

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

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

**April 27, 2010 – 7:00 P.M.**

<b>Present:</b> James R. Marshall Cynthia A. Bettison, District 1 Jamie K. Thomson, District 2 Simon Wheaton-Smith, District 3 Michael S. Morones, District 4	<b>Also Present:</b> Alex C. Brown, Town Manager-Finance Director Robert L. Scavron, Town Attorney Ann L. Mackie, Town Clerk Steve Reese, Police Captain Peter Russell, Community Development Director Alexandra Perrault, Town Planner
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- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE** – Mayor Marshall called the meeting to order at 7:03 p.m.
- 2. CEREMONIES** – None.
- 3. PROCLAMATIONS** – Mayor Marshall proclaimed May 3<sup>rd</sup> through May 10<sup>th</sup>, 2010, as “Yes we CAN” feed the hungry in our community one CAN at a time”, and presented the proclamation to members of the 2010 Class of the Southwest New Mexico Leadership Program, sponsored through Western New Mexico University. Mayor Marshall proclaimed the month of April 2010 as “Fair Housing Month” and presented the proclamation to Mike Eley, Town Planner.
- 4. PUBLIC INPUT** – Laurie Bentley, Vice-President of the Silver City MainStreet Project commented on upcoming events in Silver City to celebrate the 25<sup>th</sup> anniversary of the MainStreet Program in Silver City and in the State of New Mexico. Susan Aumann commented on how PNM and the Town of Silver City turned off utilities for non-payment of bills, and said she protested it because it caused health and safety issues. Terry Timme, Chair of the Town’s Recycling Advisory Committee, commented on the success of Earth Day on April 24<sup>th</sup>; how they collected 5 tons of electronic waste and other recyclable materials; and acknowledged the sponsorship from the Town of Silver City and the Town’s Public Works Department.
- 5. COUNCIL COMMENTS** - The Council commented on the following: thanks were given to Terry Timme and the Recycling Advisory Committee and others that made Earth Day possible; the Tour of the Gila and how it was great publicity for the Town and provided economic development, and how Jack Brennan and Michelle Geels should be thanked for their hard work; recently attended events; how Gila Hike and Bike appreciated the Town’s support of the Tour of the Gila race; how citizens help support and inform governance; a challenge to the Council to look into other forms of alternate energy; how the Town’s electric vehicles were doing well; how the Town’s decision to move to the State’s insurance pool was a positive decision; how funds needed to be made available for a flooding situation on Cooper Street; how merchants, residents, and Town staff should welcome guests to the community by keeping it clean and attractive; how Steve Montano from Secretary Mondragon’s office was working hard for Silver City and Grant County with regard to economic development; how the public should attend and participate in the upcoming budget meetings; and the Dispatch Board and all of the agencies involved with the coordination of the Tour of the Gila race were commended.
- 6. CHANGES TO THE AGENDA** – Following Reports, the Mayor received a motion, a second, and affirmative votes by the Council to move New Business items B, C, and D ahead of the Public Hearing.
- 7. APPROVAL OF THE MINUTES – Regular Meeting – April 13, 2010** - Councilor Bettison made a motion to approve the minutes. Councilor Wheaton-Smith seconded the motion as stated. All were in favor, motion passed.
- 8. REPORTS** – Manager Brown reported on how the Town’s decision to move to the State’s insurance pool was a cost benefit to the Town and that it offered more options to the employees for insurance coverage; how funding would be available to fix the flooding problem on Cooper Street in the next fiscal year’s budget; how the Town received a grant in the amount of \$472,000 from CDBG for Chihuahua Hill street drainage and sidewalk improvements; and how

Penny Park was vandalized after the Earth Day event. Representatives from New Mexico Game and Fish reported on the Silver City deer population and provided goals and objectives to reduce the deer population that included a regulated hunt to focus on does. There was further discussion with the Council, Attorney Scavron, and Police Captain Steve Reese about the proposed hunt within the Town limits.

Councilor Wheaton-Smith made a motion for a recess at 8:08 pm. Councilor Bettison seconded the motion. All were in favor motion passed. Mayor Marshall called the meeting back to order at 8:22 pm and asked if anybody for the public hearing would object to moving New Business items B, C, and D as the next orders of business. There were no objections. Councilor Bettison made a motion to move New Business items B, C, and D before Item 9. A. Councilor Thomson seconded the motion. There was no discussion. All were in favor, motion passed.

## **11. NEW BUSINESS -**

**B. Approval / Disapproval of Special Dispensers Permit Application by Mimbres Region Arts Council for the 2010 – 15<sup>th</sup> Annual Silver City Blues Festival and Beer Garden, May 29-30, 2010.** Faye McCalmont, Director of the Mimbres Region Arts Council, requested approval of the application and stated it was the 15th annual Blues Festival. There was further discussion. Councilor Morones made a motion to approve the Special Dispensers Permit Application. Councilor Wheaton-Smith seconded the motion as stated. There was no further discussion. All were in favor, motion passed.

**C. Approval / Disapproval of Public Celebration Permit Application by Silver City MainStreet for MainStreet's 25<sup>th</sup> Anniversary Reception event at Gallery 400 from 6:30 pm to 8:30 pm on May 15, 2010.** Laurie Bentley, Vice-President of Silver City MainStreet Project, asked for approval of the Public Celebration Permit. There was further discussion. Councilor Wheaton-Smith made a motion to approve the application. Councilor Morones seconded the motion as stated. There was no further discussion. All were in favor, motion passed.

**D. Appointment of one member to the Silver City Veterans Park Advisory Committee.** Mayor Marshall received the Council's consensus to appoint Roy B. Anderson to the Committee.

**Prior to the public hearing on the agenda**, Mayor Marshall asked Peter Russell, Community Development Director, to go over the process and procedures for the current stage of the Planned Unit Development (PUD) hearing because the Council had never done it before. Mr. Russell described how a PUD was a development process that allowed for something different than the standard zoning in the Town, and it had 2 components: 1) a zoning component, and 2) a subdivision/development component. He said a PUD was heard in multiple iterations: 1) a sketch plat was reviewed by the Community Development Department, and 2) the developer developed a concept plan. The concept plan would outline some general scenarios on how a PUD might be developed before a substantial investment in the planning was done. He said the PUD had a concept plan which would specifically address mixing uses, i.e. Residential A, Residential B, and Commercial, and the PUD would allow those zoning categories to be mixed in a single contiguous area of land. He said the PUD allowed mixed uses; allowed density issues to be addressed that might be different from the standard, i.e. mixed lot sizes or to have multiple family housing mixed with single family housing; and addressed some development standards so the lay out could be different than typically required. He said the PUD concept plan was heard before the Planning and Zoning Commission and they recommended that it be heard before the Town Council. He said if the Council approved the concept plan with or without conditions; it would be the basis for developing the final PUD plan which would go before the Planning and Zoning Commission and again to the Town Council. He said it was all predicated toward an actual subdivision that would be submitted at a later date. He stated it was the first PUD plan that the Town of Silver City had done, but the developer was working with a planner that had done many PUD's elsewhere. He said the subdivision submittal would be the point when they would obtain specific drawings on the water lines, fire hydrants, streets, etc., and that would be the time when they would specifically be able to say what the offsite impacts would be in terms of water development, etc. He said the staffs of the Planning Department, Fire Department, Utilities Department, and Public Works Department had reviewed it and felt that in general there was the capacity to serve the PUD, but the specifics of what onsite developments would need to happen and what offsite impacts would need to be addressed would not be identified until the actual proposal was submitted. He said there would be multiple opportunities to address concerns that may develop through the process because there would be 2 public hearings for the concept plan, 2 public hearings for the final PUD plan, and 3 public hearings for the subdivision.

There was further discussion between the Council, Mr. Russell, Attorney Scavron, and Planner Perrault on the following: concerns about how the Town's Land Use Code, page 119 (5) described how the concept plan and PUD re-zoning would be approved by the Council concurrently; how the Council could set conditions; how the developer needed fundamental knowledge before spending a large amount of money to satisfy the things necessary for the PUD plan; how the approval of the concept plan would lead to more actions and more opportunities to review it before considering the final PUD plan which would constitute re-zoning; how once the property was rezoned it did not mean the subdivision had to be approved and how conditions could later be put on the subdivision; how approving the concept plan would open the door by saying the idea was reasonable, and how the Council would have continued oversight and could still look for compliance; how the excessive amount of material given to the Council created confusion; how the criteria of the PUD, Land Use Code, pages 118-119, #3 (a-h), could not be satisfied until the proposal of the subdivision was submitted; how there were water rights available and sewer capacity to serve the subdivision; how it was not transparent and how a work session should have been held before the public hearing; how the Council had a unique opportunity to revise the language of the PUD section of the Land Use Code in the upcoming revision of the Land Use Code; how the current Land Use Code would be followed with the application for Concept Plan PU 09-1; how the process had been transparent because procedures had been followed and everybody had known about it for 1-2 years and how the goal was to have a fair consideration; issues about the legal notice for the public hearing and whether it should have included rezoning in the notice; how the map would not change until the final PUD plan was approved which would effectuate re-zoning; and how the Council could make a condition in the approval of the concept plan to reserve the right to review the proposed uses by the developer at the time of the final PUD plan. Mayor Marshall asked if there were any other questions by Council on the process. He called the item on the agenda.

**9. PUBLIC HEARINGS – A. Approval / Disapproval of Concept Plan of PU 09-1 – a request for a Planned Unit Development for a tract of land approximately 110 acres in size, located on over 200 lots on portions of Blocks 2-14, and part of Sections 2 and 11 of the Rio Vicente Subdivision. The applicant was Esperanza Hills, LLC.** Mayor Marshall stated that 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 this case. Mayor Marshall disclosed that he was a recipient of 2 emails sent from the applicant in the previous 2 days that may have contained information about the hearing, but he stopped reading it when he realized it was about the case. He told the applicant to be very careful that the Council was not on any email lists that discussed hearings because that may put them in a rolling quorum or ex-parte decision. Councilor Morones disclosed that he had done professional services for a member of the Esperanza Hills, LLC, but had no ex-parte discussions on the subject matter. Mayor Marshall asked if he was declaring a conflict, and Councilor Morones stated he just had a working relationship with them and had no ex-parte discussions or work in relation to the subject. There was no objection from the Council. Councilor Wheaton-Smith stated he had no discussions on the PUD, but had a number of phone calls from adjacent citizens that were not parties to the case. There was no objection from the Council. Councilor Bettison stated she received the email and deleted it after reading the first couple of lines in the email. She asked that they not send her any more email because it was close to ex-parte that she had received it. There were no objections from the Council. Mayor Marshall 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 6 witnesses for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted.

Alexandra Perrault, Town Planner, read the staff report which included the description of the property; the intent of the Esperanza Hills Planned Unit Development; and concerns of staff from Utilities, Public Works, Police, Fire and Community Development Departments. She stated that the Community Development Department staff recommended approval of the applicant's concept plan as long as the staff's concerns and recommendations about the zoning were addressed, and she provided a list of 5 conditions that they would like to see on the final PUD approval. She stated the Planning and Zoning Commission voted 5 to 1 to approve the applicant's concept plan during their February 2, 2010 meeting, but they had a condition that the Commission reserved the right at the final PUD review to approve further specificity of the uses as well as the right to make minor changes in the map to include zoning, circulation, and the recommended sustained residential zone buffer.

Mayor Marshall asked the applicant to present his case. Charlie Deans, Planning Consultant of Community by Design and Agent for Esperanza Hills, LLC, stated he had written several PUD's in different jurisdictions and he described

how a PUD was typically done when a property was unique or distinct or had particular characteristics about it that made the conventional zoning not necessarily the most appropriate way to go. He said his understanding of the Town's Land Use Code was that the approval of the conceptual plan would not change the zoning map, but that would happen when the final PUD plan was approved after more public hearings. He said the approval of the concept plan would give the developer some level of certainty in terms of moving forward and doing the more detailed engineering and responding to some of the things, and how a developer agreement would be part of that; and how the developer was willing to participate in offsite issues concerning utilities and roadway improvements on Mountain View Road. He stated that he and the owner, Bruce McKinney, may have confused things because they had exceeded the requirements for the concept plan, but they did it in order to understand the property and the kind of development that they wanted to see there. He described how the property was currently zoned and how they did a number of analyses on the property. He stated there were 3 zoning categories in the plan for the 110 acres: the regenerative open space with restoration work, the sustainable neighborhood with a variety of densities, and the neighborhood services (formerly residential services) that was changed from mixed use and were restricted. He said the plan represented 270 dwelling units and other mixed uses; it would be a green development that would encourage walking; and it would be considered a downtown neighborhood. He described the regulatory part of the plan that had been changed due to various discussions with citizens, the Commission, and staff; and stated that they had deleted the retail commercial and light manufacturing categories from the Neighborhood Services designation, and re-defined Residential Services for non-residential uses to be limited to bakeries, convenience stores, personal services, and they eliminated vehicle repairs and vehicle gas stations. He said the maximum building size would be 5,000 square feet. He requested that the first condition on Street No. 1 be amended to add a phrase at the end as follows: "unless the specific intersection designed demonstrates compliance with all safety and ASHTO standard requirements for that intersection." He said they met the spacing requirements between the 2 intersections, but needed to do further study. He said they were fine with the rest of the conditions and would satisfy them before the final PUD.

Mayor Marshall asked Mr. Deans about the definition of Residential Services and what was the mechanism for enforcement in perpetuity. Mr. Russell stated business licenses would have to follow what was allowed in the PUD zone, and the Town would be the enforcer. Mayor Marshall asked if there were any witnesses in support of the applicant's case. Mr. Jim Goodkind came forward; stated that he lived on Mountain View Road; that he had followed the process for a couple of years; how the PUD process was a substantial improvement in comparison to the process of other subdivisions that were developed; how the applicant had more than demonstrated the basis of his intent and provided an abundance of detail; how the Mountain View Road pointing south was perhaps one of the only areas inside Town limits that did not have basic Town services such as water and sewer; and how Mountain View Road was traditionally a dangerous and curvy road and lacked services, but this kind of development would bring those services to the area. He said it could take years before the 120 dwelling units were built, and he asked the Council to consider that it would be too long to wait for the basic street improvements that were needed on Mountain View Road.

Mayor Marshall asked if there were any witnesses in opposition to the applicant's case, and there were none. He asked Mr. Deans if there was anything else he would like to be reflected in the record. Mr. Dean addressed the 3<sup>rd</sup> condition that Mr. Goodkind had mentioned regarding Mountain View Road improvements, and said from day 1 there would be some required improvements to Mountain View Road adjacent to the project, and potentially some improvements up to the 10<sup>th</sup> Street intersection. Mr. Russell commented that the negotiations were not complete, but the idea was to tie each phase to a specific amount of investment in the road area so the property adjacent to the subdivision would be developed per phase. He said the Town was working on a co-op project for 10<sup>th</sup> Street that would address the intersection at 10<sup>th</sup> Street. He said the Town had agreed tentatively to place Mountain View Road on a State highway funding request, but it would have to be concurred by Council to seek funds to re-develop Mountain View Road from Highway 180 to 10<sup>th</sup> Street, but it was uncertain if the Town would obtain the funding.

Councilor Wheaton-Smith made a motion to recess at 10:00 pm. Councilor Bettison seconded the motion. All were in favor, motion passed. Mayor Marshall stated the hearing was back in session at 10:14 pm and stated for the record that it was his ruling that the hearing was properly notified in compliance with the Open Meetings Act. He asked Attorney Scavron to advise them on Chapter 4 which was the subject matter of the hearing. Attorney Scavron stated that previous to the hearing there was a lengthy discussion, and none of that discussion could be incorporated into the hearing. He gave his legal opinion from the Land Use Code, page 118, and read Chapter 4 as follows: "After receiving the recommendation of the Planning and Zoning Commission, the Town Council shall hold a public hearing on the

proposed concept plan and PUD re-zoning application. At the close of the public hearing, the Town Council shall approve, approve with conditions or deny the re-zoning and PUD concept plan, based on the criteria provided below.” He said his interpretation was that the re-zoning would not occur until the final PUD plan was passed on by the Council. He stated if they approved the concept plan they were giving guidance to the developer and encouraging him to continue with the application leading to a re-zone. Mr. Russell agreed with Attorney Scavron.

Councilor Wheaton-Smith made a motion to go in to Executive Session pursuant to NMSA 1978, Section 10-5-1 (H)(3) for deliberations by a public body in connection with an administrative adjudicatory proceeding at 10:18 pm. Councilor Bettison seconded the motion. A roll call vote was taken with the following results: Councilor Wheaton-Smith – aye; Councilor Morones – aye; Councilor Thomson – aye; and Councilor Bettison – aye. Motion passed. Mayor Marshall called the meeting back in open session at 10:45 pm and said the hearing would continue. He stated the closed session was held pursuant to the motion for closed session, discussions were limited to the matters at hand, and no decisions were made.

Councilor Wheaton-Smith stated the Council had reviewed the ordinance (Land Use Code), 151.092, specifically the section relating to the criteria relating to the approval of the concept plan, and they found that they had met those criteria. He said they had come up with conditions that he would be proposing. He said that they were given a set of conditions for final PUD approval, and that a concept PUD approval was being considered at the hearing. He said he would make a motion to accept the concept PUD and he read the conditions that he would propose in his motion which amended Condition #1 and added Conditions #6 and #7. There was further discussion with the applicant, Mr. Russell and the Council, and Mr. Russell recommended further amendments to Condition #1. There was further discussion and the applicant had no objections. Mayor Marshall asked if there was anything else he would like to discuss or have reflected in the record regarding his application. Mr. McKinney, owner of the property, asked Councilor Wheaton-Smith to read Condition #6 again. There was further discussion about street issues that would not be decided until the subdivision submittal. Councilor Wheaton-Smith said the reason he added Condition #6 was because there were red flags from the department heads.

Mayor Marshall asked if the hearing board was prepared to consider the application and render its decision. Attorney Scavron said they should make it clear that there would be no zoning change effective during the hearing because it was a continuing process that would lead towards a decision on an ongoing application for re-zoning, and the re-zoning was not occurring during that hearing. Mayor Marshall asked that Attorney Scavron’s statement be reflected in the record.

Mr. Goodkind asked about Condition #6 and whether they were giving the departments a veto right. There was further discussion about the appeal process. Mayor Marshall asked if the hearing board was prepared to consider the application and render its decision. Councilor Wheaton-Smith made a motion to approve the concept plan of the PUD PU 09-1 and he read the description of the agenda item. He further stated in his motion that they were adopting the conclusions of the Planning and Zoning Commission and their conditions, and they were further adopting the conditions that were provided as a matter of record by Town staff with some amendments, specifically the very first condition on circulation would read as it was except they would add after that sentence, “, unless the specific design meets Town of Silver City adopted standards or as may be later amended and with the approval of the Town Engineer.” He said the rest of the conditions would remain except they would add some more, “All concerns present or future of the Public Works Department, the Silver City Police Department, and Silver City Fire Department shall be addressed to their satisfaction before the final PUD is submitted to the Council, and finally “Specific zoning allocations are to be approved by the Silver City Council.” Councilor Bettison seconded the motion as stated. There was further discussion between Mr. Russell and the Council about parking and how it would come under the subdivision plan, and how the Community Development Department should be included in the list of departments under Condition #6. Councilor Wheaton-Smith agreed and made a motion for a friendly amendment to add the Community Development Department. Councilor Bettison seconded the motion for a friendly amendment. There was no further discussion. All were in favor, motion passed. Councilor Wheaton-Smith reiterated that there was no specific zoning and said the applicant had worked very hard to ensure that the adjacent neighbors would not be presented with commercial activity right next door to them, but would be presented with residential. He also asked the residents in that area to bear in mind a point that was also made that the alternative was not very attractive and could be implemented the following day if someone chose to do that. He said conceptually it had some very good points and

the substance was good, and the applicant had demonstrated the willingness to work with the neighbors. Mayor Marshall directed Attorney Scavron to write the Findings of Fact and Conclusions of Law, and said the written decision would be mailed to the applicant within 3 days. He concluded the hearing.

**10. UNFINISHED BUSINESS** – None.

**11. NEW BUSINESS -**

**A. Discussion and possible action on Penny Park.** Manager Brown gave an update on Penny Park since the fire damage during the previous year. He stated that after the fire there was an outpouring of donations which totaled \$12,011.18. He said the insurance company would only reimburse the cost to replace what was existing at the park at the time of the fire. He said it was very hard to come up with that cost because of how the park was originally constructed by Leathers because their process included community input, development of volunteers, and the use of their plans. He said the insurance company had to hire a reconstruction expert to go back and reconstruct and count each board based on pictures, etc. He said it took a long time to do that because he was re-doing a lot of the design work. Manager Brown said there were 2 processes that could be taken to rebuild the park: 1) use a contractor to rebuild what was in the park, but that would entail doing design work and developing plans that any contractor could bid on and reconstruct what was there, or 2) to use volunteers to reconstruct what was in the park. He said that using the volunteer process would require either re-hiring Leathers to use their plans from the original park or to re-design the project and hire a general contractor to oversee the reconstruction and take on the responsibility of taking the liability for the volunteers. He explained what the insurance company would reimburse to the Town and the cost differences between the 2 processes. Gwyn Jones commented that she believed the community built process using Leathers would work and ultimately be easier for the city, and she said that she hoped that the Council would endorse a community built park. She said she was committed to help recruit volunteers. There was discussion about creating a committee, and she said she could organize a committee in 1 to 1-1/2 months. Attorney Scavron said he reviewed the Leathers contract and there was no mention that they would cover and manage volunteers on their insurance. He said he would want to see in writing that Leathers would cover the volunteers on their insurance. There was further discussion about whether the committee would need to be a 501C3 and whether they could get a commitment from the community. Councilor Wheaton-Smith made a motion to take action to give Gwyn Jones the opportunity in 45 days to get something put together, and if there was no very good assurance that it would make progress, and then they would go the other route, the risk adverse route, and get it done this year. Councilor Morones seconded the motion as stated. Councilor Thomson asked what the standard was for Gwyn Jones on whether she had met that obligation. Councilor Wheaton-Smith amended his motion to add, “and the standard would be that they would have a very good warm and fuzzy that there was an organization with a single point of contact that substantially convinces them that they could move forward, whether or not it would be a 501C3 which could be resolved at other times because it was a tax issue and not a liability issue, and it would be based on their evaluation, but based on Manager Brown’s input.” There was further discussion about donations and tax issues, the standards and how the burden was on the community, not Gwyn Jones, and how the Council was calling to the community if they wanted to have the park rebuilt. Mayor Marshall said he would schedule it back on the agenda on June 22<sup>nd</sup>, and they would make the evaluation then. Ms. Jones said she would be calling the community to action in her media outlet. All were in favor, motion passed.

**12. ADJOURNMENT** – Councilor Wheaton-Smith made a motion to adjourn at 11:55 pm. 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