

MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY WORK SESSION

Grant County Administration Center, 1400 Hwy 180, Silver City, NM
September 8, 2010, 9:00 AM

Present: James R. Marshall, Mayor
Cynthia A. Bettison, District 1
Jamie K. Thomson, District 2
Simon Wheaton-Smith, District 3
Michael S. Morones, District 4

Also Present: Alex C. Brown, Town Manager-Finance Director
Ann L. Mackie, Town Clerk
Robert L. Scavron, Town Attorney
Peter Russell, Community Development Director

1. Call to Order, Pledge of Allegiance, and Reading of Mission Statement. Mayor Marshall called the meeting to order at 9:00 AM and Councilor Wheaton-Smith read the Mission Statement.

2. Discussion to include, but not limited to the following: the draft of the revised Land Use Code. Mayor Marshall asked a member of the audience if he had public input. Gregory Bond of Vickie's Eatery and Yankee Creek Coffee House expressed his concerns about using A-frame signs on street corners and on streets in general. He said he would like to see it continued with uniform signs, and commented that the signs were necessary because both of his businesses were a block off of Bullard so it was important to have signage on Bullard for tourists. There was further discussion about the sandwich board signs; how the Code provided standards for signs; how signs could not obstruct handicap access and how signs must allow for a 4 foot passage way on the sidewalk; the limit of 1 sign per business and how the sign had to be placed in front of their own business; permits for signs; where and how many signs could be placed in front of businesses and out of the clear sight triangle; alternate ways to have signs, i.e. kiosks, on street lamps, or directional signs; how a directory of businesses could be placed on kiosks; how Silver City MainStreet was working on a downtown action plan; how businesses could cross-promote if their sign was not in front of their own business; how businesses off of the main streets should be allowed 2 signs; whether it was legal to put up a sign for private gain on public property and how that was why there was the limitation that signs be placed in front of their own business; how clusters of signs would make accessibility difficult and how there should be a permitting process; how the Uniform Traffic Ordinance's process for loading zones could be used for signs by having involvement from adjacent businesses and a license that would be valid for 1 year with a small fee; liability issues regarding signs; how the sandwich board signs were part of the culture and flavor of downtown; signage and linear feet allowances; how the Land Use Code should be written per best case and worse case scenarios in order to give staff proper guidance; and how the permitting process should be neutral and not first come first serve. Mr. Bond thanked the Council for the discussion.

Councilor Wheaton-Smith commented that he had resolved some issues with grandfathering non-conforming stuff. He stated that he would not support the issue brought up on water harvesting because he was not going to support anything that required citizens to bear those expenses, and he gave examples. He also said that he was a strong advocate of solar, but was not in favor of mandating it to people. Peter Russell, Community Development Director, gave handouts (copies attached to these Minutes) on Santa Fe's guide for gray water harvesting that was not mandatory. He said they could distribute it to people that came in for building permits, and how they could pursue a grant to update the guide and tailor it specifically to the Grant County area. He commented that Bud Melaney, Assistant Engineer/Flood Plain Administrator, was concerned with amending FEMA language and how it could expose them to flood plain insurance issues.

Councilor Wheaton-Smith stated that he had 2 major issues to address in the Land Use Code: the variance process and the appeal process. He described his concerns and offered proposed changes to page 219, Section 6.3.19 Variance, D) Findings Required. There was further discussion about his proposed changes and on how the Council should have more flexibility than the Planning and Zoning Commission; how conditions could not be a situation that was brought on knowingly and willingly by the applicant; how variance procedures should try to establish a set of rules that applied consistently across the board and would shield political favoritism; how the Land Use Task Force looked at the most common kinds of variances and how more zoning categories were created in order to allow residents and businesses to

be mixed; and standards of set-backs and encroachments, etc. Based on the discussion, Attorney Scavron said he would work with Mr. Russell on changing the wording on page 219, Section 6.3.19 Variance, D) Findings Required, 2) and 3). Mr. Russell said he thought the proposed changes would fit with the discussions of the Land Use Code Task Force and the Planning and Zoning Commission. Attorney Scavron said that on page 196 Appeal Standards, Section 6.3.4, D) Appeal Standards, 5) - the word "has" should be changed to "had" because new evidence could not be brought in. There was further discussion on new evidence and the Variance Findings Required on page 219.

Councilor Wheaton-Smith commented on page 196, Section 6.3.4 Appeals, D) Appeal Standards, 5) and asked where the ability of neighbors fully in favor of variance was provided. There was further discussion about neighbors. Mayor Marshall said the neighbors' objection or approval should be based on findings of the Land Use Code. There was discussion about rules of evidence; the bylaws of the Planning and Zoning Commission and how they performed the function of a reasonable person and they were not trained as attorneys; how the Planning and Zoning Commission was not a court of law; the issue of new evidence during the appeal process; and how if there was new evidence the appellant could ask the Council to remand it to the Planning and Zoning Commission to hear the evidence. A member of the audience, Kathy Anderson, gave her background and asked the Council how people would know that they could ask for the case to be remanded. Mayor Marshall said the hearing officer would inform the appellant. There was further discussion about rules of evidence; how the testimony needed to fit with the Land Use Code and support compliance with or the lack of compliance if opposing; huge issues of the ability of people to represent themselves; paper appeal or live appeals; how new evidence could not be inserted in the appeals process. Mr. Russell commented that the history of satisfying appellants was good for the Town because there were very few appeals. He said the Council had overturned 2 of the Planning and Zoning Commission's decisions and remanded 1 so people were getting a fair process. He said people were getting a fair process and they were dealing with issues of fairness, consistency, and findings that everyone could easily understand. He said the applicants were informed as to whether the Planning and Zoning Commission's decision was only a recommendation, or going to the Council for a final decision; and that they were also informed about the appeals process and what remedies they had available to them. He said it was important to make it a user friendly process.

3. Adjournment. Councilor Wheaton-Smith made a motion to adjourn at 11:05 AM. Councilor Bettison seconded the motion. All were in favor, motion passed.

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk