

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy. 180, Silver City, NM
June 23, 2015, 6:00 p.m.**

Present:

Michael S. Morones, Mayor
Cynthia Ann Bettison, District 1
Lynda D. Aiman-Smith, District 2
Jose A. Ray, Jr., District 3
Guadalupe Cano, District 4

Also Present:

James Marshall, Assistant Town Manager
Robert L. Scavron, Town Attorney
Ann L. Mackie, Town Clerk
Peter Pena, Public Works Director

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE** – Mayor Morones called the meeting to order at 6:00 p.m.
- 2. CEREMONIES** – None.
- 3. PROCLAMATIONS** – None.
- 4. PUBLIC INPUT** – George Julian Dworin, Executive Director of the Silver City Arts and Cultural District, thanked the Town Council and the Lodgers Tax Advisory Board for entrusting them with Lodgers Tax dollars to market on behalf of the Town. He said they would honor it, steward it, and work to the best of their ability to represent the community in advertising, marketing, and public outreach. He said they took to heart the Lodgers Tax Advisory Board's comments to be receptive to public input as well as to work with greater transparency. He said they were responding immediately and invited the Town Council, staff, and everyone to a Tourism Town Hall event on June 29th from 6:00 p.m. to 7:30 p.m. at the Western New Mexico University Global Resource Center Auditorium.
- 5. COUNCIL COMMENTS** – The Council commented on the following: how Code Enforcement would be patrolling Districts 1 and 4 to check for Code violations regarding weeds, junk, and nuisances so residents were asked to weed, pick up their trash, etc., to avoid being cited; how the recent shooting in District 4 was an isolated incident directed at certain people so District 4 and that neighborhood were still safe; thanks were given to the Village of Santa Clara off-duty police officer that responded to the shooting; how the Town installed extra signs on Cooper Street; issues with bikers at the Blues Festival; how a local biker group would conduct a ride to raise money for the Gospel Mission; acknowledgement of the police for stopping speeding vehicles on Broadway; thanks to the public regarding their comments to the Town Council; and a reminder to the public that not every ordinance or resolution passes, but when a resolution or ordinance is placed on the agenda it provides the Council an opportunity to discuss items that were of critical importance to the residents.
- 6. CHANGES TO THE AGENDA** – None.
- 7. APPROVAL OF THE MINUTES – Regular Meeting on June 9, 2015** - Councilor Aiman-Smith moved to approve the minutes of the Regular Town Council Meeting of June 9, 2015. Councilor Bettison seconded. Mayor Morones stated there was a motion and a second to approve the minutes of the Town of Silver City's Regular Council Meeting of June 9, 2015. He asked if there was any discussion, and there was none. He asked for a vote of all those in favor, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried.
- 8. REPORTS** –
 - A. Staff reports.** James Marshall, Assistant Town Manager, reported on the work done at the park at 32nd Street and Silver Street by a group of young people from Gary Stailey's church. He thanked Mr. Stailey for the community project. He stated Code Enforcement did order more door hangers so they would be leaving them on doors for Code violations. He also recognized and thanked Peter Pena, Public Works Director, Jesus Alvililar, Parks Supervisor, and

their crews for doing such good work on the Town's parks and cemetery. He said they deserved a big thanks because it was a monumental task to keep up with, to try to grow grass here, and to kill weeds here.

9. PUBLIC HEARINGS - None.

10. UNFINISHED BUSINESS – None.

11. NEW BUSINESS –

A. Approval / Disapproval of Resolution No. 2015-14: Authorizing the execution and delivery of a First Amendment to a Colonias Infrastructure Project Fund Grant Agreement by and among the Town of Silver City as Grantee and the New Mexico Colonias Infrastructure Board and the New Mexico Finance Authority as Grantors; amending the scope of the project financed by the Colonias Infrastructure Project Fund Grant Agreement to include construction of Phase II Street and Drainage Improvements on Silver Street from Pine Street to 20th Street; approving the form and terms of and other details concerning the First Amendment to Colonias Infrastructure Project Fund Grant Agreement; amending Resolution No. 2014-33 to conform to the provisions of this Resolution; ratifying actions heretofore taken; repealing all action inconsistent with this Resolution; and authorizing the taking of other actions in connection with the Execution and delivery of the First Amendment to the Colonias Infrastructure Project Fund Grant Agreement ("First Amendment").

Peter Pena, Public Works Director, said in March they had bid out and awarded a project for Silver Street and the basic project was from Pine Street to Lamb Street. He said the bids came in good and there was \$160,000 left over so they went back to the New Mexico Finance Authority Board and requested to change the project area to add another block and to use the remainder of the \$160,000. He said the Board approved it and Resolution No. 2015-14 was required for that. He said the scope was the same; that it was for new paving, curb and gutter, sidewalks, striping, and signage. There was further discussion. Councilor Cano moved to approve Resolution No. 2015-14: Authorizing the execution and delivery of a First Amendment to a Colonias Infrastructure Project Fund Grant Agreement by and among the Town of Silver City as Grantee and the New Mexico Colonias Infrastructure Board and the New Mexico Finance Authority as Grantors; amending the scope of the project financed by the Colonias Infrastructure Project Fund Grant Agreement to include construction of Phase II Street and Drainage Improvements on Silver Street from Pine Street to 20th Street; approving the form and terms of and other details concerning the First Amendment to Colonias Infrastructure Project Fund Grant Agreement; amending Resolution No. 2014-33 to conform to the provisions of this Resolution; ratifying actions heretofore taken; repealing all action inconsistent with this Resolution; and authorizing the taking of other actions in connection with the Execution and delivery of the First Amendment to the Colonias Infrastructure Project Fund Grant Agreement ("First Amendment"). Councilor Ray seconded. Mayor Morones said there was a motion and a second as read into the record. He asked if there was any further discussion, and there was none. He asked for a roll call vote. Councilor Cano voted aye; Councilor Ray voted aye; Councilor Aiman-Smith voted aye; and Councilor Bettison voted aye. Motion carried.

B. Approval / Disapproval of Bid #14/15-6: 2014 CDBG street improvements. Peter Pena, Public Works Director, said they received 2 bids with only a \$900 difference between the bids. He said the low bidder was Deming Excavating, Incorporated for a total bid of \$432,785.50. He said the engineers checked their bid and they met all of the specifications, and it was staff's recommendation to award the bid to Deming Excavating. He said they had the money because it was part of the CDBG grant (Community Development Block Grant) that was awarded to the Town in 2014. He said they would have about \$30,000 for contingency, and he described the project area. He said they would do paving, restoration of curbs and gutters, drive pads, ADA (Americans with Disabilities Act) ramps where possible, and a little bit of sidewalks. He answered questions from the Council and stated the work would start in a month and it would be completed in 90 days. He explained that federal funding did not allow any preferences; that it was based on the lowest bidder as long as they met all of the specifications. Mayor Morones said he would entertain a motion. Councilor Ray moved to approve Bid #14/15-6: 2014 CDBG street improvements by staff recommendation to Deming Excavating, Incorporated for a total amount of \$432,785.50 without gross receipts taxes. Councilor Cano seconded. Mayor Morones said there was a motion and a second as read into the record. He asked if there was further discussion, and there was none. He asked for a vote of all those in favor, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried.

C. Approval / Disapproval of Resolution No. 2015-16: Policies governing public input at regular meetings of the Town Council of the Town of Silver City, New Mexico. Mayor Morones said he was the sponsor of the Resolution because after reading the old Resolution he found it to be pretty prohibitive and it did not leave a lot of discretion to the Mayor to allow for fruitful public input. He said public input was extremely vital even though they did not engage the public during public input because those specific topics were not on the agenda. He said the public input still gave them information from the public that they may not know, and the will of the people that they were trying to serve. He provided details of how Resolution No. 2015-16 gave the Mayor more discretion, etc. He asked the staff if they had any comments on how it may be useful. Assistant Town Manager Marshall said it made it a much more transparent and friendly process. Councilor Bettison moved to approve Resolution No. 2015-16: Policies governing public input at regular meetings of the Town Council of the Town of Silver City, New Mexico. Councilor Aiman-Smith seconded. Mayor Morones said they had a motion and a second for the approval of Resolution No. 2015-16: Policies governing public input at regular meetings of the Town Council of the Town of Silver City, New Mexico. He asked if there was further discussion, and there was none. He asked the audience if they had any comments, and no one came forward. He asked for a roll call vote. Councilor Bettison voted aye; Councilor Aiman-Smith voted aye; Councilor Ray voted aye; and Councilor Cano voted aye. Motion carried.

A member of the audience announced that they could not hear very well. Councilor Cano moved for a short break at 6:30 p.m. to resolve the sound issues. Councilor Aiman-Smith seconded. Mayor Morones said they had a motion and a second for a short recess. He asked for a vote of all those in favor, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried. He called the meeting back to order at 6:36 p.m.

D. Approval / Disapproval of Resolution No. 2015-17: authorizing the Mayor to enter into a Joint Powers Agreement (JPA) providing for membership in the New Mexico Central Arizona Project (CAP) Entity. Mayor Morones said he was sponsoring the Resolution because of the importance it had for the governing body and for the public and residents to speak and voice their desires, their wants and their will. He said that he wanted it to be done before the County Commissioners voted because they needed to know what everybody wanted, and it was their duty to inform them and help them out in their decisions. He opened the floor for public input and the following people provided their comments and encouraged the Council not to enter into the Joint Powers Agreement: Dutch Salmon, Donna Stevens, Carol Morrison, Larry McLaud, Peter Russell, Starr Belsky, Andy Payne, Shelby Hallmark, Janet Wallet-Ortiz, Tom Manning, Poppy Dames, and Ron Henry. Additionally, Gary Stailey asked the Council to consider entering into the JPA because if they did not sign it they may not have any say so in any future agreements.

Mayor Morones gave the floor to James Marshall, Assistant Town Manager. Mr. Marshall said the Town Manager was unable to attend and he read a letter written by Manager Brown with the following statements: that he was unable to appear at the Council Meeting because he was attending to important Town business in Santa Fe; that on the Town's behalf for the past 11 years his staff and he had been actively educating themselves as to potential consequences for the Town as a result of the passage of the AWSA (Arizona Water Settlement Act); that their attempts at performing due diligence required them to ask difficult questions that were often ignored or answered less than candidly; that some had branded the Town as obstructionist or worse, merely because they had endeavored to make intelligent inquiry; that he had reviewed the presentations of Mr. Marshall and Mr. Scavron and, without equivocation, was fully supportive; and that their perspectives and analysis mirrored his own and he commended both for their hard work and dedication to the Town.

Mr. Marshall provided the Council with his 3 pages of notes regarding the JPA. He read them aloud and discussed the critical points of the JPA. He concluded by strongly recommending that after many hours of research, reading, and consulting that the governing body reject the Resolution and the Town not be burdened with being a member of the somewhat unknown party.

Mayor Morones gave the floor to Attorney Scavron. Attorney Scavron also provided 3 pages of notes to the Council regarding the JPA. He read them aloud and stated that he agreed with Mr. Marshall's and Manager Brown's analysis of the JPA creating the CAP entity and that it was a fatally flawed document. He said that any public entity that signed on

to it would open itself to uncalculated risks and costs, with only a remote prospect of gain. He concluded by suggesting that the Council accept the work of Mr. Marshall, the Town Manager, and his staff as being the Town's due diligence. He stated that in his opinion the JPA was filled with misrepresentations regarding the ability to pay, to put the water to beneficial use, and to have the broad abilities to accomplish all the undertakings. He said that in contract law a court would set aside a contract where one side had misrepresented material facts. He said when the misrepresentation was deliberate with an intent to induce another to contract, the matter moved from contract law to fraud, and at its most extreme, criminal fraud. He said for the local public official that knowingly and deliberately entered into an agreement that he or she knew to contain deliberate misrepresentations, was in his opinion, conduct that may be considered official malfeasance. He said that as Town Attorney he strongly advised the Council to refrain from entering the JPA.

Mayor Morones said as difficult as it may be to move in the affirmative, he strongly encouraged the Council to make a motion in the affirmative so they fully and completely understood what they were voting on and the consequences of their vote. Councilor Aiman-Smith moved to approve Resolution No. 2015-17: authorizing the Mayor to enter into a Joint Powers Agreement (JPA) providing for membership in the New Mexico Central Arizona Project (CAP) Entity. Councilor Bettison seconded. Mayor Morones said there was a motion and a second for the approval of Resolution No. 2015-17: authorizing the Mayor to enter into a Joint Powers Agreement (JPA) providing for membership in the New Mexico Central Arizona Project (CAP) Entity. He said a vote yes was approving the JPA and a vote no was disapproving the entity. He asked if there was any further discussion, and there was none. He repeated the motion and asked for a roll call vote. Councilor Aiman-Smith voted nay; Councilor Bettison voted nay; Councilor Ray voted nay; and Councilor Cano voted nay. Motion failed.

Councilor Bettison moved for a short break at 7:32 p.m. Councilor Aiman-Smith seconded. Mayor Morones said there was a motion and a second for a short recess. He asked for a vote of all those in favor, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried. The Mayor called the meeting back to order at 7:41 p.m.

E. Approval / Disapproval of Resolution No. 2015-18: directing the Town Manager to confer and negotiate with the Interstate Stream Commission and other potential parties to the Joint Powers Agreement dated June 10, 2015, creating a New Mexico Central Arizona Project (CAP) Entity. Mayor Morones said he was the sponsor of the Resolution and that the JPA that just died was pretty much discussed and negotiated by people who were not elected officials, did not have money, and were not educated staffs of various stakeholders like the municipalities of the 4 counties. He said there were concerns if Grant County joined the JPA that was discussed or a future one that was professionally drafted; that the community and the Town would still be embodied into something that Grant County may join because they were residents of the county. He said Resolution No. 2015-18 would ensure there was strong staff that would negotiate a deal, come up with a legal document, and bring it back to the Council for approval. He gave the floor to Mr. Marshall.

Mr. Marshall said his presentation for the preceding Resolution was very much directed at the JPA and the flaws within that agreement and the Town Manager's letter talked about the Town doing their due diligence on projects. He said they basically destroyed the document that was presented on technical issues, however, Resolution No. 2015-18 was a way of saying they were willing to sit at the table and talk to at least work towards what they would like. He provided further details and said he would support the approval of Resolution No. 2015-18.

Mayor Morones asked Attorney Scavron if he would like to add anything. Attorney Scavron said Manager Brown would have the discretion to talk about all alternatives and it might be that a JPA to divert water would not be what the group decided to do. He said it would be important for Silver City to have representation and to give its resources to the group for the benefit of the region. He said in the 15 years he had been the Town Attorney he had watched year after year Silver City extending its hand to its neighbors, whether for the county or for the region. He said it was important that Silver City continue to do that and that with the discussions that Manager Brown has that he could not enter into a commitment, but could only bring back the results of his conversations to the Council. He said it was important to pass Resolution No. 2015-18 in order to give the Town Manager that direction and he encouraged the Council to vote yay for it. There was further discussion. Mayor Morones asked the Council if they had any questions for Mr. Marshall or Mr. Scavron, and they said no. He asked the public if they had any comments. Harry Browne came

forward and asked if the analysis provided by Mr. Marshall and Mr. Scavron would be available to the public in a written form. Mr. Marshall stated both documents were public records according to the Inspection of Public Records Act. Councilor Bettison moved to approve Resolution No. 2015-18: directing the Town Manager to confer and negotiate with the Interstate Stream Commission and other potential parties to the Joint Powers Agreement dated June 10, 2015, creating a New Mexico Central Arizona Project (CAP) Entity. Councilor Aiman-Smith seconded. Mayor Morones said there was a motion and a second for the approval of Resolution No. 2015-18: directing the Town Manager to confer and negotiate with the Interstate Stream Commission and other potential parties to the Joint Powers Agreement dated June 10, 2015, creating a New Mexico Central Arizona Project (CAP) Entity. There was further discussion. The Mayor asked for a roll call vote. Councilor Bettison voted aye; Councilor Aiman-Smith voted aye; Councilor Ray voted aye; and Councilor Cano voted aye. Motion carried.

F. Approval / Disapproval of endorsing Councilor Bettison's candidacy for the position of Director-at-Large of the New Mexico Municipal League Board of Directors. Councilor Bettison said she was seeking the endorsement of the Council for what would be, if she was elected, her third 2-year term as Director-at-Large of the New Mexico Municipal League Board of Directors. She said in the past 4 years she had represented the Town, and also small and large municipalities alike, in the Director-at-Large position. She named the various committees that she had been appointed to since 2009, and stated it was critical for Silver City to voice its concerns. Mayor Morones said over the years Councilor Bettison had represented the Town very well and she was respected at the League level. He said he would be very happy if the Council would endorse her. Councilor Ray moved to approve endorsing Councilor Bettison's candidacy for the position of Director-at-Large of the New Mexico Municipal League Board of Directors. Councilor Aiman-Smith seconded. Mayor Morones said they had a motion and a second for approval of endorsing Councilor Bettison's candidacy for the position of Director-at-Large of the New Mexico Municipal League Board of Directors. He asked if there was any further discussion, and there was none. He asked for a vote of all those in favor, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried. Councilor Bettison thanked the Council for their support and endorsement.

G. Appointments to Library Board. Mayor Morones said they had 2 vacancies on the Library Board, one of which was the current Chair, Ted Lynn, and the other applicant was Michael Dowd to fill those positions. He said the Chair recommended himself and Michael Dowdy. The Mayor said he would like to appoint both of the individuals. He asked the Council if they had any objection, and they did not.

H. Appointment to Museum Board. Mayor Morones said they had a vacancy and an applicant Ronald Leslie Phair. He said Mr. Phair was capable of keeping that position and was currently the President. He said he would like to reappoint him if there were no objections. There were no objections.

12. ADJOURNMENT – Mayor Morones asked for a motion to adjourn. Councilor Aiman-Smith moved to adjourn at 7:58 p.m., and Councilor Bettison seconded. Mayor Morones stated there was a motion and a second to adjourn. He asked for a vote of all those in favor, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried.

/s/

Michael S. Morones, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk