

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

Grant County Administration Center, 1400 Hwy 180, Silver City, NM
September 21, 2010, 2:00 PM

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 2:05 PM, and he read the Mission Statement.

2. Discussion to include, but not limited to the following: the draft of the revised Land Use Code. Mayor Marshall began the work session by asking Councilor Wheaton-Smith if they had gotten through all of his issues. Councilor Wheaton-Smith commented that they got through the issue of grandfathering that runs with land, and they had resolved issues on the variance. He commented that Peter Russell, Community Development Director, had provided new language on variances which was fine because it made one of the eight findings a deliberate act rather than a passive act due to a lack of knowledge (copy attached to these minutes). He said he had a major problem with the appeal process regarding a paper appeal versus a new hearing. He said the Town's Planning and Zoning Commissioners were political appointees and had little accountability, but the Town Council was held accountable with very little discretionary ability. He said the Town Council had an obligation to re-hear the case since they would be held accountable. He said with a paper review, one of the grounds for appeal was objections, and there was no training program for applicants or people in opposition to understand how to make an objection or to know what objection was reasonable. He said other municipalities had paper appeals or review appeals, but he believed the Town of Silver City was one of the few that had appointed zoning commissioners. He read New Mexico Statutes Annotated 1978, Section 3-21-19 Zoning Commission, that stated a zoning commissioner should be elected by the registered voters. He said he would not have as much of a problem with a paper appeal if the zoning commissioners were elected rather than being appointees. He said the Town Council was elected to make decisions, and he would like to retain the current process that they had, which was a rehearing. There was further discussion about how new evidence could be brought in, and how applicants and persons in opposition were completely untrained.

Attorney Scavron referred to the proposed appeal process on page 195 of the draft of the proposed revised Land Use Code, Section 6.3.4 Appeals, and commented on the normal way of a judicial appeal. He said the only other kind of appeal would be an appeal de novo and he described that type of appeal as being uncommon. He said it was an entire hearing with every step of the process done over, and would usually be done in District Court if the appellant did not like the decision of the Town Council. He described when and how an appeal de novo was typically done. He said the only problem that he had seen was when someone wanted to throw in their two cents, but how that had been eliminated because the Council's option was to remand it back to the Planning and Zoning Commission so they could hear the new evidence. There was further discussion about the appeal de novo process; how applicants were untrained; how the current process used by the Town was a hybrid of an appeal de novo because notices were not done; how due process was the issue; how witnesses in a public hearing were sworn in, the protocol was rigid, and the Mayor controlled the cross examinations; how the problem was that the Planning and Zoning Commission was not elected so there was no accountability; how the Planning and Zoning Commission only made recommendations and the Town Council made the final decisions; Table 6.3.1: Procedural Chart/Administrative Procedures on page 189 of the draft of the proposed revised Land Use Code that showed who had final authority on various actions; how rules of evidence were restrictive and did not apply to the Planning and Zoning Commission or the Town Council's public hearings; how the hybrid appeal de novo process that was used currently was efficient, but the remanding process could be resolved by doing public notifications; how dealing with a person's right as a land owner was very critical, and the process should be

open and fair; how the current hybrid appeal de novo process should be written into the draft of the revised Land Use Code, but should allow the record of the Planning and Zoning Commission to be presented to the Town Council, and should include public notification in order to allow new evidence during the appeal to the Town Council; how the appeal decision required a super majority vote; how both parties would have an opportunity to review the new evidence; how the hybrid process could be tried for a year or two to see if goals were accomplished; and how Attorney Scavron and Peter Russell, Community Development Director, would re-write Section 6.3.4 Appeals on pages 195-196 with the Council's guidance.

Councilor Wheaton-Smith moved for a short break at 2:55 PM, and Councilor Bettison seconded. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 3:13 PM.

Councilor Bettison brought forward her concerns about Section 3.1.9 Mixed Use Commercial District on page 36; Table 3.2: Uses on pages 47-49; Section 3.3.1, A) Adult Business Uses on page 56; Section 3.3.2, C), 1), b), 3), 13), and 19), b) Residential and Rural Accessory Uses on pages 75-78. There was further discussion about changing Section 3.1.9 "Mixed Use Commercial District" to "Mixed Use District" to nullify the word "commercial" in order to avoid mortgage problems; how lending institutions point to the word "commercial" and there would be insurance based on commercial rates, etc.; how the intention of "Mixed Use Commercial District" was to accommodate a mix of commercial and residential uses, but to make sure the mix was at the same scale regarding the size of the buildings; the Table 3.2 Uses and how the Land Use Code Task Force's thinking was to create a matrix of intensity so those uses with a least intensive factor went into residential districts, then as the uses had increased intensities they would go to a mixed use commercial district, etc.; how the Table 3.2 Uses allowed a community swimming pool in every zone, but did not allow a museum or library without a conditional use permit, and how all 3 should require a conditional use permit and require a consultation of the neighborhood; how conditional use permits should be based on the use and the neighborhood of the use, traffic, etc.; how Section 3.3.1, A) Adult Business Uses should also include museum, library, and community swimming pool that were within 1000 feet; Section 3.3.2, C), Residential and Rural Accessory Uses, 1), b) and g) and how residences and accessory dwellings that were legal would be grandfathered in; the issue of renting out residences, accessory dwellings, and duplexes and how the owner had to live on the parcel; concerns about the volatile economic climate and how people would not be able to rent out their residence and accessory dwelling if they had to find work out of town; how allowing the accessory use was an important feature of affordable housing; how enforcement was required when a neighbor or citizen raised a problem; how uses should also consider traffic and parking issues; how people tend to take better care of property if they have an equity interest in the property; the definition for duplex and how it did not have to share a common wall; Section 3.3.2, C), Residential and Rural Accessory Uses, 13) on page 76 regarding the renting of rooms; and Section 3.3.2, C), Residential and Rural Accessory Uses, 19), b) on page 78 regarding the height of a fence or wall around a swimming pool and how it should be exactly 6 feet in height. Mayor Marshall stated that 3 of the 5 members of the Council had not discussed their concerns, and the public had concerns. He said he wanted to get through the Council's recommendations before they received further input from the public, and asked for a motion to adjourn.

3. Adjournment. Councilor Bettison made a motion to adjourn at 4:03 PM. Councilor Wheaton-Smith seconded the motion. All were in favor, motion passed.

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk