

MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
GRANT COUNTY ADMINISTRATION CENTER, 1400 HWY. 180 E., SILVER CITY, NM
May 27, 2008 – 7:00 p.m.

Present: James R. Marshall, Mayor
A. Judith Ward, District 1
Thomas Nupp, District 2
Simon Wheaton-Smith, District 3
Steve May, District 4

Also Present: Alex C. Brown, Town Manager-Finance Director
Ann L. Mackie, Town Clerk
Robert L. Scavron, Town Attorney
Mike Eley, Town Planner
Ed Reynolds, Chief of Police
Peter Pena, Public Works Director

CALL TO ORDER / PLEDGE OF ALLEGIANCE - Mayor Marshall called the meeting to order at 7:03 p.m.

PROCLAMATIONS – None.

PUBLIC INPUT – Mary Ann Finn, Diabetes Public Health Nurse for Grant County, presented a certificate to Peter Pena, Public Works Director, to thank him for his help in putting up signs for a downtown walking loop. She also thanked the Town and the Council for the improvements that had been made to the public swimming pool. Teri Matelson commented that a traffic safety plan should be made for the intersection of U.S. Highway 180 and Highway 90, and how she considered that intersection to be the center of the town.

COUNCIL COMMENTS – The Council commented on the following: recently attended events; the Town’s Water Quality Report; an update on the Code of Ordinance project; the improvements that were made at the public swimming pool and park area; upcoming events; and Teleperformance’s announcement that layoffs would begin in July.

CHANGES TO AGENDA – Councilor Wheaton-Smith requested that Item B under New Business be moved ahead of Item A. There was further discussion. A consensus was received by a majority of the Council to change the order on the agenda for Items A and B.

APPROVAL OF MINUTES – May 13, 2008, Regular Council Meeting. Councilor May made a motion to approve the Minutes with one correction noted by the Town Clerk. Councilor Wheaton-Smith seconded the motion. All were in favor, motion passed.

REPORTS –

A. Recycling Cell Phones for Local Emergency 911 Use. Dr. Terry Timme, Chairman of the Town’s Recycling Advisory Committee, reported on how cell phones without a service provider could be recycled for 911 emergency purposes. He commented that a program would be set up locally for people who need emergency cell phones and stated that several local agencies have expressed an interest in the program. Jean Fortenberry, Director of the Grant County Regional Dispatch Authority (GCRDA), stated that the people that would be using the recycled 911 emergency cell phones would have to identify themselves and their location because the wireless technology at the GCRDA would only be able to pinpoint the location of a cell phone that had an active service provider. Mayor Marshall advised Dr. Timme that a disclaimer that identified the limitations of the phones would need to be provided to the agencies that would distribute the cell phones. Dr. Timme agreed with his recommendation.

Alex C. Brown, Town Manager-Finance Director, stated that the water rates for out-of-town customers would increase at the same rate as the in-town customers; the rates would not double as previously reported. He stated that the Notice of Intent Ordinance No. 1143 would be corrected accordingly. Mr. Brown also stated there were no commercial rates; the rates were based on the number of gallons used.

Chief Ed Reynolds reported that the Blues Festival went well; there were only seven calls for service to the Police Department, none of which were serious. There was discussion about two children that were hit by a vehicle in

the crosswalk in front of the U. S. Post Office; and the need for flashing lights, a lower speed limit, or pedestrian light switches at that crosswalk.

PUBLIC HEARINGS –

A. Approval of Transfer of Ownership and Location of Liquor License #4053 in the name of Albertson’s Inc., Current Premise Address: 1510 E. 10th, Alamogordo, NM, requested by Applicant Name: Walgreen Co., DBA Walgreens #11458, Application #494947, Proposed Location: 100 N. Rosedale Rd., Silver City, NM. Mayor Marshall stated that the Town Council would serve as the hearing board and he would serve as the presiding officer. Mayor Marshall asked the hearing board if they had any ex parte discussion concerning this case, and none had. Linda Aikin, Walgreen’s attorney, and Daniel Quinones, Walgreen’s representative from Las Cruces, were sworn in by the Town Clerk, and they presented their case. There was further discussion. There was no opposition to the case. Mayor Marshall concluded the hearing and asked the Council to render a decision. Councilor Wheaton-Smith made a motion to approve the transfer of ownership and location of Liquor License #4053. Councilor May seconded the motion. There was no further discussion. All were in favor, motion passed.

