

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY**  
**REGULAR COUNCIL MEETING**  
**Grant County Administration Center, 1400 Hwy 180, Silver City, NM**  
**January 11, 2011, 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  
Eileen Sullivan, Library Director  
Mike Eley, Planner

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

**2. CEREMONIES** – None.

**3. PROCLAMATIONS** – None.

**4. PUBLIC INPUT** – None.

**5. COUNCIL COMMENTS** - The Council commented on the following: Town staff was thanked for putting up a new fence on Town property on 19th Street, for starting work on Cactus Street, and for their hard work during the big snow storm; citizens were reminded to dial 911 for emergency reasons only; recent incidents of tampering and damage to vehicles; how the Town was actively representing the residents in the PNM rate case and the issue with hold harmless on food and medical; issues with the animal ordinance; a summary of the accomplishments by the Town Council and Town Staff in the past 3 to 4 years and how services were not cut during the recession; an update on the issue of flooding on Cooper Street; how the new fireworks ordinances worked well; how during the snow storm an incident command was set up and the Town had appropriate staff to develop the response and worked on areas to improve in an efficient manner; and how the seats on equipment used by the Town staff should be comfortable and of good quality.

Mayor Marshall reflected on the previous strategic planning session on the budget and commented how remarkable it was that Manager Brown had implemented a lot of projects in a short amount of time to improve efficiency measures of the Town operations that kept staff working, kept services to the public, and kept the basic economy of the local government functioning very well. He thanked Manager Brown for doing a good job and thanked all of the directors and department heads for their dedication to the Town and citizens and for providing services that benefitted all.

**6. CHANGES TO THE AGENDA** – None.

**7. APPROVAL OF THE MINUTES – Regular Meeting, December 14, 2010** - Councilor Bettison made a motion to approve the minutes. Councilor Morones seconded the motion. All were in favor, motion passed.

**8. REPORTS – A. Library Report on Library Forum, vision, and programs by Eileen Sullivan, Library Director.** Ms. Sullivan presented a Public Library Report and gave an update on the Public Library Forum that was held in November 2010. She commented on the vision; trends and challenges; how the public library fostered and sustained the community and provided a welcoming space to all citizens; technology and how the collection development process was more difficult with e-books and digital books; how the public library needed strong community support to remain a vital resource; how trends showed that the public library had become a primary source of high speed internet access in the community; and various new initiatives. She also stated that daily there were 211

library visits, 50 computer sessions, and 278 items borrowed; yearly there were 66,092 library visits, 15,506 computer sessions, and 87,006 items borrowed. David Gershenson, Chair of the Library Foundation, commented on how the focus of the Foundation had changed from finding a new site and to build a new library to utilizing the funds for capital expenditures for the existing Public Library, i.e. a new roof and new heating and air conditioning. He commented that local architect, Mark Richard, had volunteered his services to do an assessment of the entire library and how that type of study would provide an invaluable wish list for capital improvements for the library. He made further comments on the available funds and how improvements could be done in stages, etc. There was further discussion with Manager Brown and the Council.

Manager Brown reported on how Town staff responded during the snow event and stated the Police, Fire, Public Works, and Utilities Departments did a good job. He said they had the opportunity to identify the areas that needed improvement and how during the incident command at Central Dispatch they were able to coordinate with Public Works and Utilities when the Police identified problem areas where equipment was needed; how employees were out in 4 wheel drive vehicles to check on stranded motorists; how equipment was identified for mounting additional snow plows, etc. He also commented on garbage collections, the holiday schedules at the landfill, and how the State audit report had been released and would be brought to the Council for approval.

Clerk Mackie announced the names of the certified candidates for the March 1, 2011 Municipal Election as follows: Cynthia Ann Bettison for Councilor in District 1 and Kyle A. von Holtum for Councilor in District 3. She provided other important dates for the voters that related to absentee voting, registering to vote, and election training for the election workers.

Chief Reynolds commented that the Office of Emergency Management was activated during the recent snow storm, and that a manual of the Office of Emergency Management would be presented to the Council in the following month. He said the 2010 statistics would be ready by the next Council meeting.

Councilor Bettison made a motion for a short recess at 7:05 PM. Councilor Wheaton-Smith seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 7:17 PM.

## **9. PUBLIC HEARINGS - None.**

## **10. UNFINISHED BUSINESS -**

**A. Approval / Disapproval of 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, presented the details of Ordinance No. 1169 and stated that it would allow the Town to donate infrastructure, money, property, etc. to an affordable housing project. He said that by passing the ordinance it would meet all of the requirements of the State's affordable housing law. Councilor Morones made a motion to approve Ordinance No. 1169. Councilor Wheaton-Smith seconded the motion as stated. 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.

