

MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
SPECIAL COUNCIL MEETING
Grant County Administration Center, 1400 Hwy 180, Silver City, NM
January 24, 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
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 3:05 PM. Councilor Morones read the Mission Statement.

2. Discussion only on issues relating to the Esperanza Hills Planned Unit Development. No action taken by the Town Council. Mayor Marshall stated the purpose of the meeting and reminded the Council and Bruce McKinney, the applicant of the Esperanza Hills Planned Unit Development (PUD), that it was still under negotiations and was subject to a future hearing. He said that comments by the Council would most likely be inappropriate, however, he said they definitely wanted to hear what Mr. McKinney had to say.

Mr. McKinney said he was surprised that the Council would not be speaking on the subject matter because he had questions. He asked Mayor Marshall if it would be out of line to answer questions. Mayor Marshall stated that they may answer questions, but they would not be able to make any decisions in the meeting. Mr. McKinney stated that at the last PUD hearing before the Council that Councilor Wheaton-Smith had stated that it would have been better to have a work session for such a big proposal before the hearing; that was why he had proposed the current meeting. He said that he wanted to discuss the Cost Sharing Agreement for improvements on Mountain View Road, his final PUD submittal, and set the Esperanza Hills project in context. He said he was not happy with the way the process had gone and his presentation included: a couple of stories about the project; a PowerPoint slide show that included maps of the area intended for the project and other properties adjacent to the project; comments about neighborhood meetings; issues with Mountain View Road; the Land Use Code and the development of low-density areas with minimal regulation; how the Town should be more welcoming to green cluster housing; how the project would bring in significant revenues over 22 years; how the total cost of the project was estimated at \$43.8 million; how the estimated property tax to the Town would be \$26,020 and currently was \$458 per year from Esperanza Hills; how the project would provide some jobs and would create a business friendly atmosphere; how he would have to remain flexible since the project would occur over a 22 year period; how the area would change if he was successful with the project and if Mountain View Road was paved; the feasibility of having an outlet to the west; and how the Town's vision was neutral, etc. and that he believed that path was wrong. He stated that even if the Council would approve the PUD and sign the Cost Sharing Agreement that it may not be enough to persuade him to build the project. He said the process currently had 3 major problems: endless delays, ignoring the important issue, and focusing on trivia. He provided the following examples: how the Cost Sharing Agreement took 14 months to draw up before he could take it to his attorney to review; how it had taken 18 months to get to where they were on that date; a timeline of the agreement process; how there were 2 unnecessary delays in the PUD hearing processes; how a meeting had been cancelled without consulting him; how the legal notification period had passed; and how the Mayor offered him a work session but it was too late because he had made a personal commitment.

Mayor Marshall told Mr. McKinney that his last comment was not true. Mayor Marshall said they had both agreed on a date that would accommodate Mr. McKinney's personal commitment for the birth of his grand-daughter, but that Mr. McKinney cancelled the meeting because there were other changes and he wanted to hold off. He said it was not the Town's burden. Mr. McKinney said that was not how he remembered it. There was further discussion. Mayor

Marshall stated that he and Mr. McKinney had discussed how the Town had never done a PUD before so they would have to work together to work through the issues, and work through the processes to try to come up with a way to move forward; then to go back to adjust the Town's process to make it more workable. He said that they understood Mr. McKinney's frustration and how it had also been frustrating for the Town, and he described how the process did take time. He said both parties had made repeated changes to agreements and that it had been really difficult to come up with agreements. He said to Mr. McKinney that it would not move him forward to discuss the delays. He said that the Council's Notice of Decision on April 30, 2010, answered his questions and gave reasons why they supported his concept plan. Mayor Marshall said they were committed to do what they could to make sure his project carried through. He said it would be a future hearing, but after it was all over he would like to sit down with Mr. McKinney to make amendments to the Land Use Code. Mr. McKinney said his issue was not with the Land Use code, but it was with the delays and he said that he was still angry about the process.

Mr. McKinney continued his presentation and how his focus was on what it would take to get the project built. He said that he felt things had to change because it ignored important questions about whether the project was a good idea and if they wanted to go in that direction, and what the appropriate density of the development was. He commented on his protest with an issue with one sentence in the Traffic Analysis about how Street No. 1 had to be aligned with Yellow Arrow Road, etc.; how the Community Development Director was very literal; and how the Town Engineer would have to approve every road because the roads would become public roads. Manager Brown stated it was a condition of approval by the Town Council in the Notice of Decision; that it was not Peter Russell's decision. Mayor Marshall said Manager Brown's statement was true. Mr. McKinney said that he planned 20 clusters for the project, and that he would have to get a plat for every one of them. He said that if he had to go through that level of discussion that he would never finish. He said he did not want to waste the money that he had spent so far, but he could go to his back up plan and break even eventually, etc. He said based on his experience so far that he had no confidence that he could build it on time or on budget. He said that regulation was supposed to be important, but a small part of the development process, and that regulation had taken over. He said the Council needed to tell him if the project was going to happen because he may get approval, but the atmosphere may prevent him from completing it. He said he could review each provision of the Cost Sharing Agreement.

Mayor Marshall commented that he understood that Mr. McKinney had issues with the Cost Sharing Agreement. Manager Brown stated the agreement was under negotiations and asked whether legal questions about the contract could be openly negotiated in the meeting. Attorney Scavron said the Council could not take action, but they could encourage the Town Manager or Community Development Director to get on with negotiations in an expeditious fashion. He said that defining terms for negotiations was not a proper Council activity. He said that he was an outsider in the process, but it appeared to him that there was a failure of communication between the developer and the Community Development Department so the developer sought to go over the Community Development Director and go directly to the Town Manager, but not as a formal appeal. He said the negotiations had not been resolved with the Town Manager so the developer wanted to leap frog the Town Manager and go to the Council. He said the Council was not permitted to do anything other than review the final plat; hear the case; and decide if there needed to be direction or if there needed to be modifications or conditions. He said the Council could rescind it and not accept the final plan if it was incomplete or they could vote on it with conditions. He said that from his perspective for the current meeting that there was nothing they could do. He stated that one of the questions posed by Mr. McKinney was whether the Town Council wanted the development, and he said that there had been 3 formal hearings and 3 approvals with conditions. He said sometimes the conditions were mandated by law and sometimes by the Planning and Zoning Commission or the Town Council, but any ambiguities would have to be worked out. He said that he saw no ambiguities in the PUD as far as the law went, and that it was deliberately vague in certain areas, but the primary role of Peter Russell, Community Development Director, was to do what the Council asked him to do and what the law told him to do.

Mr. McKinney stated that he only had 1 major issue and some minor details; it was his understanding that they could discuss it, but take no action. He said that he would like to present it so they would at least know what the issues were. Mayor Marshall commented that they had the Notice of Decision from April 30, 2010, and if he had issues with it, then he could apply to go back to that step and it would go back to that process; then he could argue Decision (2) "Street No. 1 must be aligned with Yellow Arrow Road unless an alternative intersection design is approved by the

Town Engineer”. He said that Decision (2) was a requirement that the Town Council put on him at that hearing. He said if they wanted to debate that decision then they would have to go back to that step; if not, then Mr. McKinney would have to accept it so they could get on to the next step. Mr. McKinney said he did not want to go back to that step because the condition had no effect because he could do the same thing with it or without it. He said that it was fine to leave it in, but there were other issues that he could explain to them if it was appropriate. Mayor Marshall told Mr. McKinney that it was not appropriate to discuss the Cost Sharing Agreement for Mountain View Road because he was still in negotiations with staff. He said that his direction to staff was to negotiate with Mr. McKinney aggressively so they could get to the next step.

Councilor Wheaton-Smith commented on the Notice of Decision from April 30, 2010, and said it seemed to him that Condition #2 was permissive, not limiting, because it said “unless an alternative is approved by the Town Engineer” so it allowed Mr. McKinney to talk to the Town Engineer. Mayor Marshall said the Cost Sharing Agreement was where there was a hang up because it was in negotiations and it was fully inappropriate for the Council to interfere with negotiations other than to direct staff to do their job. Mayor Marshall asked if there was a way for an agreement to come to Council if both parties could not come to an agreement so the 2 parties could argue before the Council. Attorney Scavron said the developer could appeal to the Council on the interpretation of the law or the conditions, and that would halt the negotiations. He gave examples and he said that only the issue of interpretation could be appealed, but the proper place for negotiating a contract was with staff; it was not a Council role because the Council’s role was to set policy, manage the Town Manager, and listen to an appeal. He said that once the interpretation was settled, the Council would order them back to the negotiation table with that interpretation.

Mr. McKinney said that he did not see it as a negotiation because he and Manager Brown had resolved all issues but one, and it could be discussed at the future hearing. He said that he wanted to go over those issues so they could keep the future hearing short. Peter Russell, Community Development Director, stated that there was no current application pending because Mr. McKinney took back all of his submittals, but he could re-submit what he had and they would circulate it again through staff, and how there was a 15 day notice period. Mr. McKinney said the documents for the current meeting were his equivalent to a submission, and how that was a perfect illustration of the kind of delay that he was upset about. There was further discussion about his submittal and the correct process; the date of a future hearing; the road agreement negotiations and how that contract would be signed after the final plan was approved by the Council; etc. Attorney Scavron stated to Mr. McKinney that he would like him to re-submit it back to the Community Development Department and affirm in writing that nothing had changed because under the law his withdrawal of the submittal could be argued that it was a withdrawal of the project so it was better to re-submit it in order to cover the gap and they could move on. Mr. McKinney said that it was fair enough. There was further discussion about scheduling the future hearing.

Mayor Marshall asked if there was any other business and he asked a person from the audience to come forward. Mona Britt expressed her concerns on the following: how every development should have ingress and egress; how the developer should use his own money, not the Town’s, to fix up Mountain View Road, and how she would like those issues addressed in negotiations. Mayor Marshall responded to Ms. Britt that the negotiations were basically financial concerns between the parties, but the actual details would come to a public hearing and she would have an opportunity to participate in the hearing.

ADJOURNMENT – Councilor Wheaton-Smith made a motion to adjourn at 4:13 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