B. Approval of Resolution No. 2008-19: A Resolution vacating a portion of the Cooper and San Vicente Streets Rights-of-Way. Mayor Marshall stated that the Town Council would serve as the hearing board and he would serve as the presiding officer. Mayor Marshall asked the hearing board if they had any ex parte discussion concerning this case, and none had. The Town Clerk swore in three witnesses for the hearing. Mike Eley, Town Planner, presented the case and stated the Community Development Department recommended approval of Resolution No. 2008-19. Senovia Ray, applicant, stated that they wanted to sell their property. Joshua White stated that he would like to buy the Ray’s property. There was no opposition to the case. Councilor Wheaton-Smith commented on a correction to the Real Estate Agreement that was noted by the Town Clerk. There was no further discussion. Mayor Marshall concluded the hearing and asked the Council to render a decision. Councilor Wheaton-Smith made a motion to approve Resolution No. 2008-19, and Councilor May seconded the motion. There was further discussion. A roll call vote was taken with the following results: Councilor Ward – aye; Councilor Nupp – aye; Councilor Wheaton-Smith – aye, and Councilor May – aye. Motion passed.

Councilor Nupp made a motion to recess at 7:58 p.m., and Councilor May seconded the motion. All were in favor, motion passed. The Mayor called the meeting back to order at 8:14 p.m.

UNFINISHED BUSINESS – None.

NEW BUSINESS –

B. Consideration and possible action on an application for private sale of Town-owned real property (Hillcrest Hospital Site), Applicant name: Lanny Olson. Councilor Ward recused herself from the discussion and the vote on Lanny Olson’s application for private sale because of the professional contracts that she had with potential bidders on the Town owned land called the Hillcrest Hospital Site. She stated that she believed there was a possible direct financial interest according to the Town of Silver City’s Code of Ethics, Section 35.04 (B), and she submitted her statement in writing to the Mayor. Lanny Olson commented on his desire to purchase the Hillcrest Hospital Site in order to build a hotel, and how he felt that it would benefit the Town. There was further discussion on how the Town could sell or lease the property if it were declared a non-essential property, and public input was received. Mayor Marshall stated that he did not believe that the Hillcrest Hospital Site would meet the criteria for a private sale per the Town’s ordinance. He recommended that Mr. Olson’s application be denied for private sale, but to continue with the process. Councilor May made a motion to postpone action on Mr. Olson’s application. Councilor Wheaton-Smith seconded the motion. There was no further discussion. Councilor Nupp, Councilor Wheaton-Smith and Councilor May voted aye. Motion passed to postpone action on Item B for Lanny Olson’s application.

This agenda item was re-opened for consideration during the Council’s consideration of Item A under New Business (refer to page 3 of these Minutes) and Councilor Wheaton-Smith made a motion to deny the application for purchase or lease of Town-owned real property to Lanny Olson. Councilor May seconded the motion. Motion passed to deny Lanny Olson’s application with affirmative votes from Councilor May, Councilor Wheaton-Smith, and Councilor Nupp.

A. Consideration and possible action on a Motion to Rescind Resolution No. 2006-05 (designated a site for the Public Library). Councilor Ward recused herself from the discussion and the vote on the motion to rescind Resolution No. 2006-05 because of the professional contracts that she had with potential bidders on the Town owned land called the Hillcrest Hospital Site. She stated that she believed there was a possible direct financial interest according to the Town of Silver City's Code of Ethics, Section 35.04 (B), and she submitted her statement in writing to the Mayor. Councilor May made a motion to rescind Resolution No. 2006-05, and stated that the Council should then declare the Hillcrest Hospital Site non-essential to the Town, and it should be sold or leased for private commercial development. He continued with a list of recommendations on how the Town could determine the best way to dispose of the property. Mayor Marshall asked the Town Attorney, Robert Scavron, to comment on whether Councilor May's list was covered by the agenda item that was noticed to the public. Mr. Scavron stated that declaring the property non-essential and setting up procedures for sale was broader than the agenda item that was noticed. Councilor May stated he was amending the Resolution, and Mr. Scavron stated that the public must be given fair notice. Mayor Marshall declined the motion. Councilor Wheaton-Smith recommended that it should be an agenda item for the next Council meeting. Mayor Marshall stated that the issue was more procedural because the motion rescinded the Resolution, and then amended it. There was further discussion. Councilor Nupp made a motion to rescind Resolution No. 2006-05, but the motion died due to the lack of a second.

Mr. Scavron commented that legislative action could not be taken while an application was pending because it would violate the due process of the application and would interrupt the quasi-judicial process. He stated that the action on Lanny Olson's application should be completed before taking legislative action on Resolution No. 2006-05. Mayor Marshall agreed and stated that a new resolution should be brought to Council after action was taken on Mr. Olson's application and Resolution No. 2006-05. Councilor Wheaton-Smith made a motion to re-open for consideration agenda Item B under New Business. Councilor May seconded the motion. There was no further discussion. Motion passed to reconsider Item B with affirmative votes from Councilor Nupp, Councilor Wheaton-Smith, and Councilor May. The Council then returned to the consideration of Item B regarding Lanny Olson's application for private sale of the Hillcrest Property Site.

Following the action that was taken by the Council on the reconsidered Item B under New Business (refer to page 2 of these Minutes), the Council returned to the discussion of Item A under New Business. Councilor May made a motion to rescind Resolution No. 2006-05. Councilor Nupp seconded the motion and commented that the Library Foundation had expressed their wish to no longer be bound by Resolution No. 2006-05 and to the Hillcrest Hospital Site. He stated, however, that the Library Foundation would like the site as an option for a new public library. There was further discussion. A roll call vote was taken with the following results: Councilor May – aye, Councilor Wheaton-Smith – aye, and Councilor Nupp – aye. Motion passed to rescind Resolution No. 2006-05.

C. Approval of Downtown parking plans. Peter Pena, Public Works Director, and Chief Ed Reynolds presented the preliminary Downtown parking plans. There was further discussion and public input was received from Downtown merchants and residents. Councilor Ward made a motion to postpone action on the Downtown parking plans for further input and study. Councilor Nupp seconded the motion. All were in favor, motion passed.

D. Approval of Resolution No. 2008-20: A Resolution to create the Veterans Memorial Citizens Advisory Committee. Councilor Nupp presented the details of Resolution No. 2008-20 that would establish a committee to find the appropriate site, design, and funding of a War Memorial to honor all Veterans, and he made a motion to approve Resolution No. 2008-20. Councilor Ward seconded the motion. There was further discussion and Councilor Wheaton-Smith offered a friendly amendment for several typographical corrections to the Resolution. Councilor Nupp and Councilor Ward approved the friendly amendment. The Council received public input. All were in favor, motion passed.

E. Approval of Purchase and Sales Agreement of real property for MainStreet Plaza. Frank Milan, Manager of the Silver City MainStreet Project, presented the details of the Purchase and Sales Agreement for the MainStreet Plaza property. There was further discussion. Councilor May made a motion to approve the Purchase and Sales Agreement, and Councilor Wheaton-Smith seconded the motion. There was further discussion.

Councilor May amended his motion to authorize the Town Manager to execute the agreement on behalf of the Town. Councilor Wheaton-Smith seconded the amendment. All were in favor, motion passed.

Councilor Wheaton-Smith made a motion to recess at 10:07 p.m. Councilor May seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 10:20 p.m.

F. Approval of Resolution No. 2008-21: A Resolution supporting an affordable housing project. Mike Eley, Town Planner, presented the details of Resolution No. 2008-21. There was further discussion. Councilor May commented that his employer, Border Area Mental Health, supported the affordable housing project and he strongly encouraged the Council to support the Resolution. Mayor Marshall asked Councilor May if he was directly working on the affordable housing project with Border Area Mental Health. Councilor May stated that he was, but he had no direct benefit as their Special Projects Director. Councilor Wheaton-Smith, Councilor Ward, and Councilor Nupp were satisfied with his statement. Councilor Ward moved to approve Resolution No. 2008-21, Councilor Nupp seconded the motion. A roll call vote was taken with the following results: Councilor May – aye; Councilor Wheaton-Smith – aye; Councilor Nupp – aye; and Councilor Ward – aye. Motion passed.

G. Approval of Notice of Intent Ordinance No. 1145: an Ordinance amending Chapter 32, Section 32.01 of the Town of Silver City Municipal Code, relating to Library Board. Councilor May made a motion to approve the Notice of Intent Ordinance No. 1145. Councilor Wheaton-Smith seconded the motion. There was further discussion. All were in favor, motion passed.

H. Approval of Resolution No. 2008-22 to adopt the preliminary Budget for Fiscal Year 2008-2009. Mr. Brown presented the preliminary Budget for Fiscal Year 2008-2009 and answered questions from the Council. Councilor Ward made a motion to approve Resolution No. 2008-22. Councilor Nupp seconded the motion. There was no further discussion. A roll call vote was taken with the following results: Councilor Ward – aye; Councilor Nupp – aye; Councilor Wheaton-Smith – aye; and Councilor May – aye. Motion passed.

I. Approval of Destruction of Records: Custodian of Record File: records of requests filed from 04/05 to 12/07. Ann Mackie, Town Clerk, presented the details of the request for the destruction of records. Councilor Wheaton-Smith made a motion to approve the request. Councilor May seconded the motion. There was further discussion. All were in favor, motion passed.

ADJOURNMENT – Councilor Ward made a motion to adjourn the meeting at 11:01 p.m. Councilor Wheaton-Smith seconded the motion. All were in favor, motion passed.

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann. L. Mackie, Town Clerk