**B. Approval / Disapproval of Ordinance No. 1175: an Ordinance amending Chapter 34, Section 179 (Unlawful Noises) of the Town's Municipal Code.** Councilor Morones presented the details of Ordinance No. 1175 and stated it was more clear, substantive, concise and comprehensive than what was on the books before, and had been reviewed and looked at since 2007 with the Noise Ordinance Advisory Committee. He said it was based on model ordinances and it utilized a hybrid method which meant that it had subjective reasonable person standards and objective standards that would help residents and law enforcement officers understand it and use it more effectively. He stated that a few minor tweaks had been made since the Notice of Intent Ordinance was approved in November by making time frames more consistent, taking out redundancies, etc. Mayor Marshall asked if there were any comments from the audience. Kurt Albershardt from the Murray Hotel thanked the Council for clarifying the time limits, but he said he had concerns about the time windows because some establishments have live music after 10:00 PM and

construction usually began at 7:00 AM rather than 8:00 AM, and that a 45 dB(A) level was a low level, etc. There was further discussion about noise issues downtown. Mayor Marshall stated the ordinance should allow businesses to conduct business in a friendly manner and should protect the neighbors. He said it was a fine line to try to balance, but it was a document that was fluid and could be changed as things progressed after further evaluation from the Council. There was no other public input, but the Council discussed it further. Mayor Marshall commended Councilor Morones for working through the issue and using all of the available resources to come up with a document that he considered to be a quality document. He said that he did have some concerns on how it would be consistently enforced and he hoped that it would set a standard of what was acceptable in the community so enforcement would not become an issue. Councilor Morones stated that all of the work that he read from the Noise Ordinance Advisory Committee, the comments that he had received, and discussions with Attorney Scavron and Police Chief Reynolds, provided a very balanced approach. He said the ordinance demanded that respect was given to fellow citizens, but also mandated some tolerance for fellow citizens by allowing and accepting some noises. Councilor Morones made a motion to approve Ordinance No. 1175 with all of the tweaks and adjustments that were made since the Notice of Intent Ordinance was approved. Councilor Wheaton-Smith 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.

## **11. NEW BUSINESS -**

**A. Approval / Disapproval of Resolution No. 2011-01: Open Meetings.** Clerk Mackie requested approval of the Open Meetings Resolution. Councilor Bettison made a motion to approve Resolution No. 2011-01. Councilor Wheaton-Smith seconded the motion as stated. There was 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.

**B. Approval / Disapproval of March 1, 2011 Election Workers.** Clerk Mackie requested approval of the list of election workers for the upcoming Municipal Election. Councilor Bettison made a motion to approve the March 1, 2011 election workers. Councilor Wheaton-Smith seconded the motion as stated. Mayor Marshall thanked the election workers for their work, and he said it was very important to maintain the political process in the country. All were in favor, motion passed.

**C. Approval / Disapproval of Resolution No. 2011-03: a Resolution supporting an application by Jonathan Reed and Assoc. for federal tax credits and authorizing the Town Manager to indicate that support in the manner required by said application.** Mike Eley, Town Planner, stated the Resolution would allow the Town to apply for tax credits to assist the low-income multi-family rental project of 60 units to be built on Town property. He said the property would be donated to the project at a later date by the Council if so approved. He said the program was administered by the New Mexico Mortgage Finance Authority and he described the process of using the tax credits, etc. There was further discussion about the Town's support of applications for tax credits; how it could be used with Town property or private property; how it was for low-income housing and not affordable housing; how the Resolution did not designate property; how it did not require the Town's financial support, but could be a donation of land, development of a partnership to do the project on private property, etc.; how low-income rental housing would benefit the Town; and how a future Resolution and Ordinance would be brought to the Council regarding the donation of property.

Mayor Marshall commented on how the Resolution stated that Alex C. Brown, Town Manager, would execute all documents necessary to accomplish those purposes, and he asked Planner Eley what those would be. Planner Eley said it was primarily a letter of support that stated if the tax credit project went through, and if it was on Town property, then the Town would be willing to donate the property. There was further discussion between Attorney Scavron and Planner Eley about how the Council was not voting on the issue of donating land at that time; how the project would move through the Community Development Department; how it would create a plat, and how the Council could approve or reject the final plat; how the tax credits would go to the developer so the tax credits were an incentive for the developer to do that type of project because the federal government had determined that it was a way to get capital investment into low-income housing; and how the Resolution authorizing Manager Brown to sign a letter of support was fine according to Attorney Scavron. Mayor Marshall stated that he was comfortable with Manager Brown's

judgment, but wanted to see that authorization changed to the Mayor because it was his job in the Charter to carry out laws and policies of the Town so he would sign the letter of support. There was further discussion about the content of the letter of support. Mayor Marshall stated that for the record they would separate the written document that Planner Eley presented with Resolution No. 2011-03 that mentioned approving the land; it would not be later used as evidence of why the Council supported Resolution No. 2011-03 for institutional knowledge. Mayor Marshall stated that for the record of the meeting that Planner Eley's testimony, Manager Brown's testimony, and the questioning of Attorney Scavron would be the basis for the Council's decision. Attorney Scavron stated that the minutes would reflect that there was no commitment made on the Council's vote on Resolution No. 2011-03 to donate land. He stated that the letter of support could say that the Town Council would entertain the donation of land which would indicate they would fairly consider the donation of land, but would make no promise of doing so. There was further discussion. Councilor Morones made a motion to approve Resolution No. 2011-03 and changed the title of the Resolution from Town Manager to the Mayor as the person authorized to indicate that support in the manner required by said application. Councilor Wheaton-Smith seconded the motion as stated and suggested a friendly amendment to change the body of the text in the same way. Councilor Morones accepted the friendly amendment. 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.

**D. Approval / Disapproval of Request for Proposal #10/11-2P: Silver City Large-Scale Solar Photovoltaic Projects for the Waste Water Treatment Plant and the Well Fields Booster Station.** Manager Brown stated it was staff's recommendation to enter into negotiations with Affordable Solar/Solar Power Partners, Albuquerque, NM for the large scale photovoltaic project for the Waste Water Treatment Plant and the Well Fields Booster Station. He said it was also staff's recommendation that if negotiations failed with Affordable Solar/Solar Power Partners that staff would enter into negotiations with American Capital Energy as the alternate. Manager Brown stated that if negotiations were successful then they would enter into a contract with them based upon their proposal. Mayor Marshall asked if there were comments from the audience, and there were none. Nick Sussillo, Director of the Joint Office of Sustainability for Grant County and Silver City, provided further details on the basis for the recommendations and discussed the project. He stated there was no cost and that it was a power purchase agreement arrangement which was a legislative law by the State which allowed a third party utility solar developer to make the installation and receive Public Regulation Commission renewable certificates which were then sold to the main utility, PNM. He said that financial structure made it attractive to third parties and jurisdictions because the developer was the owner, operator, and installer. He said they would be a mini-utility to the Town with a proposed flat rate of 6 cents per kilowatt hour for 20 years with no rate increase as 1 option, as opposed to 10.6 cents per kilowatt hour plus 15-20% at the Waste Water Treatment Plant without knowing where the rate would go over 20 years with an electric utility. He described the evaluation process of the proposals that were received, and he stated the proposal by Affordable Solar/Solar Power Partners projected that the Town would save over \$1,000,000 at present value or close to \$2,000,000 in aggregate savings over 20 years. He commented on how Santa Fe was saving money with their system. There was further discussion and the Town Manager was asked why it would be beneficial to the Town. Manager Brown said it was important because PNM was looking at raising rates so the Town was looking at other sources to avoid the increase of PNM at the Waste Water Treatment Plant because customers would have an increase on their electric system and their water and sewer bill. He described how the Town was trying to work with PNM to save costs with a metering system, etc. Several audience members asked questions and made comments. There was further discussion. Councilor Wheaton-Smith made a motion to approve staff's recommendation with the alternate. Councilor Bettison seconded the motion as stated. There was further discussion. All were in favor, motion passed.

Councilor Bettison made a motion for a short recess at 8:37 PM. Councilor Wheaton-Smith seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 8:47 PM.

**E. Approval / Disapproval of Bid 10/11-8: Homeowner rehabilitation.** Manager Brown stated that 2 bids were received for Bid 10/11-8, and that it was staff's recommendation to award the bid to Chavez Plastering and Cement Construction for a total amount of \$25,421.14 that included gross receipts taxes. There was further discussion. Councilor Bettison made a motion to approve Bid 10/11-8 per staff's recommendation. Councilor Wheaton-Smith seconded the motion as stated. All were in favor, motion passed.

**F. Appointments (3) to the Mayor's Climate Protection Agreement Citizens Advisory Committee.** Mayor Marshall re-appointed Debraura James and James Goodkind, and appointed Frank Drysdale with no objection from the Council.

**G. Appointment to Parks and Recreation Board.** Mayor Marshall appointed Henry Rhone with no objection from the Council.

**H. Discussion on a direction for Penny Park.** Manager Brown reported that the plans had been completed by the engineers for the reconstruction of Penny Park; how the dirt that had high levels of arsenic had been removed and replaced so it was ready for construction; how the engineer's estimate came in lower than the preliminary estimates for construction by a contractor; how the engineer's estimate was \$110,000 to put out for bid; and how there would be no problem covering the cost of materials if they decided on the volunteer route. He stated it was up to the Council on how they wanted to proceed. Mayor Marshall said they should make it well known that they were ready to proceed and to see if anybody would present them with a plan to effectively complete the project as a community project. He said there was great interest in making it a community rebuild project so they would have an opportunity to make a presentation at the next Council meeting. He said he would like to see 1 plan that was well put together that would state how they would accomplish the project in a timely, safe, and organized manner that would not burden the Town with uninsured bills. There was further discussion by the Council. Mayor Marshall asked for audience participation, but there was none. Mayor Marshall asked the Council if they had any objection to giving direction to staff that it would be put back on the agenda for the next meeting for a final decision on whether they use a volunteer community build or to put it out to bid. There was no objection by Council.

**ADJOURNMENT** – Councilor Wheaton-Smith made a motion to adjourn at 8:55 PM. Councilor Bettison seconded the motion as stated. 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