

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY  
REGULAR COUNCIL MEETING**

**Grant County Administration Center, 1400 Hwy 180, Silver City, NM**

**August 25, 2009 – 7:00 P.M.**

**Present:** James R. Marshall, Mayor  
Cynthia A. Bettison, District 1  
Thomas A. 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

**1. CALL TO ORDER/PLEDGE OF ALLEGIANCE** – Mayor Marshall called the meeting to order at 7:02 p.m.

**2. CEREMONIES** – None.

**3. PROCLAMATIONS** – None.

**4. PUBLIC INPUT** – Vivian Savitt commented that her neighbor had 2 pot belly pigs and she stated her reasons why pot belly pigs should not be considered as pets, but as livestock. She stated that District Judge Quintero's August 18, 2009, decision that her neighbor's pot belly pigs were pets did not address pig odor, health issues, or quality of life abuses for persons living in close proximity to them.

**5. COUNCIL COMMENTS** – The Council commented on the following: recently attended events; Senator Bingaman's recent Town Hall meeting in Silver City; the local weather and rainfall amounts; the grass roots effort to display American flags on September 11<sup>th</sup>; how stealing U. S. mail was a federal offense; upcoming events and exhibits; the upcoming amended animal ordinance; the feeding of deer and deer population issues; a means by which citizens could write a statement or complaint of a violation of an ordinance and have it processed without an officer having witnessed it; noise complaints on Bullard Street; positive remarks about the first 2 new electric vehicles for the Town's meter readers; handicap parking violations; the Community Garden Grant Award and how the Town could support community gardens by providing parcels of land that could be used for community garden spaces; a recent skatepark incident; the grant award for the Grant County Conference Center; how Secretary Mondragon of Economic Development for the State of New Mexico had promised that the New Mexico MainStreet Program should celebrate their Silver Anniversary Conference in 2010 in Silver City; the Mayor's teleconference with White House Staff and 9 other representatives from New Mexico and Colorado regarding energy and climate legislation; EMS Legacy Funding that was a state and national issue; and how the Council members had the right and freedom to make comments at their leisure and how it was not the Mayor's right or responsibility to censor the comments.

Mayor Marshall commended and thanked Lieutenant Michael Collins of the Silver City Police Department for the service he had provided to the Town and how he had defined the community outreach for the Police Department. He stated that Lieutenant Collins would provide the Village of Angel Fire a great service and that he would be missed in Silver City.

**6. CHANGES TO THE AGENDA** – None.

**7. APPROVAL OF THE MINUTES – Special Meeting with Lodgers' Tax Advisory Board – August 10, 2009:** Councilor Wheaton-Smith made a motion to approve the minutes. Councilor Bettison seconded the motion. Councilor Nupp requested to abstain from the vote since he had not been able to attend the Special Meeting. Councilor Bettison, Councilor Wheaton-Smith, and Councilor May voted in favor of the motion. Motion passed.  
**Regular Meeting – August 11, 2009:** Councilor Bettison made a motion to approve the minutes. Councilor Nupp seconded the motion. All were in favor, motion passed.

## **8. REPORTS – A. Budget Projected Revenues Shortfall by Alex Brown, Town Manager-Finance Director.**

Manager Brown reported on how the projected revenues had decreased from 2.3% to 10% as the fiscal year had progressed. He stated that the Town's economy was directly tied to the mining industry and gross receipts being spent in the Town. He said a total reduction of 10% or approximately \$1,000,000 in expenditures in the general fund would be required for FY 2009-2010. He stated he was able to come up with \$600,000 in grant funding which left a \$400,000 shortfall for FY 2009-2010, and the only place left to cut was in personnel costs which were 82% of the total budget. He stated that he had been meeting with the department heads and the unions, to evaluate division by division, and position by position, to see what hours could be cut in order to save the additional \$400,000 in the FY 2009-2010. He said the economic situation may continue through 2011 per the State's revenue projections. There was further discussion with the Council about the \$4,300,000 in projects that were planned for the remainder of FY 2009-2010; how they were funded by grants; how they would create jobs and gross receipts tax for the Town; and how the Town had to spend the money on those projects prior to being reimbursed from the State or Federal Government. They also discussed how safety and essential services would be the priorities. Manager Brown stated he would request budget adjustments quarterly rather than at the end of the fiscal year. Mayor Marshall asked that he continue to work closely with the Council to keep them informed. He said it was horrible when they had to look at personnel, but their duty was to maintain government functions and public safety first. He said Manager Brown was doing an excellent job in developing a plan that maintained the critical services and integrity of the Town with the available funds.

