She discussed the requirements of the New Mexico Alcohol and Gaming Division and the process after Mr. Nennich of W & N Enterprises agreed to sell the license to Walgreens. She said the net effect was that one license would leave the city and they would not have any new businesses that were operating a liquor license in the city. She asked if they had questions and stated that Deborah Nennich of W & N Enterprises was present and had been sworn in. Mayor Marshall asked if there were any other witnesses in support of the application. Deborah Nennich with W & N Enterprises said they were purchasing the license from the May's (Patricia D. May Revocable Trust) and when they were looking at their options they ran into some road blocks so when Ms. Aiken told them that Walgreens was interested they decided that would be their best recourse. She said it was not bringing in an additional liquor license into the area. She said it was a matter of Walgreens sending their license to Las Cruces and the license they had would go in the current Walgreens and they would continue operating as they currently did. There were no other witnesses in support of the application. Attorney Scavron commented that a staff report was included in the packet and was signed by all of the department heads. Mayor Marshall said there was no verbal staff report. Mayor Marshall asked if there were any witnesses in opposition to the application, and there were none. He asked if there were any questions, and there were none. He asked the applicant if they had anything else to reflect in the record or if it concluded their case, and they said it concluded their case. He asked the hearing board if they were prepared to consider the application and render its decision, and all 4 Councilors said yes. He said that he would entertain a motion. Councilor Ray moved to approve the Transfer of Ownership and Location of Liquor License #0735, Applicant Name: W & N Enterprises, Inc., dba: Walgreen #10808, Proposed Location: 100 N. Rosedale Rd., Silver City, NM. Councilor Morones seconded. Mayor Marshall asked Ms. Aiken if they needed to include a waiver for a church and she said not at the Walgreens location. The Mayor said there was a motion and a second to approve the Transfer of Ownership and Location of Liquor License #0735, Applicant Name: W & N Enterprises, Inc., dba: Walgreen #10808, Proposed Location: 100 N. Rosedale Rd., Silver City, NM. 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.

B. Approval / Disapproval of Transfer of Ownership and Location of Liquor License #0735, Applicant Name: Walgreen Co., Inc., dba: Walgreen #10808, Proposed Location: 100 N. Rosedale Rd., Silver City, NM. 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 all 4 Councilors said no. He qualified all of them to be on the hearing board. He 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 1 witness. Mayor Marshall read the procedures of how the hearing would be conducted. He asked the applicant to present their case. Linda Aiken said she was the attorney for Walgreens and that Walgreens was purchasing the liquor license to be used in their current store in Silver City so they could move the Retailer Liquor License that they currently owned at the Walgreens in Silver City to a new Walgreens store in Las Cruces. She said the net effect was that the Town would not have a new business or a new liquor license and they were just moving one license out. Mayor Marshall asked if there were any questions for the applicant and there were none. He asked if there were any other witnesses in support of the application, and there were none. He asked if there were any witnesses in opposition to the application, and there were none. He asked Ms. Aiken if that concluded her case or if there was anything else she would like reflected in the record, and she said no. He asked the hearing board if they were prepared to make a decision, and all 4 Councilors said yes. He said he would entertain a motion. Councilor Ray moved to approve the Transfer of Ownership and Location of Liquor License #0735, Applicant Name: Walgreen Co., Inc., dba: Walgreen #10808, Proposed Location: 100 N. Rosedale Rd., Silver City, NM. Councilor Morones seconded. There was no further discussion. Mayor Marshall said there was a motion and a second to approve the Transfer of Ownership and Location of Liquor License #0735, Applicant Name: Walgreen Co., Inc., dba: Walgreen #10808, Proposed Location: 100 N. Rosedale Rd., Silver City, NM. 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.

10. UNFINISHED BUSINESS – None.

11. NEW BUSINESS -

A. Approval / Disapproval of Resolution No. 2013-34: a Resolution adopting the 2015-2019 Infrastructure Capital Improvement Plan (ICIP). Jaime Embick, Town Planner, said it was a result of this year's public meetings. She thanked Manager Brown for attending the second public meeting and that it was a great help because he had personal knowledge of each project and he could give more feedback to the people. She said that they were able to include a lot more of the suggestions from the public and she discussed the process. Manager Brown said that any projects that they were going to request capital outlay funding on would have to be in the top 3 on the list. He said that in working with the Fire Department that he would like to move up the ambulances to #2 on the list because it was a safety issue because the current ambulances had a lot of miles and they were having problems with them. He said that capital outlay funding could help them fund at least 1 of the ambulances. He said everything else on the list could be moved down. He discussed some items suggested by the public that were on the list; how the sidewalk project on the list was a place holder for any sidewalk funding; and how the housing rehabilitation project was continually getting funding so it was on the list every year and that it was a very successful program. Mayor Marshall asked Manager Brown if there had been any discussion with the local legislators on their support of the top 3 on the list. Manager Brown said no, but he was having a meeting with them the following week. He said the #1 priority was Scott Park so they could complete it and get as much use out of it to justify the investment, and he provided further details and discussed other projects. There was further discussion about the public meetings and how the ICIP process was confusing to the public so they needed to improve the process. Mayor Marshall asked if anyone in the audience would like to speak. Walter Szymanski and Shelby Hallmark addressed the Council and Manager with comments and questions. There was further discussion about the process; what the role of the public was in the process; how the list was developed and prioritized; how the projects were funded; how they would work to improve the process, but had to follow the State's rules; how they could have more public meetings throughout the year to develop the list and not wait until the State's database provided the deadlines, etc.; how the ICIP included projects that had been discussed for over a decade; how projects had to be on the ICIP in order to get any funding through the State; how the ICIP was a living document and did not focus on big items or new items and it was basically for infrastructure; how there had been discussions about big ticket items and having a dream team of county residents to go through a public process and vet projects, etc.; how the final public meetings would need to be close to when the Resolution was adopted because every year the process from the State had changed; how the State's website did not allow access to the process until a few weeks before the deadline; how everything on the list was an investment in the community; and how there could be public meetings specific to each Town department in order to meet people's specific interests. Councilor Bettison moved to approve Resolution No. 2013-34: a Resolution adopting the 2015-2019 Infrastructure Capital Improvement

Plan (ICIP), and moving ambulances to #2 and then changing and dropping all of the others down. Councilor Morones seconded. Mayor Marshall said there was a motion and a second to approve as amended, and he asked if there was any other discussion. There was none. He said there was a motion and a second to approve Resolution No. 2013-34: a Resolution adopting the 2015-2019 Infrastructure Capital Improvement Plan (ICIP) moving #9, the ambulances, up to #2 and everything down one. 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. Appointment to Planning and Zoning Commission. Mayor Marshall said there was 1 opening and 2 applications and if there was no objection he wanted to appoint Carmon L. Steven to the opening. He said the applicant had met with staff and the Chair of the Planning and Zoning Commission, and that they found the applicant to be fit, qualified, and desirable. He asked if there was any objection, and there was no objection from the Council.

12. ADJOURNMENT – Mayor Marshall asked for a motion to adjourn. Councilor Bettison moved to adjourn at 7:09 p.m., and Councilor Ray 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