

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

**Grant County Administration Center, 1400 Hwy 180, Silver City, NM
March 8, 2011, 6:00 PM**

Present:

James R. Marshall, Mayor
Cynthia Ann Bettison, District 1
Jamie K. Thomson, District 2
Vacant, District 3
Michael S. Morones, District 4

Also Present:

Alex C. Brown, Town Manager - Finance Director
Ann L. Mackie, Town Clerk
Luan Mitchell, Planner
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 6:00 PM, and Councilor Morones read the Mission Statement. Mayor Marshall stated the agenda would be re-arranged in light of the recent fire in the community, and the Forest Service public information personnel that were present provided status on the fire. Mayor Marshall changed the agenda to switch the order of Item 2 Ceremonies and Item 3 Proclamations.

2. PROCLAMATIONS – Mayor Marshall read the proclamation, "Girl Scouts Make the World a Better Place Week, March 6 - 12, 2011," to Annette Toney and a group of Girl Scouts. Ms. Toney thanked the community for their support and said they sold 25,000 boxes of cookies which would help them to go on trips, buy patches, and buy lots of supplies.

3. CEREMONIES – Mayor Marshall said it was truly an honor to serve the community and that Councilor Wheaton-Smith had ended his term. He said that they had robust discussions, but always maintained the decorum of the meeting and respected each other, and how that brought much to the Council and to the work that they had done for the Town. He said that Councilor Wheaton-Smith had more neighborhood meetings than any other Councilor and that he really appreciated it because it truly allowed the Council to represent all of the community. He presented a plaque to Councilor Wheaton-Smith to honor his years of service, dedication and friendship. Councilor Wheaton-Smith told a personal story about how he met a paramedic named Mr. Marshall, then met him again years later when he interviewed for the Town Clerk position, and that he did not know at the time that the paramedic had become the Mayor of the Town of Silver City. Mayor Marshall called for a recess in order to hold a reception to honor Councilor Wheaton-Smith. He called the meeting back to order at 6:31 PM.

4. PUBLIC INPUT – None.

5. COUNCIL COMMENTS - The Council commented on the following: thanks were given to all of those that assisted with the fire and with the residents; recently attended events; the Mimbres Region Arts Council's mural brochure; the upcoming International Women's Day Parade on March 20, 2011; how the urban wild land interface fires were complicated because the wild land firefighters and the urban firefighters were culturally different, and how they were able to communicate very efficiently during the recent fire; how the Jose Barrios Elementary School's Principal and teachers appreciated the Town staff for their work on a grant project with the Waterworks Building; how the Community Development Department was working hard to fix the tailings in San Vicente and their efforts were appreciated; how a by-pass for economic purposes was important, but it would also serve some purpose in the health and safety of the community; and a legislative update.

Councilor Bettison commented that she appreciated those that voted in the uncontested race and that it was her honor to represent and to serve District 1 and the Town of Silver City. She said it was her second term and that she would continue to represent District 1 and the Town to the best of her ability. She stated that she could only do it through the support of the Council members and the staff of the Town of Silver City. She said she appreciated working with the staff, the Council, and with former Councilor Wheaton-Smith.

Councilor Morones stated that Councilor Wheaton-Smith served as a mentor to him, and that he gained a lot of knowledge from him on how to work, read, study, and how to conduct himself as a Councilor. He said that he appreciated the efforts of Councilor Wheaton-Smith.

Mayor Marshall commended the volunteer firefighters and the Silver City Fire Department's firefighters for doing an amazing job by trying their best to stop the damage from the fire that was out of control, and how they risked their lives to save the property of others. He said they were getting assistance from firefighters from all over the State; the Forest Service; State Forestry; all of the volunteer fire departments; all of the law enforcement agencies; and the Red Cross. He said the Red Cross was providing an invaluable service to those that lost their homes, and he encouraged people to support the Red Cross. He described the support they were getting from the community. He stated that they worked with Senator Morales, Representative Martinez, County Commission Chair Kasten, and Secretary of Homeland Security Michael Duval which led up to the Governor's Executive Order that freed up additional resources.