April Weitlauf, Managing Consultant for the La Capilla Heritage Project, gave a status report on La Capilla, a 28 acre park project that was started in 1997. She reported on the progress of the park, the budget, and the future plans for the park. Councilor Bettison asked Manager Brown for the status of Penny Park. He provided an update and stated that he would ask the Council for their direction during the next Council Meeting scheduled for September 8<sup>th</sup>.

Councilor Bettison made a motion to recess at 8:07 p.m. Councilor May seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 8:20 p.m.

**9. PUBLIC HEARINGS – A. Request for a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only), Application # A-602360, Applicant Name: Billy's BBQ LLC, Doing Business As: Billy's BBQ, 2138 E. U.S. Hwy. 180, Silver City, NM 88061.** Mayor Marshall stated that the Town Council would serve as the hearing board and he would serve as the presiding officer. He asked the hearing board if they had any ex parte discussion concerning the case, and none had. Alexander Ocheltree was sworn in by the Town Clerk as the only witness in the case. Mr. Ocheltree presented his case and requested approval of the liquor license for beer and wine for the casual dining restaurant that he was opening. He answered questions from the hearing board. There was no opposition to the case. Mayor Marshall concluded the hearing and asked the hearing board to render a decision. Councilor Wheaton-Smith made a motion to approve the request for a liquor license (beer and wine on-premise consumption only). Councilor May seconded the motion. There was no further discussion. All were in favor, motion passed.

## **10. UNFINISHED BUSINESS –**

**A. Approval / Disapproval of Letter of Support to the Community Preservation Partners for the Rehabilitation and Preservation of the Casa Linda Apartments at 100 East 17<sup>th</sup> Street, Silver City, New Mexico.** Jeff Carnell, Comptroller of Medlock Southwest Management Corporation from Lubbock, Texas, provided details of the ownership of the property, their partnership with Community Preservation Partners, and their request for a letter of support. There was further discussion and he answered questions from the Council. He reviewed the letter of support that the Mayor had proposed and had some concern about the language regarding market rates that was mentioned in the letter, and stated that he would like to speak with Mr. Coyne of Community Preservation Partners. Mayor Marshall expressed his concerns about the content of the original letter provided by Community Preservation Partners. He then stated that he would like the Council to approve a letter of the same general form to ensure that it was factual and served the need. Councilor Bettison made a motion to approve a letter of support. Councilor Nupp seconded the motion. All were in favor, motion passed.

**B. Approval / Disapproval of Notice of Intent Ordinance No. 1157: An Ordinance Amending Chapter 91 (Fire Protection and Prevention: Fireworks), by Adding a New Subsection 91.44 to the Town of Silver City Municipal code, Relating to the Sale or Use of Aerial and Ground Audible Devices Within the Town Limits of the Town of Silver City, Grant County, New Mexico.** Councilor May presented the details of Notice of Intent Ordinance No. 1157 regarding the sale or use of fireworks and stated the amendment was to shorten the length of time that vendors could sell the fireworks and shorten the length of time that people could ignite fireworks, and no ignition of fireworks would be permitted in the downtown area. Councilor Wheaton-Smith read a written statement by James Koons who was unable to attend the meeting. Mr. Koons' statement included a petition with over 700 signatures of citizens that supported the sale and use of fireworks. Councilor Wheaton-Smith stated he had met with 54 citizens; 2 of them were radically opposed to fireworks, but the rest supported fireworks. He suggested changing the start date of permitted sales and use for July 4 from June 30 to June 28. He agreed the downtown area should be protected. Councilor Bettison commented that some of her constituents agreed to support the NOI as written, but they were concerned that the permitted times would cut into the work week because many people work on the day after a holiday and on weekends. Councilor Nupp stated they needed to have some control over fireworks because the potential problems with fireworks included the possibility of a major fire or injuries. He commented that the intent of the NOI was admirable and he supported the intent, but he felt that it was similar to many of the firearms control ordinances throughout the country because it punished the responsible citizen without addressing the irresponsible citizen. Mayor Marshall asked if any audience members would like to speak. Jacque Cusick thanked the Council for proposing the ordinance and she expressed her concerns regarding fireworks and noise.

Councilor May made a motion to adopt the NOI as presented and stated he was open to any amendments. Councilor Bettison seconded the motion. There was further discussion. Councilor Wheaton-Smith commented on four points and asked that they consider a friendly amendment to paragraph B. (1) (a) July 4<sup>th</sup> to change June 30 to June 28 for the sale of fireworks. Councilor May asked Councilor Wheaton-Smith if he was also extending the ignition dates by changing it from June 30 to June 28 and Councilor Wheaton-Smith said he was willing to have it either way. Councilor May said he had no problem with the friendly amendment. Councilor Bettison said she had no problem with the amendment, but she hoped the fireworks vendors would help publicize the fact that the sales would start on June 28, but ignition would not be permitted until June 30. Mayor Marshall stated if the sales were going to be extended by 2 days then also extend the use by 2 days. Councilor Nupp requested postponement of the item until the next Council meeting in order to get public input. Mayor Marshall stated that the purpose of the NOI was to have a grace period for public input before the final vote, and he asked that it not be postponed. Councilor Nupp agreed. Councilor May called for the question. There were no objections. Mayor Marshall asked for the vote. All were in favor, motion passed.

## **11. NEW BUSINESS –**

**A. Approval / Disapproval of Bid 09/10-02: Wellfield SCADA System.** Manager Brown presented the details of Bid 09/10-02 and stated 3 bids were received. He said it was staff's recommendation to award the bid to Dement Electric from Silver City with a base bid of \$400,242.00 with additive alternate #8 for \$9,750.00, and additive alternate #9 for \$7,235.00 for a total without gross receipts tax of \$417,227.00, and a total with gross receipts tax of \$447,475.96. He stated the project would save the Town money on personnel overtime costs and would allow them to reduce the personnel in the Well Department by one employee, and shift that one employee to the Water Division. Mayor Marshall stated it would increase the safety and security of the water system, and would ensure that the quality of the water was maintained. Councilor May made a motion to accept the staff's recommendation to award the bid to Dement Electric of Silver City. Councilor Bettison seconded the motion. Members of the Council commented that they were glad it was a Silver City business that received the award. All were in favor, motion passed.

**B. Approval / Disapproval of Bid 09/10-07: 2009 CDBG Project for Water System Improvements for Chihuahua Hill Area.** Manager Brown presented the details of Bid 09/10-07 and stated one bid was received for the project with a Type "A" wage determination and it was staff's recommendation to award the 2009 Colonias CDBG project to J & S Plumbing and Heating from Silver City with a base bid of \$326,221.38 with additive alternate #1 for \$37,782.60, and amended lump sum amount was down by \$8,460.00 for a total without gross receipts taxes of \$355,543.98 and total with gross receipts taxes of \$381,320.92. He stated the project was funded

entirely through grant funds and the Town had been awarded \$473,000 for the project. Councilor Wheaton-Smith made a motion to approve Bid 09/10-07 to J & S Plumbing and Heating of Silver City. Councilor Bettison seconded the motion as stated. There was further discussion. All were in favor, motion passed.

**C. Approval / Disapproval of an Amendment to the Master Operating Agreement between the Town and Community Access Television of Silver City, Inc. (CATS).** Town Clerk Mackie presented the details of the amendment to the Master Operating Agreement (MOA) that would provide for an extra 2 weeks in the payment terms to CATS. She commented that John Waters, General Manager of CATS, had reviewed it and had agreed to the amendment. Councilor Wheaton-Smith made a motion to approve the amendment to the MOA. Councilor May seconded the motion. All were in favor, motion passed.

Councilor Wheaton-Smith made a motion to adjourn and Councilor May seconded. Manager Brown commented that they needed an Executive Session. Councilor Wheaton-Smith withdrew his motion.

**EXECUTIVE SESSION** - Councilor Wheaton-Smith made a motion to go into Executive Session pursuant to NMSA 1978 Section 10-5-1(H) (8) for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body. Councilor Nupp seconded the motion. A roll call vote was taken with the following results: Councilor May – nay; Councilor Wheaton-Smith – aye; Councilor Nupp – aye; and Councilor Bettison – aye. Motion passed. The matters discussed in the closed meeting were limited only to those specified in the motion for closure.

**12. ADJOURNMENT** – Councilor Wheaton-Smith made a motion to adjourn at 10:15 p.m. Councilor Bettison seconded the motion. All were in favor, motion passed.

/s/

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James R. Marshall, Mayor

Attest:

/s/

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Ann L. Mackie, Town Clerk