

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY  
REGULAR COUNCIL MEETING  
Grant County Administration Center, 1400 Hwy 180, Silver City, NM  
October 8, 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  
Robert Esqueda, Utilities Director

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE** – Mayor Marshall called the meeting to order at 6:01 p.m.
- 2. CEREMONIES** – None.
- 3. PROCLAMATIONS – "Fire Prevention Week" - October 6 - 12, 2013.** Mayor Marshall read the proclamation and presented it to Fire Chief Bencomo, Captain Nathan Schwarz, and Second Lieutenant Aric Ray. Lieutenant Ray said the focus and emphasis on the fire prevention theme would be safety while cooking in the kitchen, having an adult present at all times when children occupy the residence, and keeping at least a 3 foot distance from stove tops. He said they would interact with about 750 students from the local schools during Fire Prevention Week.
- 4. PUBLIC INPUT** – Larry McCloud said he sent a letter in May about his concerns with noise from very loud vehicles that were driving by their residence on S. Bullard Street, that he went to a Council Meeting in June or July to talk about it, and that very little had changed with the loud noise from vehicles. He said he was not going to give up because they needed relief and he suggested installing a speed bump as a solution. He asked the Council to please help.
- 5. COUNCIL COMMENTS** – Councilor Bettison commented that she attended the Governor's Awards for Excellence in the Arts, and that Mimbres Region Arts Council (MRAC) and Faye McCalmont, Executive Director, received an award. She shared favorable comments that she received from other award recipients that Silver City was fortunate to have MRAC and Ms. McCalmont as the Executive Director. She thanked the volunteers of the Friends of the Library and the Silver City Museum Society for everything that they did and how both were independent 501c3 membership based organizations that were created by local citizens to support the Silver City Library and Museum. She said they appreciated the time that they spent volunteering to the organizations and raising funds. She also commented on a film production called "X Species" that was being filmed in Grant County and that they would be in town during the next month spending their money in town for lodging, food and rent.
- 6. CHANGES TO THE AGENDA** – None.
- 7. APPROVAL OF THE MINUTES – Regular Meeting on September 24, 2013** - Councilor Bettison moved to approve the minutes of the Regular Meeting of September 24, 2013. Councilor Ray seconded. Mayor Marshall stated there was a motion and a second to approve the minutes of the Regular Meeting of September 24, 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. Update on the progress of the Safeguarding Abandoned Mines on Boston Hill Project by Ken Romig of Dekker/Perich/Sabatini.** Mr. Romig, Project Manager for the plan and design for safeguarding abandoned mine features on Boston Hill, introduced the members of his team and gave a presentation of the plan and design for safeguarding the abandoned mines on Boston Hill. He said they were currently in Phase 2 Planning and that the Assessment Phase was 90 percent complete. He reported on the 3 priorities of the New Mexico Abandoned Mine Land

(AML) Program; reviewed several maps; provided the findings and concerns of the stakeholders; the field design meeting in August; how safeguarding measures would need to be monitored and perhaps a volunteer group could assist in the monitoring of Boston Hill; the goals for safeguarding measures and stakeholder values; various conceptual designs; and the next steps in Phase 3 for design and Phase 4 for construction assistance. There was further discussion from the Council about the life of the tensile steel mesh over open pits and how it was rated to last for over 100 years; how the final report would include an estimate in today's dollars for maintenance; how replacing signs may be a first solution to addressing the problem of trails being created by the public; and how there was a lot of work to be done.

**B. Staff reports.** No reports.

## **9. PUBLIC HEARINGS –**

**A. Approval / Disapproval of an Application for an extension of water service outside Town limits. Request is to extend a 6" water line to serve 4 undeveloped residential lots located just north of Oakwood Estates between Oakwood Avenue and Sandalwood Avenue. Applicant /Authorized Representative: Michael Giusto. Property Owners: Michael R. Giusto and Adele J. Giusto.** 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 4 witnesses. Mayor Marshall read the procedures of how the hearing would be conducted. The Mayor gave the floor to Robert Esqueda, Utilities Department Director. Mr. Esqueda read the staff report that was included in the Council's meeting packet, and stated the Utilities Department recommended approval of the application based on 12 findings and 7 conditions. There were no questions from the Council. Attorney Scavron asked Mr. Esqueda if at the time of completion of the water line extension and sewer extensions if they would be accepted into the Town and if the applicant would pay for all constructions costs of the water and sewer lines. Mr. Esqueda said yes to both questions. Attorney Scavron asked if it should be reflected in the recommendation and Mr. Esqueda said it could be added. There was further discussion about the fees; the Town's Code Chapter 52, Article IV; and the definitions of static pressure, residual pressure and fire flow.

Mayor Marshall asked the applicant, Mr. Giusto, to present his case. Mr. Giusto said it would benefit the community and the Town to have the growth and to have the fees added to the city's coffers, and he thanked the Council for their consideration. There were no opponents to the application. There was further discussion about Table 1 in the public hearing materials about the fire hydrant readings and how the Town was currently not providing decent fire flows on the north end of Sandalwood; how the booster pumps at the booster station in Phase 2 of Oakwood Estates may need to be improved in the future in order to improve the fire flow; the Town's exposure to accepting a water system in a county subdivision into the Town's system when the current fire hydrants did not meet the fire flow requirements; how looping the Sandalwood and Oakwood water lines would improve the flow by 40 gallons per minute per Mr. Esqueda; how fire flows were recommended at 500 gallons per minute; how they maintained a level of 70 percent full for the water tanks at all times; and how a buyer of the lots would have to ask the Utility Department or Fire Department about the fire hydrants and fire flows, etc. Attorney Scavron stated the Town's law and liability followed the water, and that the liability out of town was the same as in town, that they should balance the economic value of extending the water line to the liability that came with it, etc. There was further discussion about how the Mayor believed it did matter if it was in town or not; how in the Town's Code a decision to grant a water main extension shall be supported by findings and substantial evidence; how they could make their decision with conditions; how the primary fire response for Oakwood Estates was the Tyrone Water Association and that they had water tanker trucks; how the secondary response was from the Town's Fire Department and that the Town's trucks had the ability to increase the water pressure with their booster pumps; concerns about safety issues by adding 4 homes into the system and how people assumed that a fire hydrant would provide water in an emergency; how they could make a condition that there shall be no further subdivision of the 4 lots or it could stay in the application process; how the applicant could still sell the lots and homes could be built without the approval of the application; and how water could not be pulled through a soft hose. Mayor Marshall asked Mr. Giusto if there was anything else he would like reflected in the record or if that concluded his case. Mr. Giusto said it concluded his case. There were no other questions from the hearing board. Mayor Marshall asked them if they were ready to render their decision. Councilor Cook moved to approve the

application and she read the agenda item description. Councilor Morones seconded. Mayor Marshall asked Attorney Scavron if they should include the adoption of the staff report and engineering reports. Attorney Scavron said yes, plus the conditions that the applicant was responsible for the construction costs for the sewer and water extensions and comply with the relevant provisions of Town Code Chapter 52, Article IV. Mayor Marshall stated the motion would be amended to the existing plus the adoption of all the staff reports and a condition that the applicant is responsible for all associated constructions costs as requested and must comply with Chapter 52, Article IV. He asked Councilor Cook and Councilor Morones if that was a friendly amendment, and they said yes. Mayor Marshall stated they had an amended motion. He asked if there was any other discussion, and there was none. He said there was a motion and a second and no further discussion to approve an application for an extension of water service outside Town limits. Request is to extend a 6" water line to serve 4 undeveloped residential lots located just north of Oakwood Estates between Oakwood Avenue and Sandalwood Avenue. Applicant /Authorized Representative: Michael Giusto. Property Owners: Michael R. Giusto and Adele J. Giusto, additionally the staff reports are adopted and a condition added that the applicant is responsible for all costs associated with the construction requested in the application and must comply with Chapter 52, Article IV of the Town Code. Mr. Esqueda said it would have to be passed by a super majority vote. Mayor Marshall 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. Mayor Marshall said the application was granted by a super majority.

Councilor Bettison moved for short break at 7:25 p.m. Councilor Morones seconded. Mayor Marshall said there was a motion and a second, and he asked all those in favor to say aye. 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 7:36 p.m.

#### **10. UNFINISHED BUSINESS – None.**

#### **11. NEW BUSINESS -**

**A. Approval / Disapproval of 2 Public Celebration Permit Applications for the Bike-tober Fest, a fundraiser for Bikeworks at 820 N. Bullard St., Silver City, NM on October 18, 2013 from 2:00 pm to 10:00 pm. Sponsored by Energy Ideal / The Bikeworks. Liquor License Holder information: Little Toad Creek Brewery, License No. 67021, and Little Toad Creek Distillery, License No. 63004, Owner name: Little Toad Creek LLC, 1122 Hwy. 35, Mimbres, NM 88049.** Sarah Jane Gendron, owner of Energy Ideal, said they were promoting bike activities and bike education, and were raising money for The Bikeworks to improve the infrastructure at 820 N. Bullard Street location. There were no questions from the Council. Councilor Ray moved to approve the 2 public celebration permit applications and he read the agenda item description. Councilor Morones seconded. There was no further discussion. Mayor Marshall said there was a motion and a second to approve the 2 Public Celebration Permit Applications for the Bike-tober Fest, a fundraiser for Bikeworks at 820 N. Bullard St., Silver City, NM on October 18, 2013 from 2:00 pm to 10:00 pm. Sponsored by Energy Ideal / The Bikeworks. Liquor License Holder information: Little Toad Creek Brewery, License No. 67021, and Little Toad Creek Distillery, License No. 63004, Owner name: Little Toad Creek LLC, 1122 Hwy. 35, Mimbres, NM 88049. 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 Resolution No. 2013-35: authorizing the execution and delivery of a loan agreement and intercept agreement by and between the Town of Silver City and the NM Finance Authority in the principal amount of \$764,950 for the purpose of financing the costs of purchasing equipment for the Scott Park Baseball and Soccer Complex for use by the governmental unit.** Manager Brown it was a loan to install lighting and safety netting at the Scott Park Sports Complex. He said they also had an additional \$175,000 from a legislative allocation that was specifically for lights, and they had an additional \$100,000 for upgrades at the Sports Complex. He said with the funds they planned to do all of the lighting, the safety netting, the electrical for the future concession stand and bathrooms, and install ADA access sidewalks. He said it was a 15 year loan and the annual debt service would be approximately \$62,000. Mayor Marshall asked if there were any comments from the audience, and there were none. There was further discussion between the Council and Manager Brown. Councilor Ray moved to approve Resolution No. 2013-35 and he read the agenda item description. Councilor Bettison seconded. There was no further discussion. Mayor Marshall said there was a motion and a second to approve Resolution No. 2013-35: authorizing the execution and delivery of a loan agreement and intercept agreement by and between the Town of Silver

City and the NM Finance Authority in the principal amount of \$764,950 for the purpose of financing the costs of purchasing equipment for the Scott Park Baseball and Soccer Complex for use by the governmental unit. 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.

**C. Approval / Disapproval of Notice of Intent Ordinance No. 1225: adopting a Municipal Infrastructure Gross Receipts Tax in the amount of one-eighth of one percent (.125%) for Public Safety purposes.** Manager Brown said Notice of Intent Ordinance No. 1225 was to reauthorize the second and third 1/16 increment of the municipal infrastructure gross receipts taxes that were originally imposed by Ordinance No. 1085 in July 2004. He said at that date the Town Council decided to put a sunset on the ordinance for the increment of gross receipts taxes so they could review what the funds were used for. He said that he provided a presentation in their meeting packet with a detailed accounting of how the funds were used to date. He said originally it was used to hire 4 additional police officers and 1 additional firefighter and to pay for capital equipment for both the Police and Fire Departments from the point they were at 10 years ago. He said it actually only paid for 3 police officers because of the increase in salary and benefits now, compared to what they were being paid 10 years ago. He said the actual revenue received from the 1/8 total increment was not enough to continue to pay for 4 police officers. He described the process of adopting the ordinance and how it would need to be presented to the voters so it would be a question on the election resolution. He said the question language should specify that it was for public safety defined as police and fire. He said if it was approved by the voters then it could only be used for public safety purposes and could not be amended for any other purpose. He said that he hoped that it would not include a sunset so they would not have to go through the process again. He said they would put the instructions for the adoption on the Town's website along with the table of the Town's list of ordinances for gross receipts taxes that had been implemented, and his presentation of how the funds had been spent since July 2004. He said they wanted to continue what was adopted with Ordinance No. 1085 in 2004. Mayor Marshall asked if it would include the 5 taxes that the Town had not yet imposed, and Manager Brown said yes, plus there was a sixth increment of municipal gross receipts taxes that was not on the list. He said they could adopt up to 1.5 percent of municipal gross receipts taxes and they had only adopted 1.25 percent up to that point. Mayor Marshall asked if anyone from the audience had comments. Walter Szymanski asked what the rationale was for not putting in a sunset on the proposed ordinance. Mayor Marshall stated it was critical infrastructure for the Town and public safety, and if \$3.3 million had not been in the budget under the tax, then that would have been \$3.3 million less in services that they could have provided. He said that going forward that number would have been higher which meant it would have had to come out of their road fund or they would have lost the 4 officers and firefighter, and the police would be using old outdated equipment. He said the Town Council was elected to protect the life, safety and health of its citizens, and the tax was a critical funding source to do exactly that. There was further discussion that the purpose of the tax was solely for public safety and a future Council could not change the dedication of the tax; how the need for ambulances was priority #2 on the Infrastructure Capital Improvement Plan (ICIP); how the public safety revenues were divided between the Police and Fire Departments; how \$3.3 million was not much revenue over a 10 year period; how the public safety fund had been supplemented by the general fund numerous times to offset extra costs so they could do what they promised to do with the public safety tax; and how the current revenue from gross receipts taxes was 7 percent less than the previous year. Mayor Marshall emphasized the importance of the public safety fund by commenting that it was predicted that the future climate would be hotter, dryer and windier, and would create a much higher demand on public safety from the Fire Department trying to respond to more intense fires, and from law enforcement in setting up perimeters and helping to evacuate people. He said they absolutely had to continue to increase their levels of public safety and not just maintain them, and that they had to be prepared. Councilor Bettison moved to approve Notice of Intent Ordinance No. 1225 and she read the agenda item description. Councilor Morones seconded. Councilor Morones and Manager Brown discussed why a previous Council added a sunset to the previous ordinance. Mayor Marshall stated the Council was the government and was responsible for public safety and for ensuring that all of the departments had sufficient resources to provide the necessary services to the town. He said if they failed it would fall on the Council, and they would have to take ownership of it and had to be responsible for it. He said the successes and the failures in the operation of the Town were owned by the Council. There was no further discussion. Mayor Marshall said there was a motion and a second to approve Notice of Intent Ordinance No. 1225: adopting a Municipal Infrastructure Gross Receipts Tax in the amount of one-eighth of one percent (.125%) for Public Safety purposes. 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.

**D. Approval / Disapproval of the destruction of records from the Executive, Finance, Fire, Community Development, Municipal Court, Police, Recreation Center, Public Library, and Utilities Departments. Quantity: 293 boxes.** Clerk Mackie said the State Records and Archives Division had approved the Town's records destruction request, and she asked the Council for their approval to destroy the records from various departments. Mayor Marshall asked if there were comments from the audience, and there were none. Councilor Morones moved to approve the destruction of records and he read the agenda item description. Councilor Bettison seconded. There was no further discussion. Mayor Marshall said there was a motion and a second to approve the destruction of records from the Executive, Finance, Fire, Community Development, Municipal Court, Police, Recreation Center, Public Library, and Utilities Departments. Quantity: 293 boxes. 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.

**12. ADJOURNMENT** – Mayor Marshall asked for a motion to adjourn. Councilor Morones moved to adjourn at 8:14 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.

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James R. Marshall, Mayor

Attest:

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Ann L. Mackie, Town Clerk