

MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy 180, Silver City, NM
December 14, 2010, 6:00 PM

Present:

James R. Marshall, Mayor
Cynthia Ann Bettison, District 1
Jamie K. Thomson, District 2
Simon W. Wheaton-Smith, 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
Peter Russell, Community Development Director
Mike Eley, Planner

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE – Mayor Marshall called the meeting to order at 6:03 PM. Councilor Thomson read the Mission Statement.

2. CEREMONIES – None.

3. PROCLAMATIONS – None.

4. PUBLIC INPUT – None.

5. COUNCIL COMMENTS - The Council commented on the following: MainStreet gift certificates and how they would help to keep the gross receipts tax revenues within the Town; how concerns about the noise ordinance had been addressed; how the Museum Board meetings were scheduled at the same time as the Council meetings which prevented Councilor Wheaton-Smith from attending them as ex-officio; complaints about speeders and crashes on streets and how the drivers were at fault, not the police; how the police deserved more support and the public was encouraged to thank them for what they do; how the Parks and Recreation Board was weighted with people that were interested in bicycling, hiking, and swimming, and people with other interests were encouraged to attend the meetings; recently attended events; issues for the upcoming 60 day legislative session; how the Small Business Development Center was pleased with the road map for small businesses that Town staff had developed, and how they would like more processes to help small businesses; Susan Berry, retired Museum Director, was honored for her years of service and Mayor Marshall commented that a lot of the quality of the Town was due to its long term employees; an update on Penny Park and how plans would be brought to the Council in January 2011; an update on the fencing project on 19th Street; and the open positions on the Town's Boards and Committees.

Councilor Wheaton-Smith commented that he would run again for Councilor in District 3, and that it would be his third and last term. He said that his commitment was to perform the same as before by being vocal, but he would try to be more sensitive.

Mayor Marshall commented on the PNM rate case and reassured everyone that the Town was very involved to ensure that they were represented as a PNM customer, and would ensure that any rates agreed to were justified as fair and equitable. He said they would continue to participate and advocate for them until it was resolved, and he described the recent meetings that he had attended, including a meeting with Gary King, Attorney General, to address the topic. He said they were being very aggressive in representing the Town and PNM's customers.

Mayor Marshall also commented that Alex Brown, Town Manager-Finance Director, had received an award for planning at the Infrastructure Conference in Las Cruces. He said the award was well deserved and that Manager Brown had earned it.

6. CHANGES TO THE AGENDA – None.

7. APPROVAL OF THE MINUTES – Regular Meeting, November 23, 2010 - Councilor Bettison made a motion to approve the minutes as revised on that date. Councilor Morones seconded the motion. All were in favor, motion passed.

8. REPORTS – A. Explanation of the new solid waste tracking system by C. J. Law, Manager of the Southwest Solid Waste Authority. Mr. Law reported that the Authority had purchased new software for tracking trash and for better accounting of where the trash was coming from as needed for reporting to the New Mexico Environment Department. He said the most reasonable way to verify with some degree of certainty where people lived in Grant County was to request the customer's driver's license. He answered questions from the Council about the new procedure of requesting drivers' licenses; protecting customer's identity and the adoption of a Red Flag Policy; and identifying trash when a customer had multiple properties or when a neighbor dumps another neighbor's trash, etc.

Manager Brown reported that lodgers tax revenues collected through November 2010 had increased 27.79% above his original projections or 24-1/2 % above the 2009 revenues. He said the increase was due to the Town's monitoring of monthly payments from lodging facilities, mining contractors staying in the motels, and increased tourism. He reported that the gross receipts tax revenues were 4.8% above his projections or 2.2% above the 2009 revenues, and he expected it to continue to rise for the remainder of the fiscal year due to the activity at the mines. He said he had concerns about the upcoming legislative session and the issue of whether they would take away the hold harmless for food and medical services because it could cause the Town to take a 10-15% cut in the budget in the next fiscal year. He said that based on the previous 12 months that food and medical services accounted for 19-1/4% of the Town's total gross receipts revenues. He said it was important to make the public aware of how that would impact services in the Town and the surrounding areas. He also reported on the PNM rate case and gave examples of how the Town of Silver City had decreased its power usage. There was discussion on the Town's 4 electric vehicles in the Meter Department and how the operational costs had only been \$58 for a year.

Clerk Mackie reported on the upcoming municipal election to be held on March 1, 2011 for the elective offices of Councilor in District 1 and Councilor in District 3. She provided information on important dates for candidates and voters.

9. PUBLIC HEARINGS – None.

10. UNFINISHED BUSINESS –

A. Approval / Disapproval of Ordinance No. 1174: an Ordinance repealing Ordinance No. 1017 and all succeeding supplements and amendments thereto (1999 Land Use Code); renaming title of Chapter 8; deleting Chapter 8, Article VI., Section 8-112 of the Town's Municipal code; and adopting a revised Land Use Code to be entitled "Land Use and Zoning Code of 2010" which shall be placed in said Municipal Code as Appendix "C". Peter Russell, Community Development Director, presented the details of the process involved in revising the Land Use Code and commented on the changes that had been made since the Notice of Intent Ordinance No. 1174 was approved on November 9, 2010. He provided a list of the changes to the Council that included: Chapter 1, Section 1.10.1 regarding the Fire Code; Chapter 6, Section 6.3.19(D) regarding variance findings; and Chapter 3, Section 3.3.1(Y) regarding Recreational Vehicle Parks. There was further discussion and additional changes were made to Chapter 3, Section 3.3.1(Y) 9). Councilor Wheaton-Smith made a motion to approve Ordinance No. 1174 with the amendment of the word "lot" after the word "vehicle" in the first line of Chapter 3, Section 3.3.1(Y) Recreational Vehicle Parks, Section 9). Councilor Bettison seconded the motion as stated. There was further discussion about a typographical error in the second sentence of Chapter 3, Section 3.3.1(Y) 9) to correct "mobile home park" to "recreational vehicle park". Attorney Scavron said it was a ministerial change so the motion did not require an amendment. There was no further discussion. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

Mayor Marshall acknowledged Mr. Tony Morones, a resident who was in attendance, for actively participating in the process of the revision to the Land Use and Zoning Code, and the staff and everyone that had aggressively spent hours and hours of time committed to the document. He said it was well worth it and that they had truly made a lasting impact for the betterment of the Town. He said the debate was full and well justified, and he was truly honored to be part of the government that passed the document. He said the Task Force and the Planning and Zoning Commission that worked on it should be commended, and he asked Mr. Russell to carry that message forward.

Councilor Wheaton-Smith made a motion for a short recess at 7:05 PM. Councilor Bettison seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 7:21 PM.

11. NEW BUSINESS

A. Approval / Disapproval of Memorandum of Understanding for GIS and MSAG Databases and Services; an Agreement between the Grant County Regional Dispatch Authority, the County of Grant, the Town of Silver City, and the City of Bayard. Manager Brown said the agreement was basically what was already in place, but the Memorandum of Understanding was a formality that was required by the New Mexico Department of Finance and Administration. He said that formalizing it was a benefit because it would allow the Town's GIS person, David Lawrence, to qualify for educational assistance for GIS training that was available through the E911 funds. There was further discussion. Councilor Bettison made a motion to approve the Memorandum of Understanding. Councilor Wheaton-Smith seconded the motion as stated. There was further discussion and Councilor Bettison amended her motion to add, "and authorize the Town Manager to execute it." Councilor Wheaton-Smith approved the friendly amendment. There was no further discussion. All were in favor, motion passed.

B. Approval / Disapproval of a Joint Powers Agreement between Grant County, the Town of Silver City, the City of Bayard, the Town of Hurley, and the Village of Santa Clara, establishing a Joint Communication Center. Mayor Marshall stated that he wanted to postpone action on the item because other discussions should be held before renewing their commitment to the Joint Powers Agreement. He said the Dispatch Director and the County of Grant had no issue with postponing it, and in the meantime nothing would change with the operations of dispatch. There was further discussion. Councilor Bettison made a motion to postpone Item B for the Joint Powers Agreement. Councilor Wheaton-Smith seconded the motion as stated. There was no further discussion. All were in favor, motion passed.

C. Approval / Disapproval of Resolution No. 2010-35: a Resolution opposing E911 Program Transfer. Mayor Marshall stated that he was concerned that the Resolution was a blanket rejection or opposition to something that they were not sure about, and that the "therefore" paragraph was adamantly opposed to the transfer of the E911 Program from the New Mexico Department of Finance and Administration to any other State Department or Division. He said in reality their objection would be to any violation of that fund from its intended purpose. He said the Resolution as written was opposing a transfer which may have zero effect on the administration and distribution of that fund, etc. He stated that he would like to postpone action on the item, and he said that he would ensure that his activities in Santa Fe would be to oppose the violation of the fund from its intended purpose. Councilor Bettison stated that she agreed with Mayor Marshall, and made a motion to postpone action on Item C Resolution No. 2010-35 and she asked the local E911 personnel and other operators in the state to discuss the Resolution and their concern about any potential violations of the fund with the New Mexico Municipal League and the Coalition of Counties. Councilor Wheaton-Smith seconded the motion as stated. There was further discussion. All were in favor, motion passed.

D. Approval / Disapproval of Resolution No. 2010-36: a Resolution to amend Resolution No. 2010- 33 by correcting the dollar amount of the application and the Town's cash contribution amount. Robert Esqueda, Utilities Director, provided the details of the correction to Resolution No. 2010-33 and he stated the correct amount of the application was \$468, 818.05 with the 10% cash match of \$46,881.81. Manager Brown confirmed to Councilor Wheaton-Smith that the money was budgeted and would come out of the Water/Sewer fund. Mr. Esqueda stated that the amount of the Town's cash match would pay for the engineering services that would go into preparing the plans and specifications for the grant. There was further discussion. Councilor Wheaton-Smith made a motion to approve Resolution No. 2010-36. Councilor Morones seconded the motion as stated. Councilor Wheaton-Smith commented that it was for Chihuahua Hill and it was the continuation of the momentum of improving the infrastructure. A roll call

vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; Councilor Bettison - aye. Motion passed.

E. Approval / Disapproval of Notice of Intent Ordinance No. 1169: an Ordinance amending the Town of Silver City Code of Ordinance by adding a new Chapter 9 establishing an Affordable Housing Program pursuant to the Affordable Housing Act; defining terms; establishing application requirements and review criteria; and establishing procedures to administer an Affordable Housing Program. Mike Eley, Town Planner, stated the State's anti-donation law specified that nothing could be donated by any government agency to anything other than affordable housing. He said there were several steps that had to be taken in order for the Town to make any donations to affordable housing. He said the first step had been done which was to create a housing plan and obtain the approval of the Mortgage Finance Authority and the Council, and the next step was to approve the Notice of Intent to approve Ordinance No. 1169 which would give the Town the authority to donate property, money, or buildings to an affordable housing project. He said the ordinance included step by step procedures on how any developer or the agency (the Town) could proceed, and he explained the procedures, etc. There was further discussion and he answered questions from the Council. Councilor Morones made a motion to approve NOI Ordinance No. 1169. Councilor Wheaton-Smith seconded the motion as stated. There was no further discussion. All were in favor, motion passed.

F. Approval / Disapproval of Resolution No. 2010-34: declaring as Non-Essential for Municipal Purposes all of Lot 16, Block 4, W.M. Berger's Subdivision of Hardee's Addition situated in the Town of Silver City, Grant County, NM, as shown and designated on the plat thereof dated March 28, 1888, filed in the office of the Grant County Clerk of said county, in Book 2 at page 30 of plat records, and to authorize a private sale to Robert Crowell, an adjoining landowner. Mike Eley stated that Mr. Crowell had filled out an application to purchase the property from the Town; that staff had presented the application to all of the Town departments; that the departments had declared that the property was not necessary for any of their projects in the future and recommended that the Council declare the property as non-essential. He said it was a 25' x 100' lot that was adjacent to Mr. Crowell's property, that lied between his property and Gordon Street, and would allow Mr. Crowell better access to the rear of his present property. He stated that staff recommended approval of Resolution No. 2010-34. Councilor Thomson asked Mr. Eley if the application had been sent to the Parks and Recreation Board since it seemed to be open space. Mr. Eley said no and there was further discussion. Mayor Marshall asked Mr. Crowell if he had any comments. Mr. Crowell commented that he was concerned when he first bought the house because the adjacent lot seemed to be a natural part of the property that his house was on, and he did not know why it had been excluded from the property that his house was on. He said it would be a natural extension and would allow him some flexibility for additions or expansions of the house or an additional garage. Councilor Thomson asked where the money from the purchase would go, and Manager Brown said that 95% of it would go into the Trails and Open Space fund and 5% would go into the General Fund for administration of the projects to pay for surveys, etc. unless the Town Council chose to dedicate the funds in a different fashion in the motion. Attorney Scavron stated the transaction would be done per Ordinance No. 1126 that dealt with the sale or exchange of Town property. He said that it was published, and in the absence of any other requests to purchase that it would be dealt with as a private sale; and the costs of the transaction would be paid for by the purchaser and not the Town. Mayor Marshall stated that in the photos the terrain looked like it was not likely to be used for a park, but Councilor Thomson's concerns could be kept in mind for land that would be better suited as a park, community garden, etc. There was further discussion. Councilor Thomson made a motion to approve Resolution No. 2010-34. Councilor Bettison seconded the motion as stated. There was no further discussion. A roll call vote was taken with the following results: Councilor Bettison - aye; Councilor Thomson - aye; Councilor Wheaton-Smith - aye; and Councilor Morones - aye. Motion passed.

G. Approval / Disapproval of Resolution 2010-37: Authorizing the Mayor to negotiate for air service for the Town of Silver City. Mayor Marshall said air service was provided to Grant County Airport through the Federal Department of Transportation's Essential Air Service Program which subsidized flights to allow rural areas of the country to get to more central hubs. He said there were multiple requirements in the program as well as methods and means of issuing waivers. He said that as of that date they had heard from 3 different flight operators that were interested in bidding on the contract, and that there were a huge number of details to be dealt with. He said the contract would close on December 22, 2010 and they would have an opportunity to review the proposals, speak with the companies and formulate a response that would best serve the citizens and constituents of Silver City and Grant

County. He said that he spoke to the County Manager to ensure that they would work together to stay informed, and he spoke to the Mayor of Clovis because the Silver City / Grant County Airport was under the same contract as the Clovis service. He said that the last time the contract came up that they developed a nice partnership with Clovis and made sure that they had a uniform recommendation that served both of their needs. Councilor Wheaton-Smith expressed his concerns about the 3 air carriers for Mayor Marshall's consideration. There was further discussion. Councilor Wheaton-Smith made a motion to pass, adopt and approve Resolution No. 2010-37. Councilor Bettison seconded the motion as stated. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

H. Approval / Disapproval of the cancellation of the regular Town Council meeting scheduled for December 28, 2010. Mayor Marshall asked Manager Brown if there was any pressing business, and Manager Brown said no. Councilor Wheaton-Smith made a motion to cancel the regular Town Council meeting scheduled for December 28, 2010. Councilor Bettison seconded the motion as stated. All were in favor, motion passed.

I. Appointment to Planning and Zoning Commission. Mayor Marshall stated that 2 applications were received, and he recommended the appointment of Nick Seibel. He said that he spoke with the Chair of the Commission, and she concurred with the recommendation. He said the reason that he did not appoint the second applicant when there were 3 positions open was because he was entertaining an idea of introducing an ordinance that would cut the body of the Planning and Zoning Commission back from 7 to 5 members. He said the Town Council was a 5 member body and functioned well, and the Town was divided into 4 districts. He said if they were cautious they could get applicants from each district and the 5th person could be at large within the Town limits which was necessary for a tie breaker and for good debate. He said they would entertain that ordinance at a later date. He received no objections from the Council and appointed Nick Seibel to the Planning and Zoning Commission.

ADJOURNMENT – Councilor Wheaton-Smith made a motion to adjourn at 8:13 PM. Councilor Bettison seconded the motion as stated. All were in favor. Motion passed.

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk