

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy. 180, Silver City, NM
April 9, 2019, 6:00 p.m.**

Present:

Ken Ladner, Mayor
Cynthia Ann Bettison, District 1
Lynda D. Aiman-Smith, District 2
Jose A. Ray, Jr., District 3
Guadalupe E. Cano, District 4

Also Present:

Alex C. Brown, Town Manager – Finance Director
James Marshall, Assistant Town Manager
Ann L. Mackie, Town Clerk
Robert L. Scavron, Town Attorney
Freddie Portillo, Police Chief
Milo Lambert, Fire Chief
Robert Esqueda, Utilities Director
Peter Pena, Public Works Director
Jaime Embick, Community Development Director

- 1. CALL TO ORDER / PLEDGE OF ALLEGIANCE** – Mayor Ladner called the meeting to order at 6:00 p.m.
- 2. CHANGES TO AGENDA** – None.
- 3. CEREMONIES** – None.
- 4. PROCLAMATIONS** – **“Give Grandly! Give Local Day” – May 11, 2019** – Mayor Ladner read the proclamation in support of the local non-profit organizations, and presented it to Carol Ann Fugagli, President of the Southwest New Mexico Non-Profit Coalition. Ms. Fugagli expressed her appreciation for the proclamation and the support on behalf of the Grant County Community Foundation and the Southwest New Mexico Non-Profit Coalition. She invited everybody to celebrate the non-profits in the area on May 11.

“Fair Housing Month” – April 2019 – Mayor Ladner read the proclamation about fair and equal housing and presented it to Jaime Embick, Community Development Director. Ms. Embick said the Town would have a booth at the Housing Fair and more details would be available later.
- 5. COUNCIL COMMENTS** – Councilor Cano commented that people had forgotten the rules of the roads regarding emergency vehicles and she asked Chief Portillo to comment. Chief Portillo asked the community to yield to emergency traffic when the lights and sirens were on; that motorists should yield to the right and pull off the road. Councilor Ray commented on the following: how motorists, walkers, and bicyclists needed to be more aware of each other during the upcoming Tour of the Gila event; people walking and texting on their phones; being careful in the crosswalks; how he believed the hospital should use their own security personnel and not put police officers in harm’s way; how schools could hire retired police officers for security; and how the use of La Capilla Park could be arranged through the Town Manager’s office. Councilor Aiman-Smith commented on the following: acknowledged the wonderful articles that contractor Lisa Jimenez and the *Silver City Daily Press* were publishing about Town departments, and how the recent articles about the Community Development Department and Public Works Department were particularly useful; information about recently passed legislation including the large tax bill HB6 and an extension of the Indoor Clean Air Act that included vaping products and that e-cigarettes could not be done inside buildings; acknowledged HB100 that replaced Columbus Day with Indigenous People’s Day in October; and her happiness with the capital outlay that would come to the Town. Councilor Bettison commented on the following: certain Federal Communications Commission regulations that would force local governments to subsidize the deployment of wireless infrastructure with no guarantee of service with residents; how she would ask the New Mexico Municipal League (NMML) Board of Directors to encourage the New Mexico legislators to support the House of Representatives’ Bill # H. R.530 and allow industry to work with local municipalities regarding wireless infrastructure; how NMML may work with the National League of Cities to support H. R.530; how the public could obtain information about H. R.530 at www.congress.gov; a recent conference call between the NMML Board of Directors,

Mayors and Governor Lujan Grisham about recent legislation and issues important to the Governor and for municipalities; and how several businesses commended Corporal Steven Delgado, Officer Tony Flores, and all police officers for their professionalism and for keeping their businesses and citizens safe. Mayor Ladner commented on various issues brought to him by the public during the Monday with the Mayor events.

6. APPROVAL OF MINUTES - Regular Meeting – March 26, 2019 - Councilor Aiman-Smith moved to approve the Minutes of the Regular Council Meeting of the Town of Silver City of March 26, 2019. Councilor Bettison seconded. The Mayor asked if there was any discussion, and there was none. He asked those in favor to approve the minutes to say aye, and all four Councilors said aye. He asked if any were opposed to say nay, and there was no opposition. Motion carried.

7. PUBLIC INPUT – Al Gamboa commented on the following: thanks to everybody that participated in the legislature and how they did an excellent job to bring back great results for this part of the state; how people needed to be sent back to driving school; and his desire to bring back the issue of side by side vehicles and work within the parameters that fulfill legalities and regulations.

8. REPORTS

A. Staff Reports. – Manager Brown reported the following: thanks to Peter Pena, Public Works Director, for replacing the speed limit signs multiple times on 32nd Street; how he would discuss the budget at the next Council meeting; how the Town received four capital outlay awards and each project was described; and thanks to all of the Representatives, Senators, Lieutenant Governor and state government officials for the four allocations.

9. PUBLIC HEARINGS – None.

10. UNFINISHED BUSINESS – None.

11. NEW BUSINESS -

A. Approval / Disapproval of two public celebration permit applications for the 24th Annual Blues Fest on May 24 – 26, 2019 at the 1200 block of Pope Street, Silver City with alcohol service on May 24 from 5:00 pm to 10:30 pm, on May 25 from noon to 9:00 pm, and on May 26 from noon to 5:00 pm. Liquor license holder information: 1) Little Toad Creek LLC, DBA Little Toad Creek Brewery, License # 67085, 203 S. Mill Rd., Silver City, NM, and 2) Little Toad Creek LLC, DBA Little Toad Creek Distillery, License # 63013, 203 S. Mill Rd., Silver City, NM. Kevin Lenkner, Executive Director of the Mimbres Region Arts Council (MRAC), and Darrell from Little Toad Creek answered questions from Councilor Cano and Councilor Bettison about the time of alcohol service on May 25 and 26 because the applications did not match up with the letter from MRAC. Mr. Lenkner asked that the letter be withdrawn. Councilor Cano discussed changing the ending times of those two days to a half an hour earlier, and she moved to approve two public celebration permit applications for the 24th Annual Blues Fest on May 24 – 26, 2019 at the 1200 block of Pope Street, Silver City with alcohol service on May 24 from 5:00 pm to 10:30 pm, on May 25 from noon to 9:00 pm, and on May 26 from noon to 5:00 pm. Liquor license holder information: 1) Little Toad Creek LLC, DBA Little Toad Creek Brewery, License # 67085, 203 S. Mill Rd., Silver City, NM, and 2) Little Toad Creek LLC, DBA Little Toad Creek Distillery, License # 63013, 203 S. Mill Rd., Silver City, NM pending an amendment to the application at the end of the meeting. Councilor Ray seconded. Mayor Ladner asked all those in favor to say aye, and all four Councilors said aye. He asked if any were opposed, and there were none. Motion carried.

B. Approval / Disapproval of a Joint Powers Agreement (JPA) for Consolidated Public Safety Answering Point (PSAP). Assistant Manager Marshall said the JPA constituted the Grant County Regional Dispatch Authority and he described how they spent the last year negotiating with Gila Regional Medical Center (GRMC) and failed. He said the Dispatch Board approved the agreement with all references to GRMC removed. He said the Board would go from a seven-member board to a six-member board, and a quorum went from four members to three members. He said the 10 percent payment distribution that GRMC had was removed and dispersed to the other parties, and the Town and Grant County's payment distribution went from 35 percent to 38 percent and everybody else went from five percent to six percent. There was further discussion. Mayor Ladner asked for a motion. Councilor Bettison moved to approve a Joint Powers Agreement (JPA) for Consolidated Public Safety Answering Point (PSAP). Councilor Aiman-Smith

seconded. Mayor Ladner 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.

C. Approval / Disapproval of Resolution No. 2019-11: A Resolution clarifying and expressing Town of Silver City policy of neither seeking nor desiring the annexation of developed property to the Town. Assistant Town Manager Marshall gave a presentation to support the approval of Resolution No. 2019-11 to affirm the Town's policy against the annexation of developed property. He provided the reasons that the Council may want to pass the Resolution which included the following: the Town has specific development standards; the Town has limited resources; developed areas bordering the Town do not meet Town standards because they are in the county and not regulated by the Town; the annexation of developed land versus undeveloped land creates unique and costly burdens to the Town; areas that were annexed historically continue to have significant and unmet needs to bring the area and services up to Town standards; the topography of Silver City and surrounding areas create unique difficulties in development and more importantly in modifying areas not developed to Town standards originally; and the Town has the responsibility to address the needs and promised services within the Town prior to consideration of accepting additional areas that may be fiscally burdensome. He reviewed the following important sections of the Town's Land Use Code: Section 6.3.3 E) for the process of annexation; Article 5 Development Standards; and Article I, Section 1.3 Purpose, Section 1.3.2, Section 1.3.3, and Section 1.3.4. He also discussed the following important Town Codes that were much different than the county: animal care standards with a two animal limit and no single-point tethering; fire prevention/suppression codes that establish fire breaks, set-backs, ingress and egress, fire flows which all relate to the Town's ISO (Insurance Service Office) rating based on existing Town limits, and how the ISO rating impacted every individual and business in the Town regarding their homeowner and business insurance; utility infrastructure; street standards and drainage, the slope, condition, surface material, gutters and sidewalks, and dedicated 50 foot right of way; and how the Town had an annexation process in place for both Town initiated and property owner initiated. He discussed the criteria for annexation and the importance of a fiscal impact analysis and how the territory to be annexed, upon build-out, shall not diminish the level of services identified by the Town. He said the Town's resources were currently stretched for police, fire, public works, and utilities, and the applicant of a developed area would have to bring the property up to Town standards.

Councilor Bettison asked about the ISO rating. Fire Chief Lambert said an annexation could increase the Town's ISO current rating of a four class to possibly a five or six class which would increase the insurance rates for all personal and business insurance in the Town. Mr. Marshall continued the discussion by reviewing what an annexation did to the residents in the annexed territory: how they are suddenly mandated to come into compliance with the Town's set of rules and regulations that are typically more stringent than the county's rules and regulations; how costs may shift to residents, especially in multi-occupancy lots; how areas would have to be brought up to Town standards; and how the Town only allowed two animals. He stated that without a fiscal impact analysis to show positive increases to revenues, the following Town services would be diluted: police; fire; streets; sanitation; code enforcement; utilities; and existing issues with drainage would become a burden. He reviewed the issues with the Ridges Mobile Home Park regarding an annexation and how there was minimal opportunity for fiscal resources for the Town to address the additional burdens. Manager Brown said without a fiscal impact analysis he estimated that the Town would lose approximately \$70,000 from the water fund because the out-of-town customers paying out-of-town rates would begin paying in-town rates. He said that burden would be spread among the remaining residents of Silver City to cover the losses in the water fund. He said the sanitation fund would generate about an additional \$80,000 per year, but it would be to provide additional services; that the Town would charge the residents of the annexation the tipping fees instead of charging the property owner of the Ridges Mobile Home Park. He said all the cost burden would be shifted from the property owner to the renter and to the Town. Mr. Marshall also provided an example of the annexation process of undeveloped land that would result in an ability to ensure the Town could provide the services to the newly annexed territory and the subsequent development of the territory and not negatively impact the citizens they were currently committed to.

At 7:25 p.m. Mayor Ladner asked for a motion for a short break. Councilor Bettison moved for a short break. Councilor Aiman-Smith seconded. The Mayor asked all those in favor to say aye, and all four Councilors said aye. Motion carried. The Mayor called the meeting back to order at 7:32 p.m. Manager Brown asked several department

heads of the Town to report on the impact the annexation would have on the services their respective departments provide.

Police Chief Portillo stated the Police Department had one Animal Control Officer and one Code Enforcement Officer for the Town and an annexation would really stretch out their ability to meet those needs, and it would take a lot of time to bring the area up to par with the Town Code. He said it also came down to an officer safety issue because they had a minimum of three officers on the street. He said he may have to make it mandatory to have four officers on the street to cover the area, and the impact on the officers would mean they would not have the ability to take time off. He said the distance to the area would be an officer safety issue and would affect response times. Councilor Bettison brought up the fact that the police would have to cross county lines to get to the area and county residents may expect the Silver City Police Department to also provide services to them, etc. Chief Portillo said the Silver City Police Department would have to act in an emergency situation. There was further discussion.

Fire Chief Lambert discussed several points beyond the ISO rating. He said the water supply in the area was very dependent upon the single water line running across Ridge Road. He said if the Fire Department drew water from any of the existing hydrants downhill from Ridge Road or any of the proposed streets, they would have approximately three to six minutes of water before they would have to shut down operations. He said they would stand a very good chance of cavitating the line by drawing enough water out of the line that could not be replaced and it would collapse the line and damage their vehicles. He asked the Council to consider the 2011 Quail Ridge Fire when they lost 56 structures that had wide-open space around them, and the annexation area's properties were close together and did not have property boundaries that are typically mandated in the city limits. He said the situation was worse because the eroded ravines in between the streets were extremely full of debris and brush so they could have the same scenario as on Quail Ridge going through Silver Acres, and the chance of losing 70 percent or greater of the structures in that instance was very likely. He said the ISO rating also looked at the distance from the nearest fire station for response, and that currently their ISO rating was judged on the farthest distance on Ridge Road which was 1.8 miles from Station 1 on Hudson Street and the end of the annexation area was 3.8 miles from the same station. He said going from 1.8 miles to 3.8 miles without building another fire station or doing some extreme improvements on the water supply and fire protection of that area would definitely change the Town Fire Department's ISO rating. He said that change would affect the town citizen's insurance rates for business and residents, but it would also affect the funding that the Fire Department received from the State. He said the loss of several ISO points would take about one-third of his operating budget, and they would rely on general funds which would create additional burdens on the Town's general funds.

Mr. Marshall said they heard there was an application before the Municipal Boundary Commission, what they were proposing to the Council was a general policy and many of the points mentioned about Ridge Road also apply to Mountain View Road, and other areas. He said they were trying to prepare the Council and the citizens and give some level of security that the policy of the Town was to ensure there was no harm given by an annexation anywhere around the town. He said the Resolution was a restatement and reiteration of the Council's policy and educational for anybody that may be considering annexation so they would know what the Town is looking for and what the Town needs after this proceeding. Councilor Bettison discussed how in the past particular fire hydrants were upgraded in order to ensure the Town's ISO rating was maintained. Mr. Marshall said they also did recent projects in town to make sure there was commercial fire flow for some commercial development right in the middle of town in District 1. He said Mr. Esqueda, Utilities Director, was the one responsible for making that happen.

Robert Esqueda, Utilities Director, said the proposed annexation area was developed in 1994-1995 so the standards were not the same as current standards. He said the Town currently asked new developers to perform a water impact analysis and a sewer impact analysis to provide insight on what the minimum size of lines were necessary and what types of improvements were needed within the development. He said those analysis also indicate if there would be any negative impacts to the existing infrastructure for sewer or water lines or to see if there were any required improvements to the existing infrastructure that lead to the development so it would not negatively impact existing residents. He said it was the same for the sewer collection system. He said it was easier to work with undeveloped land. He said they would need to determine what would be necessary to mitigate any issues and what cost would it bear on the Town to make any improvements. Manager Brown gave a specific example of how the Town worked with

the County when they built the jail; the County had to increase the capacity of the water line that went to the jail so they could have proper fire flows for their proposed construction. He said the Town even paid for the difference of what they specifically needed to increase the sizing for future development. He said it was a perfect example of how they had been working with an entity to be proactive in an area.

Peter Pena, Public Works Director, said he saw many concerns because the area did not meet Town standards and to bring it up to Town standards would cost a lot of money. He described how costly projects were around Town, and any improvements needed for the annexation would be very costly for the Town. He said his biggest concerns were the drainage issues along the ridges that were very steep with no flood control, so water went everywhere. He said resolving those issues would start with doing curb and gutter at a very minimum, and that was very costly because of the number of streets for a couple of miles. He said the cost impact to the Town would be great in order to get the area up to standards for flood control. He said it was critical and he described the issues they had with the bottom of the ridges at the old landfill site. He discussed the following concerning the area: how the standards were not met by the roads; how there were no drive pads which were important for drainage; how they may not be able to meet ADA standards for sidewalks, etc. because of how steep it was unless they built costly retaining walls and structures of that nature; and how there would be a lot of impacts to the Public Works Department. He concluded by saying there were a lot of needs in the Town that they were not able to meet, and the annexation would add to what they already had.

Manager Brown said they all knew that in Silver City, because of the topography, the drainage issues were immense all over town. He described specific areas and how the cost of a recent drainage study from Highway 180 on Market Street down to Bullard Street would cost \$120,000 just to do the study and did not include any work to mitigate the drainage issues in that area. He said they had an old community and the Big Ditch occurred because of poor drainage development. He said most of the infrastructure projects they work on specifically to streets were increased by 40 to 50 percent in the cost of construction because of all the added drainage they had to include because of the topography of the town. He said Deming could get twice the construction dollars that Silver City could because Deming did not have to plan for drainage. He said to add another area would compound their issues and would put them farther and farther behind the eight ball. Councilor Bettison discussed how the money came from gross receipts tax and property tax that the citizens were paying for, and how when they say "the Town" it meant the residents and people that spend money in Silver City. She said the Town would be losing \$1.8 million in hold harmless gross receipts taxes and there would be no way to fully recover from that loss even if new taxes were imposed; that the burden would be passed down even more to the citizens. She said the department heads were doing a good job, but she wanted to bring it back to the residents and all the taxes they pay.

Jaime Embick, Community Development Department, said the earlier presenters did a great job of describing what her job was. She said they accept applications and then work with the department heads and the developer to make sure all the Town standards were met. She described the application process and said if that did not happen the Council and department heads would not have a complete picture to look at when they had to make a decision. She said the Land Use Code was specific as to what was required in applications.

Mr. Marshall said it was important to maintain the sustainability of the Town and the Town staff had looked at many areas contiguous to the Town to come up with this recommendation and affirmation of their policy. He said the Land Use Code and the criteria, and the historic willingness of the Town to consider applications and to go to great lengths to negotiate acceptable solutions for both parties, is a good sign for the public and the town. He said all these issues and factors to be considered truly impacted people and the resources were limited. He said they had to make sure if they were going to add additional burdens on those resources that they were able to take care of the residents of the town as they exist today. He said many areas meet the requirements of annexation that meet the standards as far as character, but not many areas meet Town standards as far as infrastructure and could potentially create a great financial burden as well as a dilution of resources. He recommended the Council approve Resolution No. 2019-11.

Mayor Ladner thanked staff for the very thorough presentation. He said he could not tell how many phone calls he had received over the years during the rainy season about flooding and the roads being torn up by the waters running down the street in various parts of their community. He said each time he met with Manager Brown and Mr. Pena about it, their response was to be patient because they would address the issues as they could when they had the money. He said

the vote would send the message to the community members, and he strongly recommended they send the message that the Town will help when it could, but they were not going to dilute their resources in any annexation. He said that was his personal take on it. He asked the Council if they had comments or questions for Mr. Marshall.

Councilor Aiman-Smith said the Resolution reaffirmed policies imbedded in the Land Use Code that were reflected in various Town plans and the Comprehensive Plan. She said the Resolution was saying this is how the Town has decided to do business in order to protect its character and in order to ensure they were prudent with their funds; to do what was possible given the historical nature and the ongoing nature of the town. She said it was an affirmation and thanked everyone for all the work. She said the Town policies had been active for some time.

Councilor Ray asked if they approved the Resolution, would the annexation be forced upon them. Attorney Scavron responded by saying normally an annexation occurs when there was an agreement between the property owners and the municipality. He said the usual problem was not having an annexation forced upon you, but the usual problem was a voracious municipality trying to expand its borders and gain influence or power, political or economic, so most of the laws had been drafted to prevent the voracious municipality from trying to expand itself. He explained the three methods of annexation and said two out of the three methods were when the city wanted the annexation, but they had to prove they could provide the services. He said the third method of annexation was when the property owner did not come to the city and look for an agreement but tried to impose its will through the Municipal Boundary Commission. He explained further and stated the Municipal Boundary Commission was obligated to listen to the Town, and the Town deserved high deference. He said the Municipal Boundary Commission could probably force the annexation upon the municipality unless there were reasonable reasons expressed by the municipality why such an annexation would be detrimental to the town, to its principals, to its residents, to its financial ability, and to its uniqueness. He said they were all aware there was an annexation notice published in the newspaper where a property owner was using the Municipal Boundary Commission to force an annexation on the Town, but by the presentation made they could see there was reasonable opposition to any annexation, and not just to this particular property owner. He said the problem is the Municipal Code's Land Use Code already has procedures designed for everything in the Resolution, but the Municipal Code only deals with a cooperative annexation with a petition or arbitration. He said the Town's voice was heard during the presentation as to why there should be no annexations; that it was not a wealthy town. He said the presentation made by staff was the best expression of what the Land Use Code already said, what the Comprehensive Plan already said, and what the practices of the Town have been for the last 25 years. He told the Council what they did would be the voice of the Council because they would not be testifying in the case. He said their voice would express the policy that they all agreed upon; that they were not annexing any property unless it met the infrastructure needs, did not dilute the services to the present residents, was economically affordable and intelligent to do it, and it was mutually beneficial. He said they would have to make those findings plus the other required findings required in the Land Use Code in order to hold any annexation to those standards. He concluded by stating the entire staff of the Town would give them that support.

Mayor Ladner gave the floor to Mitch Hellman in the audience. Mr. Hellman said he was a resident for 16 years and was truly impressed by the presentation. He said he hoped they approved the Resolution because they were seeing the most clear-cut example as to why they should not annex a portion of the land around Silver City. He said there was not a clear explanation as to who would pay for the property coming up to Code and the Town obviously could not afford to do so; that it should be said whether or not the land owner plans to pay for any portion of the bill.

Attorney Scavron said he discussed with the Town Manager to learn that any annexation of developed property contiguous to the Town would be unaffordable for the Town to make those infrastructure upgrades. He said state statute had an improvement district where all the costs to bring a property up to Town standards would be born by the owner or owners of the property and would become a tax assessment on the owners. He explained further and said a governing body could create an improvement district, and it could be created outside the town limits with the permission of the county if the health, safety and welfare of the town was being threatened.

Mayor Ladner thanked Attorney Scavron and called for the motion. Councilor Cano moved to approve Resolution No. 2019-11: A Resolution clarifying and expressing Town of Silver City policy of neither seeking nor desiring the annexation of developed property to the Town. Councilor Ray seconded. There was further discussion. Mayor Ladner

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.

D. Approval / Disapproval of Disposal of Fixed Assets of the Library. Manager Brown said the Library would like to dispose of the list of items and that normally they would wait for a larger list, but he wanted the new purchasing agent to work through the process. Councilor Aiman-Smith moved to approve the Disposal of Fixed Assets of the Library and read the list that included three chairs and one desk. Councilor Bettison seconded. Mayor Ladner asked all those in favor to say aye, and all four Councilors said aye. He asked if any were opposed, and there were none. Motion carried.

E. Appointment of Councilors to committee, board, and group positions. Mayor Ladner appointed Councilors to the following committees, boards and groups: Councilor Cano appointed to Cemetery Board and Region IV Chief Elected Officials of New Mexico Workforce Connection Board; Councilor Aiman-Smith to Municipal Library Community Advisory Group and the Area Transportation Authority Board; Councilor Bettison to the Municipal Museum Community Advisory Group and Alternate #2 to the Southwest New Mexico Council of Governments Board; Councilor Ray as Alternate to the Grant County Regional Dispatch Authority Board and as Alternate to the Southwest Solid Waste Authority Board; and Mayor Ladner to the Grant County Regional Authority Board, Alternate for Area Transportation Authority Board, Southwest Solid Waste Authority Board, Grant County Water Commission, Silver City MainStreet Project, and Alternate to Region IV Chief Elected Officials of New Mexico Workforce Connection. There were no objections from the Council.

12. Adjournment – Mayor Ladner concluded the meeting and asked for a motion. Councilor Aiman-Smith moved to adjourn at 8:25 p.m., and Councilor Ray seconded. Mayor Ladner stated there was a motion and a second to adjourn. He asked for a vote of all those in favor, and all four Councilors said aye. Motion carried.

Ken Ladner, Mayor

Attest:

Ann L. Mackie, Town Clerk