6. CHANGES TO THE AGENDA – See Item 1 above for changes.

7. APPROVAL OF THE MINUTES – Regular Meeting, February 21, 2011 - Councilor Bettison made a motion to approve the minutes. Councilor Morones seconded the motion as stated. Councilor Bettison, Councilor Thomson, and Councilor Morones voted in favor, motion passed. Note for the record of the vote: the position of Councilor in District 3 was vacant on this date.

8. REPORTS – Fire Chief Bencomo described the fire incident that began on March 7, 2011 off Highway 90 South that was determined to have originated 200 yards north of the Town site of Tyrone and how there were gusts of winds from 45-50 miles per hour. He praised the Incident Commander, Captain Gabriel Gutierrez, for doing an excellent job. He estimated that the width of the fire was 600 yards wide and how all of the local volunteer fire departments, State Forestry, and Forest Service were there. He thanked the Silver City Police Department, the State Police, the Grant County Sheriff's Office, and the Streets Division of the Public Works Department. He said the incident was transferred over to the State Forestry personnel, the Forest Service personnel, and the Bureau of Land Management. He said the fire was close to being contained and that the residents were being allowed to return to their homes. He said that because of the incident and the damage that had occurred that he had a meeting with Manager Brown; he said that he wanted to exercise his duties and responsibilities by city ordinance to impose fire restrictions on open flames such as, campfires, open pits, chimineas, and refuse burning. Mayor Marshall stated that Fire Chief Bencomo's recommendation was extremely appropriate because there were many areas in the community that were considered to be urban interface, and it would be devastating to have another incident because personnel were tired and worn out. He said to Fire Chief Bencomo that he highly recommended that he carry out the ordinance and exercise the power that he was given, and that the Police Chief and staff should follow through with the enforcement with absolute zero tolerance and with great vigor because they could not risk another fire. He told Fire Chief Bencomo to make sure that his crews knew that their work was appreciated and that the state and national staff also recognized that they did an exceptional job.

Manager Brown reported that the State Fire Marshall recently did a debriefing with him and Assistant Fire Chief Heidrick, and that they informed him that the Silver City Fire Department was trained, equipped, and considered to be on the same level as the Albuquerque Fire Department. He provided further information on the department's ISO (Insurance Services Office) rating because it could go down to 4 or 3 because of the strides of the department as far as infrastructure improvements with water, etc. Mayor Marshall stated that the lower ISO rating for the Fire Department was better because it caused better rates on homeowners insurance. There was further discussion. Police Chief Reynolds reported on the role of the Silver City Police Department during the fire incident, and he said the fire command and law enforcement were in sync. Manager Brown reported that Robert Esqueda, Utilities Director, saved the Wastewater Treatment Plant. Mayor Marshall said it was very important because it was close to being in the line of fire, that it was critical infrastructure, and it would have been devastating to the Town.

9. PUBLIC HEARINGS -

A. Approval / Disapproval of Ordinance No. 1177: an Ordinance for a Map Amendment/Zone Change request # ZC 11-01 from Commercial to Historic Downtown Commercial for property described as the east 82 feet of lots 13 and 15, Block 65 of the Fraser's Addition and addressed as 505 W Yankie Street, Silver City, NM. The applicants are Ben K. and Susan M. Sherman. 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 3 witnesses for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted. Luan Mitchell, Planner, read the Staff Report, and stated the Planning and Zoning Commission recommended approval of the map amendment/zone change and that no conditions were recommended. She concluded her report of the Staff Report. Councilor Bettison asked whether having the word "commercial" in the new zone would have an impact on loans. Ms. Mitchell said that question came up in the Planning and Zoning Commission meeting and at that time Peter Russell, Community Development Director, said they would be writing letters to lenders and if the word "commercial" became a barrier then they would ask the Council to change the name of the designation. Mr. Russell addressed the Council and said that he talked with a couple of realtors about the concern, and that the issue was what the exact use of the building was being used for; if it was being used for a residential purpose then they should get a residential rate. He said the word "commercial" was included in the Downtown District to acknowledge that there were in fact lots of commercial uses there. He said the purpose was to allow people to use their property in a manner that accommodated the historical uses, and allowed them the greatest freedom in terms of financing their property. He said that they believed it would be adequate to resolve any financial issues, and that they would provide any documentation that the lender would ask for.

Mayor Marshall asked Dr. Ben Sherman to present his case. Dr. Sherman said that the interest rates were at a historic low because of the way that lenders were lending money through Fannie Mae and Freddie Mac, but they were not allowing any commercial loans. He said that when he was interested in having commercial on the property that he was paying 9.5% on commercial and that it was difficult to find anyone that was interested in renting the commercial property. He said he had a better idea to use it as residential, and the residential interest rates were 3.125% versus the 9.5% interest rate for commercial. He said it would be a huge money loss for him and he requested that the hearing board support him by allowing him to access himself to residential or commercial variances. Mayor Marshall asked Dr. Sherman if he found the historic designation to be appropriate. Dr. Sherman stated that he had asked the lenders and was told that as long as the intent was to sell it as residential or use it residentially then they would not have a problem with it. Mayor Marshall asked him if he felt that it fit the character of the neighborhood and Dr. Sherman said yes. Dr. Sherman commented on the input he received from the 35 people in the vicinity and stated that there were no negative comments; all were supportive of the position. Mayor Marshall asked him if that concluded his case. Dr. Sherman said yes, and he had nothing else to be reflected in the record. There were questions from the hearing board, and there was no opposition to the case. Mayor Marshall asked the hearing board if they were prepared to render a decision, and they said yes. Councilor Morones moved to approve Ordinance No. 1177. Councilor Bettison seconded the motion as stated. Mayor Marshall asked Councilor Morones to state a finding. Councilor Morones stated, "with the finding that the proposed amendment will not adversely impact the public health, safety or general welfare and will promote the original purposes of the Land Use Code." Mayor Marshall confirmed with Councilor Morones that his statement of the finding was in addition to his motion. Mayor Marshall asked Councilor Bettison if it was a friendly amendment and she stated yes. Mayor Marshall stated it was finding number 2. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed. Note for the record of the vote: the position of Councilor in District 3 was vacant on this date. Clerk Mackie asked the Mayor if she could confirm the finding number given in the motion, and Councilor Morones confirmed it was finding number 4.

Councilor Bettison moved for a short break at 7:18 PM, and Councilor Morones seconded. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 7:30 PM.

10. UNFINISHED BUSINESS - A. 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. Manager Brown presented the details of Resolution No. 2011-08 which had been postponed during

the February 21, 2011 Council Meeting pending further review. He explained the funding and how the motors and soft starts to be installed in the Franks and Woodward booster pumps would be much more energy efficient. Councilor Bettison thanked him for clarifying the details over the previous meeting. Mayor Marshall left the meeting to take a phone call, but said he supported the Resolution before he left. Councilor Bettison acted as Mayor Pro Tem in the Mayor's absence, and asked if there were any questions. There was further discussion. Mayor Pro Tem Bettison asked for a motion. Councilor Morones made a motion to approve Resolution No. 2011-08. Councilor Thomson seconded the motion. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed. Note for the record of the vote: the position of Councilor in District 3 was vacant on this date.

11. NEW BUSINESS -

A. Approval / Disapproval of Resolution No. 2011-10: a Resolution supporting an application for NM Department of Transportation Municipal Arterial Program (MAP) Funding. Peter Pena, Public Works Director, presented the details of Resolution No. 2011-10 to support an application for Phase II funding for a street and drainage project for College Avenue from Cooper Street to E Street. He said it would include paving, repairs to the curb and gutter, sidewalks, signage, striping, and meet ADA (American with Disabilities Act) requirements. There was further discussion and Manager Brown provided details on the funding. There was no further discussion. Mayor Pro Tem Bettison asked for a motion. Councilor Morones made a motion to approve Resolution No. 2011-10. Councilor Thomson seconded the motion. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed. Note for the record of the vote: the position of Councilor in District 3 was vacant on this date.

B. Approval / Disapproval of a Special Dispenser Permit Application and a waiver of NM Statute 60-6B-10 for a beer garden on April 30, 2011 at 703 N. Bullard Street during the SRAM Tour of the Gila's 25th Anniversary event. License Holder: Red Barn, 708 Silver Heights Blvd., Silver City, NM. Michelle Geels, President of Tour of the Gila, and Jack Brennan, Race Director for the Tour of the Gila, requested the Council's approval of the Special Dispenser Permit Application and a waiver of NM Statute 60-6B-10 since the event would be within 300' of The Episcopal Church of the Good Shepherd. Ms. Geels said the church approved the event with a written letter. She said it was the 25th year for the Tour of the Gila so they wanted to have a lot of celebration, and she described the planned activities and the beer garden. She said that they would like to attract more spectators and improve the economic benefits. Nick Seibel, Manager of the Silver City MainStreet Project, stated that MainStreet was a big supporter of the Tour of the Gila and the Downtown Criterium, and they were excited because it would be an opportunity to bring in even more people downtown. There was further discussion. Mayor Marshall said the Tour of the Gila race was a keystone event in Silver City, but he was often puzzled by the need to have alcohol at every event, but if they felt that it would enhance the event and be a value to the spectators, then he would not object. He said that Ms. Geels and Mr. Brennan should be honored and recognized for the time and effort and contributions that they put into the race which effectively was put into the Town and the County as a whole. He asked that they accept from him that their effort was recognized and valued. There was further discussion about the possibility of having non-alcoholic beverages made available in the beer garden area, etc. Councilor Morones made a motion to approve the Special Dispenser Permit Application and a waiver of NM Statute 60-6B-10. Councilor Bettison seconded the motion as stated. There was no further discussion. Councilor Bettison, Councilor Thomson, and Councilor Morones voted in favor, motion passed. Note for the record of the vote: the position of Councilor in District 3 was vacant on this date.

C. Approval / Disapproval of Resolution No. 2011-09: declaration of vacancy on Town Council and Notice of Intent to Appoint. Mayor Marshall stated that the Town had elections the previous week and that Councilor Bettison was elected in District 1 and Kyle von Holtum was elected in District 3. He said Mr. von Holtum was sworn in on March 3, 2011 and promptly turned in his resignation which left a vacancy on the Town Council. He said they did extensive research and Resolution No. 2011-09 would allow the Council to proceed with the filling of the vacancy. He said that within the law they were allowed to request petitions and the period was open for 30 days; the petitions received must have 5% of the qualified voters in District 3. He said if they received more than 1 petition then they would consider all of them; he would make a recommendation to the Council and they would accept or reject his recommendation. He said if 1 petition was received that they also had the option to reject it. He said people could sign as many petitions as they wanted, and that if they did not receive petitions after 30 days, then he would make a recommendation to the Council. He said the Council would accept or reject his recommendation. Councilor Bettison

asked the Town Clerk to discuss the petition process. Clerk Mackie stated that District 3 had 1,824 registered voters so 5% or 92 signatures would be required on the petition which would be due in 30 days or on April 7, 2011. She described the petition form and the qualification form for the nominee. She stated that every person that signed the petition, and the nominee, would be qualified to make sure they were registered voters of District 3. Mayor Marshall commented that each person must complete the forms exactly as they are registered with the County Clerk. A member of the audience, Herbie Marsden, commented on how the Mayor could recommend someone regardless of the number of petitions received and the number of signatures that were on the petitions. Mayor Marshall stated that the process that was laid out in the law requested petitions and he thought that putting in some effort to get the names on a petition should show some commitment on the current situation. Councilor Bettison made a motion to approve Resolution No. 2011-09. Councilor Thomson seconded the motion. A roll call vote was taken with the following results: Councilor Bettison - aye; Councilor Thomson - aye; and Councilor Morones - aye. Motion passed. Note for the record of the vote: the position of Councilor in District 3 was vacant on this date.

D. Approval / Disapproval of the re-scheduling or cancellation of the regular Town Council meeting scheduled for March 22, 2011. Mayor Marshall requested to re-schedule the next Council meeting to March 23rd because he was nominated to represent the Town in a process that was important to the Town and it was important that he attend those meetings. He recommended that the March 22nd meeting be re-scheduled for March 23rd at the same time and same place. Councilor Bettison made a motion to approve the re-scheduling of the regular Town Council meeting scheduled for March 22, 2011 to March 23, 2011 at 6:00 PM at the Grant County Commissions' Chambers. Councilor Morones seconded the motion as stated. There was no further discussion. Councilor Bettison, Councilor Thomson, and Councilor Morones voted in favor, motion passed. Note for the record of the vote: the position of Councilor in District 3 was vacant on this date.

12. ADJOURNMENT – Councilor Bettison made a motion to adjourn at 8:02 PM. Councilor Morones seconded the motion as stated. All were in favor. Motion passed.

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk