

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY  
REGULAR COUNCIL MEETING**

**Grant County Administration Center, 1400 Hwy 180, Silver City, NM  
February 21, 2011, 3:30 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  
Robert Esqueda, Utilities Director  
Peter Pena, Public Works Director

**1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE** – Mayor Marshall called the meeting to order at 3:30 PM, and Councilor Wheaton-Smith read the Mission Statement.

**2. CEREMONIES** – None.

**3. PROCLAMATIONS** – None.

**4. PUBLIC INPUT** – Mona Britt commented on water damage with frozen pipes and how the Governor declared a State of Emergency, and that her neighborhood needed posted speed limit signs.

**5. COUNCIL COMMENTS** - The Council commented on the following: thanks were given to all who assisted during the gas shortage and how the Grant County Business and Conference Center was set up as a place to go for heat; recently attended events; the Police Department was thanked for helping out during the Puppet Parade; a request for input regarding the animal ordinance; legislative issues; the recent natural gas shortages throughout the state and how N.M. Gas had no emergency plan at the local levels; how crews from various Town departments had to assist with shutting off the gas and turning it back on, and shutting off water to contain major water losses due to freezing pipes; how the Town's Code book had a new numbering system; and how the Public Regulations Commission rejected PNM's settlement over 3 years for a rate increase short of 11% because the settlement was not formulated in a transparent process that involved all of the parties with a consensus of all the stakeholders.

Councilor Wheaton-Smith commented that it was his last meeting on the Council and he read a list of the Town Council's accomplishments during the last four years. He said he was very proud of what the Town Council; the Town Manager; the department heads; and the employees had done for the citizens. Councilor Bettison and Councilor Thomson expressed their appreciation to Councilor Wheaton-Smith for the work he did on the Council and for the citizens of the Town. Mayor Marshall thanked Councilor Wheaton-Smith for his service and for the robust discussions and open debates.

**6. CHANGES TO THE AGENDA** – Councilor Wheaton-Smith moved to drop Item B of Section 9 for Public Hearings because the applicant had withdrawn the application. Councilor Bettison seconded the motion as stated. Mayor Marshall stated that the applicant withdrew his application by email and he was not present in the room to present his case. All were in favor, motion passed.

**7. APPROVAL OF THE MINUTES – Regular Meeting, February 8, 2011** - Councilor Bettison made a motion to approve the minutes. Councilor Morones seconded the motion as stated. All were in favor, motion passed.

**8. REPORTS** – Attorney Scavron commented on the coalition that was formed to fight the PNM rate increase and said that the first thing that Mayor Marshall insisted on to PNM, the Attorney General, and other parties, was that the process be open and transparent. He said there was still a mindset that somehow transparency was dangerous to their wellbeing, and apparently neither the Attorney General nor the Public Regulations Commission (PRC) saw fit to insist on transparency during negotiations. Mayor Marshall stated that Attorney Scavron was referring to the PRC that was

in place prior to January 1, 2011. He said it was the current PRC that took office on January 1, 2011 that made the decision to reject PNM's settlement offer and it was commendable that they came to that decision without forcing many of the stakeholders to involve additional legal input into the case.

Manager Brown commented on Ms. Britt's concerns about the water breaks, and stated that the sewer rates were based on December, January, and February water usage. He said the Utility Billing Director kept a list of the times there were water breaks reported or when a meter was misread and corrected, and when the new rates would come out she would go back to those accounts and correct the water usage. He said instead of averaging 3 months for determining the sewer rates, that they would instead average 2 months and exclude the water usage due to the water breaks. There was further discussion by the Council.

Clerk Mackie reported on the upcoming Municipal Election on March 1, 2011, and said absentee and early voting was taking place at City Hall until February 25, 2011.

**A. Report from Mayor Marshall on Essential Air Service.** Mayor Marshall stated the overwhelming majority of input was to maintain flights to the Albuquerque / Santa Fe area, and the second area of interest was Phoenix. He said there were presentations by Great Lakes and Seaport Airlines. He said there were a lot of issues; one of them was that they could issue waivers to decrease the level of service provided, such as the equipment that they were allowed to use, but if they were to change their minds then it would be difficult to argue why the waiver was no longer desirable. He stated that his recommendation was to go with Great Lakes with a destination of Albuquerque and an option to negotiate with Great Lakes for additional service enhancements as their company grew in the region. He said that Great Lakes was re-locating most of their efforts from the Great Lakes region to the Southwest region. There was no discussion from the Council.

## **9. PUBLIC HEARINGS -**

**A. Approval / Disapproval of Request for a Restaurant Liquor License (beer and wine on-premise consumption only), Application #A-654482, Applicant Name: Jose L. Dominguez, DBA: La Familia Mexican Restaurant, Proposed Location: 503 Hudson St., Silver City, NM 88061.** Mayor Marshall stated that the Town Council would serve as the hearing board and he would serve as the presiding officer. He asked if any member of the hearing board had ex-parte discussions with any person regarding the subject, or had any communication from any party to the case, and none had. Mayor Marshall asked all parties and witnesses, including staff members, to come forward to be sworn in to testify by the Town Clerk. The Town Clerk swore in 2 witnesses for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted. Diane Dominguez stated that she and her husband, Jose Luis Dominguez, would like their approval of a restaurant liquor license. She stated they had complied with what was needed and they had both taken the servers classes and had their server's licenses. She said that their waitresses were also certified. Councilor Bettison clarified that only beer and wine would be sold and consumed on the premise, and Mrs. Dominguez said yes. There were no other questions from the Council and there were no other witnesses in favor or in opposition to the applicant's case. There was further discussion about how the deed or lease was not included in the packet. Clerk Mackie stated that the State did not provide the information. Mrs. Dominguez concluded their case. Mayor Marshall asked if the hearing board was prepared to render a decision. Councilor Morones made a motion to approve the request for a Restaurant Liquor License (beer and wine on-premise consumption only), Application #A-654482, Applicant Name: Jose L. Dominguez, doing business as La Familia Mexican Restaurant, proposed location: 503 Hudson St., Silver City, NM. Councilor Wheaton-Smith seconded the motion as stated. All were in favor, motion passed.

**B. Approval / Disapproval of a request for a final plan for a Planned Unit Development (PUD 09-1) and rezoning on a tract of land approximately 110 acres in size and located on over 200 lots on portions of Blocks 2-14 and part of Sections 2 and 11 of the Rio Vicente Subdivision. The applicant is Esperanza Hills, LLC.** This item was dropped from the agenda. See above Item 6 for Changes to the Agenda.

## **10. UNFINISHED BUSINESS -**

**A. Approval / Disapproval of Ordinance No. 1170: an Ordinance allowing the dedication of land and infrastructure improvements to an Affordable/Workforce Housing Project for subsequent transfer to a qualified purchaser.** Peter Russell, Community Development Director, presented the details of Ordinance No. 1170 and stated it would allow the Town to provide public property for a specific project, such as the Vistas de Plata Affordable Housing project. Councilor Thomson asked if the property was designated as open space. Mr. Russell said the Town had not designated property as open space, but it was a new category in the new Land Use Code. He said the property was land that was in the Town's inventory for a long time. There was discussion about the estimated value of the property with 27 acres and how it would take away from the inventory of open space that the Town had. Manager Brown stated the property was valued from \$60,000 - \$90,000, but was used to leverage over \$2,000,000 in infrastructure improvements that would be put into the neighborhood. There was further discussion. Councilor Morones made a motion to approve Ordinance No. 1170. 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.

Councilor Bettison made a motion for a short break at 4:27 PM. Councilor Morones seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 4:38 PM.

## **11. NEW BUSINESS -**

**A. Approval / Disapproval of Town of Silver City Audit Report for Fiscal Year ended June 30, 2010.** Mike Stone of Stone, McGee & Co., CPAs reported that the Town's budget was \$15-20,000,000 per year with managed assets of \$68,000,000. He stated that the State Auditor required them to put 2 comments in the Audit Report and he disagreed with both of them. He said he put the comments in so the State Auditor would release the Audit Report. He said that he was going on public record to say that what the State Auditor did was wrong and that he had also gone on public record on the State level. He described the reasons for the 2 comments and said they were minor things and had nothing to do with the operation of the Town. He said one of the comments was because the Town had a negative cash balance for a short period of time while awaiting reimbursement from grant sources; the other comment was because the Town's timely audit report submitted prior to December 1, 2010 was not reviewed by the State Auditor until the first comment was included, which was after the deadline. He said that he asked the State Auditor for the rule for each comment, but the rule was not provided by the State Auditor or the Department of Finance and Administration. There was further discussion. Mr. Stone said the Town's Finance Department was doing an excellent job, was very cooperative, and handled the audit with class and a very professional attitude. Councilor Morones said the Audit Report looked good. Mayor Marshall said that the entire time that he had been Mayor that it was the first time for comments in an Audit Report. He thanked Mr. Stone and his firm for providing the services to the Town and said they had done an exceptional job in performing the audit tasks. He said the auditor's job would not be successful without the hard work of the staff. He thanked Alex Brown, Town Manager-Finance Director; Linda Flores, Deputy Finance Director; the staff in the Finance Department; and the department heads. There was further discussion. Mayor Marshall asked Mr. Stone if it would be inappropriate to make a comment when they made a motion to approve the Audit Report. He said no. Mayor Marshall said he would not be concerned if the State would show the rules on what generated the comments. Councilor Morones made a motion to approve the Audit Report for Fiscal Year ended June 30, 2010. Councilor Wheaton-Smith seconded the motion as stated. Councilor Bettison asked if they were going to amend the motion and she asked Attorney Scavron for a suggestion. He said to add, "and protest the 2 comments." Councilor Wheaton-Smith said the comments were unsubstantiated. Mayor Marshall suggested that the motion could be changed to "approval of the Town of Silver City Audit Report for Fiscal Year ended June 30, 2010 and protest the unsubstantiated comments." There was further discussion. Councilor Morones accepted the friendly amendment as stated by the Mayor. Councilor Wheaton-Smith seconded the friendly amendment. Clerk Mackie repeated the motion as stated by the Mayor. Attorney Scavron added, "included therein." Mayor Marshall asked if they accepted the second friendly amendment. Councilor Morones and Councilor Wheaton-Smith both accepted it. There was no further discussion. All were in favor, motion passed.

**B. Approval / Disapproval of Request for Proposal # 10/11-3P: Professional Design Services for Hidalgo Medical Services Public Health Facility.** Manager Brown stated that the project was being paid for by grants on a reimbursable basis. He said they received 14 proposals for the project for professional design services for the Hidalgo Medical Services (HMS) Public Health Facility, and it was staff's recommendation to go into negotiations and award the contract to Hartman and Majewski Design Group out of Albuquerque, and if negotiations failed that SMPC

Architects would be named as an alternate to enter into negotiations. He said it would be paid for with the remainder of a \$1,000,000 legislative allocation that was received for the HMS facility, and if there were not enough funds to pay for the entire design service then HMS would use the \$8,000,000 that they had received to finish the design and to do the construction of the building. He said no dollars would be coming out of Town funds. There was further discussion. Mayor Marshall asked the audience if there were any other comments on the bid, and there were none. Councilor Morones made a motion to approve Request for Proposal # 10/11-3P for Professional Design Services for Hidalgo Medical Services Public Health Facility to the Hartman and Majewski Design Group with SMPC Architects as the alternate as recommended by staff. Councilor Bettison seconded the motion as stated. There was no other discussion. All were in favor, motion passed.

**C. Approval / Disapproval of Notice of Intent Ordinance No. 1176: an Ordinance amending and superseding Resolution N. 2008-07, authorizing the execution and delivery of an amended and restated loan agreement by and between the Town of Silver City and the N.M. Finance Authority for improvements of the municipal water utility.** Manager Brown presented the details and said the loan was entered into a year and a half before for the purpose of installing the SCADA system for the water system as well as to build a replacement well for the Gabby Hayes well. He said the construction on the SCADA system was completed, but when they went out to bid for the replacement well for the Gabby Hayes well, there was an engineer's estimate of \$400,000, but the lowest bidder came in close to \$1,000,000. He said that they wanted to amend the agreement by increasing it by \$400,000 because some adjustments were made to the design, and based on the bids that were received they should have enough funds with the additional \$400,000 to complete the Gabby Hayes well. He said the problem with the Gabby Hayes well was that the column had shifted so the pump could not be lowered any further. He said that they needed to build a new well so they could continue to lower the pump as needed. He said it was not needed right now, but they wanted to take advantage of the price and time so they could get it installed and have it ready. He provided details on the loan agreement and answered questions from Councilor Bettison. There was no further discussion, and no comments from the audience. Councilor Bettison made a motion to approve Notice of Intent Ordinance No. 1176. Councilor Wheaton-Smith seconded the motion as stated. There was no further discussion. All were in favor, motion passed.

**D. Approval / Disapproval of Bid #10/11-5: Wastewater Treatment Plant Sludge Return Line Reroute.** Manager Brown stated that the Town received 4 bids and it was staff's recommendation to award the bid to Tatsch Construction, Inc. for the base bid for a total amount of \$79,535.88 that included gross receipts taxes. He said the Town would have to come up with \$8,000 for the project and he described 2 other funding sources that would cover portions of the cost of the project. There was further discussion. Councilor Bettison made a motion to approve Bid #10/11-5 per staff's recommendation. Councilor Wheaton-Smith seconded the motion as stated. Robert Esqueda, Utilities Director, commented on the project. All were in favor, motion passed.

**E. Approval / Disapproval of Bid #10/11-9: Memory Lane Cemetery Expansion Phase II.** Manager Brown stated the project would complete the Phase II construction of the Cemetery. He said they received 3 bids and it was staff's recommendation to award the contract to Southwest Concrete and Paving, Inc. He said they were not the lowest bidder, but because of the recent change to the Town's Procurement Code, Southwest Concrete and Paving, Inc. was given the 5% Grant County preference because the difference between Deming Excavating, Inc. and Southwest Concrete and Paving, Inc. was less than 5%. He said it was staff's recommendation to award Bid lots #1 – 5 to Southwest Concrete and Paving, Inc. for a total of \$138,673.95, including gross receipts taxes. He said the entire amount was within the funds that were available from the Cemetery's legislative allocation so no funds would come out of the Town's budget, but it would be on a reimbursement basis. There was further discussion. Peter Pena, Public Works Director, stated it would allow the Town to finish 2 more sections within the newly developed area. He said the expansion would provide 1,100 more available plots; the paving of another section of road; a parking area; a retaining wall on the east side by the retention area to maximize the property in order to create an area for infant burials; plus the paving of Evergreen in the old section so everything in the old section would be paved. Manager Brown stated there were approximately 80 burials per year. Councilor Wheaton-Smith made a motion to accept staff's recommendation to award the Bid #10/11-9 with Bid lots #1 – 5 for a total with gross receipts taxes in the amount of \$138,673.95 to Southwest Concrete and Paving, Inc. using the new amendment to the Procurement Code. Councilor Bettison seconded the motion. There was further discussion. All were in favor, motion passed.

**F. Approval / Disapproval of Resolution No. 2011-08: authorizing the submission of a WaterSmart Water and Energy Efficiency Grant Program application to the U.S. Department of the Interior.** Nick Sussillo, Director of the Joint Office of Sustainability, presented the details of Resolution No. 2011-08, and said it was in support of a grant proposal to the Department of Interior’s Bureau of Reclamation’s WaterSMART program. He said that he had discussions with Peter Russell, Community Development Director; Alex Brown, Town Manager – Finance Director; Robert Esqueda, Utilities Director; and Mayor Bauch of Santa Clara, and there was an obvious need for upgrading existing motors for well pumps and for the use of soft starts that would draw less current and would hopefully extend the life of the motors for the pumps. He provided further details by reading a prepared statement. He stated that Resolution No. 2011-08 documented the intent of the municipalities (the Town of Silver City and the Village of Santa Clara) to commit 50% cost share, which was required by the grant program, through cash contributions from their Water and Sewer Funds. He said the Town of Silver City would be committing a match of \$175,000 toward the purchase of flow meters and motors, and the Village of Santa Clara would be committing \$35,000. Councilor Bettison stated that the Resolution had different dollar amounts in it under Items 4 and 5. Manager Brown asked Mr. Sussillo if it could be brought back to the next Council meeting because it was presented to him differently, and he needed more time to review it. Mr. Sussillo apologized for the discrepancy in the numbers and said he would discuss it with Manager Brown to resolve it. Mayor Marshall asked for a motion to postpone Resolution No. 2011-08. Councilor Wheaton-Smith made a motion to postpone action on Resolution No. 2011-08 to the subsequent Council meeting. Councilor Bettison seconded the motion as stated. There was further discussion. All were in favor, motion passed.

**12. ADJOURNMENT** – Councilor Wheaton-Smith made a motion to adjourn at 5:36 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