

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy 180, Silver City, NM
June 28, 2011, 6:00 P.M.**

Present:

James R. Marshall, Mayor
Cynthia A. Bettison, District 1
Jamie K. Thomson, District 2
Jose A. Ray, Jr., District 3
Michael S. Morones, District 4

Also Present:

Alex C. Brown, Town Manager-Finance Director
Robert Scavron, Town Attorney
Yolanda C. Holguin, Acting Town Clerk
Rudy Bencomo, Fire Chief

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE – Mayor Marshall called the meeting to order at 6:01 p.m. Councilor Thomson read the Town’s Mission Statement.

2. CEREMONIES – None.

3. PROCLAMATIONS – None.

4. PUBLIC INPUT – Mayor Marshall reminded everybody that they were allowed five minutes to speak under public input. He stated that before beginning public input that he wanted to make comments regarding the fireworks issue. He began by reading a release from the Governor’s office which stated Governor Susana Martinez would seek and support legislation in the Fall’s Special Legislative Session that would give cities, counties, and the State the authority to enact more comprehensive and total bans on fireworks during high fire danger circumstances like they were presently facing. Mayor Marshall stated that Silver City, through the Fire Chief, had enacted stricter rules than Albuquerque. He said that he spoke with the Vice-President of TNT Fireworks, wholesaler of the 2 large tents in town, and they said that they would not be selling fireworks. The audience applauded. Mayor Marshall continued by stating that they supported free speech, but assault and aggression on neighbors, families, and citizens was not acceptable and they did not condone it. He said people should be professional and polite when expressing free speech and remember that the people live in the community as well. He said that it was his understanding that TNT Fireworks did work with the vendors and let them out of their contract. He said they would work with TNT in the future and come up with safe activities that involved their industry.

Azima Lila Forest stated that she organized the picketing and the boycotts, and she thanked the owners of Food Basket, the manager of Wal-Mart, James Koons, and the people of Silver City for their support. She urged the Town Council to authorize and order that signs be made to say, "whereas, you may buy fireworks, you may not light them." She urged that there would not be Town fireworks, and she said that people should call Central Dispatch any time they see or hear fireworks being shot off. Shari Wilcox also commented on the fireworks issue.

Lori Ford, the new Executive Director of CATS (Community Access Television of Silver), invited the public to visit the studio and she said that she was looking forward to working with the Council.

Chuy Lopez stated that he was a retired firefighter with the Town and had been selling fireworks for 10 years. He asked the public to remember that he was bound by a legal contract to sell fireworks and that he could not know how weather conditions would be when he signed his contract. He stated that he was aware of the extreme fire conditions and was pleased that TNT released him from the contract.

Hasani Kudura stated that she lived near the Boston Hill area and was concerned about another fire issue. She said that she heard ATVs in the early morning and late at night. She stated that ATVs were illegal in the Boston Hill area and a

fire danger. She stated that the area was 500 acres and a protected environment. She talked about ATV tracks in the grass and snow; how she did not know what enforcement was available; and how the ATVs entered.

Jeffrey Scott commended the Governor's decision on addressing the extreme fire danger issue. He said that a proactive remedy during the summer was important and that the danger was very high. He stated that it was a common sense issue to take whatever steps that could be taken to make themselves and the environment more safe.

5. COUNCIL COMMENTS - Councilor Bettison had the following comments: thanks were given to Town Attorney Robert Scavron for his excellent work in developing a very comprehensive policy statement that the Mayor presented to the New Mexico Municipal League Public Policy Committee which sought to amend the current State law to provide municipalities the ability to restrict any and all fireworks under certain types of conditions; how the Council was taking steps to change legislation in reference to fireworks; thanks were given to the community for their e-mails and phone calls voicing their concerns about fireworks; a reminder to citizens to assist the Police and Fire Departments by calling 911; the current fire restrictions; citizens were asked to take everything into consideration before lighting fireworks; and thanks were given to the Public Works Department for cutting down weeds and cleaning up the roadways and sites that were owned by the Town. Per Councilor Bettison's request Manager Brown reported on the striping on Pope Street and Highway 180. Councilor Thomson commented on the team effort to repair the pool and Manager Brown stated the pool's capacity was 420 people. Councilor Thomson said the draft Animal Ordinance was almost completed and it would be forwarded to law enforcement for review. Councilor Ray apologized for previously not agreeing with the ban on fireworks. He thanked the Streets Department, Peter Pena, and Alex Brown for the work done on Ridge Road and commented on sewer projects with funding opportunities. Councilor Morones commented that fire danger risks should be mitigated as much as possible by keeping weeds down and trash picked up.

Mayor Marshall commented on the following: he urged the Council to support the Fire Chief's decision on the public display of fireworks; night skies issues with PNM; and how a letter should be sent to Harold Love at the NM Department of Transportation regarding the poor striping on Highway 180. He said that he attended the Energy Leadership Summit with Nick Sussillo in Washington D.C. and how it was necessary to learn to adapt to climate change. He also stated that the State had taken upon themselves to remove the local power to protect the life, safety and health of the citizens from the local governments. He said the Town needed to be able to adapt its laws, adapt its rules, and adapt its regulations on the fly, and in a hurry, as conditions changed and not allow the State to pre-empt the Town's authority with regulating public health, safety, and welfare issues. He said that he had spoken with Senator Morales and that Senator Morales would be sending a letter to the Attorney General for an opinion on whether the State's actions were constitutional. Mayor Marshall said there were many other issues where local governments were pre-empted from doing local government and that the State should assume their role in the State and let the local governments worry about the life, safety, and health of the citizens. He said they were going to push those issues as far as they could, and hopefully get some positive results so they could address the citizen's concerns in a timely manner.

6. CHANGES TO THE AGENDA – None.

7. APPROVAL OF THE MINUTES –Regular Meeting, June 13, 2011 - Councilor Bettison made a motion to approve the minutes. Councilor Thomson seconded the motion. All were in favor, motion passed.

8. REPORTS –

Fire Chief Bencomo reported on fire fuels and fire behaviors in the southwest and southern portion of the United States. He said based on information received from weather stations that New Mexico and other states were in the 90-97th percentile of extreme fire danger; how record highs were being set at levels they had never seen before; and if there was a fire that they would see rapid rates of spread and long rate spotting. He said the long range weather forecast for the next 30-90 days showed higher than normal temperatures and not much rain. He said the fuels were critically dry and would continue to drop in moisture content. He stated that if a wildfire should occur in these types of conditions that the rate of speed and intensity would out-pace the suppression efforts of firefighters. He reported that he had met with his staff and had been vocal about asking people to refrain from purchasing fireworks. He said that based on all of the information that he did not feel comfortable with having a public fireworks display, and that the

firefighters should be available if there was a fire elsewhere. He provided statistics on the number of fires in the past years. The audience applauded Fire Chief Bencomo. Mayor Marshall commented on the number of federal resources available; ignition of fires from any source, i.e. cars and ATVs in high grass; how the 97th percentile and above had never been seen before in the United States; how he supported Chief Bencomo's decision. Fire Chief Bencomo said it came down to using common sense. He thanked business owners that were not selling fireworks, and commented on the banners on fire restrictions.

A. Presentation about the Southwest Regional Planning Organization (SWRPO) process and transportation news by Traci Heffelbower, Transportation Planner for Southwest New Mexico Council of Governments. Ms. Heffelbower, Transportation Planner, presented a flow chart of the SWRPO and how they covered 13 local governments in the southwest part of the state, and District 1 and 6 of the New Mexico Department of Transportation (NMDOT). She said the Town of Silver City was in District 1 of NMDOT and their regional office was in Deming, NM. She discussed the brochure that included the responsibilities of the SWRPO. She stated that the Town's representative was Peter Pena (Town Public Works Director), and he was also the Chair of the SWRPO and reviewed all recommendations from the public and through the Town. She reviewed some of the project recommendations, the process on prioritizing, and stated their meetings were open to the public. She said that as Transportation Planner she supported the local governments in developing projects and helped to encourage an open forum for communication between the NMDOT, the public, and the local governments.

Councilor Bettison made a motion to take a short break at 6:55 p.m. Councilor Ray seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 7:04 p.m.

B. Update on the implementation of the Town's Climate Action Plan (2010 progress), and additional Water Conservation Recommendation to the Town's Climate Action Plan presented by Mary Stoecker, Chair of the Mayor's Climate Protection Citizen's Advisory Committee. Mary Stoecker thanked the Town staff for their assistance in gathering the data for the update. She said the Committee began in 2008 and they presented to the Town the Climate Action Plan in 2009. She discussed the strategic plan, its recommendations, its indicators and process measures to make sure they were making progress; and the strategies that would cause their goal to happen and cause their outcome measure to happen. She said they were using 2010 data and she commented on the following Action Plan recommendations: creation of the Town and County's Joint Office of Sustainability, its implementation of the Energy Sense Program, and how 124 households participated in the program; the solar energy installation to power the Town's Wastewater Treatment Plant and well stations; education programs; the Green Chamber of Commerce; a high school curriculum that would be used as a model for the State; how the changing of traffic signal bulbs to LED caused energy and cost savings; a local financing structure being worked on by the Green Energy and Jobs Task Force; changes from 2009-2010 that indicated a decline of 2% in total electricity usage by the Town's municipal government that equaled 116 tons of CO2 emissions reduction; and how the Town's municipal water usage from 2009-2010 went down 11.7%, but residential, commercial, and other water usage went up.

Ms. Allyson Siwik presented the details of the water conservation addendum. She said the water sector represented the largest category of energy use and greenhouse gas emissions for the Town so water pumping and treating represented 57% of the Town's energy costs or \$800,000 per year, and 64% of the greenhouse gas emissions. She talked about the cost effectiveness of water conservation; adapting to less precipitation in a hotter, dryer climate; the reduction of water usage and cost savings percentages; unaccounted water losses throughout the Town's water system; recommended that the Joint Office of Sustainability (JOS) pursue a water conservation plan; and potential options to save water and energy. Ms. Stoecker commented on the following suggestions by the Climate Protection Citizens' Advisory Committee: 1) continuing to implement the plan and any addendums, 2) other sustainability efforts in Town and County; and 3) continued support of JOS and for the four county effort (Bingaman Task Force). She stated that three years of data had been collected and she recommended that with the next year's update that they should do a totaling of the data.

Mayor Marshall stated to Ms. Stoecker that the group that fell under "adaptation" may fit under strategies on the tree diagram. He also commented on tracking legislation and the results of it; targeting economic development and people with small businesses; taking a global view; cost savings to citizens; and future appointments to the Committee.

Councilor Thomson said they should pursue the aims aggressively and each department head should think about how to conserve energy. He said that he liked how the Committee had findings based on data because it allowed them to experiment to see what actually worked. He said that he was very happy to hear that the Mayor was excited about climate change issues. Councilor Morones commented on how the Committee coordinated with the Town staff very well and there was good communication. He said that he was pleased with the action and activities that came out of the Committee. Ms. Stoecker commented on the solar parking structure and asked people to submit their applications to be on the Committee. Nick Sussillo, Director of the Joint Office of Sustainability, acknowledged the hard work of Mary Stoecker and Allyson Siwik and thanked them for their volunteer hours and unique contributions.

C. Report by the Wellness Coalition's Youth Conservation Corps regarding the recent work completed at Boston Hill. Sam Castello, Executive Director of the Wellness Coalition, had the crew introduce themselves, and gave a brief explanation of the program and the benefits that the crew leaders and members received. Tyler Sherman, Crew Supervisor, gave an activity summary of the Boston Hill project. He reported that the crew focused on drainage structures; got rid of bad trails and tried to create a more sustainable and longer lasting route; widened narrow places of trail; installed 20 signs; and that multi-users could pass each other and not destroy the trail. The Council commended the crew for their work and accomplishments on the Boston Hill project, how they had learned some great skills and how to work together as a team, and encouraged them to pursue their education. Mr. Castello also informed the Council about the work done at the Big Tree.

9. PUBLIC HEARINGS - None.

10. UNFINISHED BUSINESS - None.

11. NEW BUSINESS -

A. Approval / Disapproval of Notice of Intent Ordinance No. 1180: an Ordinance providing for restrictions on the sale and use of fireworks. Mayor Marshall stated the Fireworks Licensing and Safety Act regulated the sale and use of fireworks around New Mexico, and he read a portion of the Act. He said that because they assigned the regulation to the State Fire Marshal that they have acknowledged that it was a public safety issue. He read the State Statute that said the State Legislature had granted municipalities the power to define and abate nuisances, to pass ordinances to provide for the health, safety, and welfare of its inhabitants, and to take such actions as were necessary and proper to protect persons and property; thus recognizing that local government best knows the current and local conditions affecting public safety. He said the Town Charter specifically gave the Town Council the power, by ordinance, to make regulations to secure the general health of the inhabitants of the Town. He said the New Mexico Constitution referenced municipalities' legislative powers and he specifically quoted, "The purpose of this section is to provide for maximum local self-government. A liberal construction shall be given to the powers of municipalities." He said that in State Statute they have regulated what municipalities could and could not regulate. He said the Notice of Intent Ordinance No. 1180 basically stated that the Act placed unreasonable limitations on New Mexico municipalities' ability to generally regulate the sale and use of fireworks, notwithstanding local concerns for public safety, which limitations were a usurpation of local prerogative suggested by the New Mexico Constitution. He said that if it passed, the Town Council would find the power and authority to proclaim extreme and severe drought and fire conditions and thereafter to impose reasonable restrictions on the sale and use of fireworks within the Town, including the total ban thereof, was necessary for the health, welfare, and safety of the Town and its inhabitants. He said the NOI did not ban anything, but if passed it would allow the Council to ban in accordance to the current situations of any given time. He said that it also stated that it was the Council's charge to protect the life, safety, and health of the citizens and the Council would not delegate it to the State. He said they wanted to keep it, maintain it, and utilize it. He recommended that the Council support it and return the local control of life, safety, and health issues to the local government. He accepted comments from the audience. Mayor Marshall stated that many pieces of legislation stripped the power from the local government so they could not do what they were elected to do and expected to do. He stated that Town Attorney Robert Scavron wrote the recommended policy for the New Mexico Municipal League, and he did an exceptional job drafting the language. He said that he had hours of discussions with Attorney Scavron on the subject, and that he truly appreciated how Attorney Scavron elevated their discussions to be very global and comprehensive, and that they tried to protect the citizens and the governing body.

Attorney Scavron commented on the growth and integrity of the Council; how he had worked with lots of States, Federal, and Indian Tribes and that the Town was the best client he had ever had; how leadership was having the integrity and imagination and the true concern of putting the people in front of personal ego, and how Mayor Marshall had set the standard for that. He said the Town owed a lot to Mayor Marshall, and that he owed the Mayor a lot as an attorney that worked with an intelligent client that never put his ego in the way of doing the best for the Town. He talked about the process of working on the NOI, and the process that led to PNM withdrawing 50% of its desired rate increase in which the Mayor was in the center of; the Mayor's work with the Joint Office of Sustainability and every department head; how every department head was devoted to the benefit of the Town due to their personal integrity and the example shown by Manager Brown; how the Town had progressed because Manager Brown had the Council's confidence and the Council had Manager Brown's confidence. He said if the NOI passed they would have the first ordinance in the State, and how the ordinance that expanded the Fire Chief's powers that allowed him to put orders out to ban open flames was the first in the State and had been borrowed by many municipalities State-wide. He said that he liked how the Town was the first in a lot of good stuff that was going on in the State, even though they were small and fundamentally ignored by Santa Fe. He said the Town stood up for what was right in the face of Santa Fe and it was a credit to the Town, and was setting an example for other towns around the State. He said the Town was the first and only municipality to issue a resolution in support of what Senators Bingaman and Domenici were doing in Washington D.C. that caused the Arizona Water Project, and how the Town was instrumental in starting that energy. He said the Town was still actively involved and provided their expertise, being the only system in the County that had water in the County, and how the County provided no water for its people, but the Town did. He said it was forward-looking and was an atmosphere of sharing to view the County as a cousin. He said this government stayed the course by working with other governments and working with the people. He said that he was proud to be part of it and he thanked the Council for the opportunity. The audience applauded.

Councilor Bettison made a motion to approve NOI Ordinance No. 1180. Councilor Morones seconded the motion as stated. There was no further discussion. All were in favor. Motion passed. The audience applauded again. Mayor Marshall thanked Attorney Scavron for his comments, and he said that the Council set a standard, and by setting and passing laws that they set what the community felt was a standard on how to conduct themselves. He said the Council's success and the Town's success depended on the citizen's stepping up to that standard and behaving and conducting themselves to that level. He said that enforcement should be a last step effort when everything else had failed. He said that he really hoped, as they go into the times ahead, that people understood that if they wanted to know how to conduct themselves then to look at the standard and stay within it, and not to wait for the cops to catch them. He said that people could be more successful in their personal lives if they stayed within the community standard.

B. Selection of a Voting Delegate and Alternate to vote at the New Mexico Municipal League's Annual Conference. Mayor Marshall explained the process. Councilor Bettison made a nomination to appoint Mayor Marshall as the Voting Delegate. Councilor Thomson made a nomination to appoint Councilor Bettison as the Alternate. Councilor Bettison made a motion to close the nominations and to accept the two nominees by acclamation. Councilor Ray seconded the motion. All were in favor. Motion passed.

C. Approval / Disapproval of Resolution No. 2011-24: a Resolution regarding compensation under a professional services contract (Town Manager/Finance Director's contract). Mayor Marshall stated that he was honored to sponsor Resolution No. 2011-24. He said the two positions held by Alex Brown were very demanding and required an extensive amount of knowledge of the Town's operations and regulations that had to be followed, in addition to the committees that Manager Brown served on and in positions of leadership by selection from his peers. He said that Manager Brown was the one that set them up for financial security that they had enjoyed for many years, and that he did that by foregoing his own contract compensation increases that he was entitled to in previous years to ensure that they did not have to lay off staff or cut wages. Mayor Marshall said he brought great knowledge, as well as institutional knowledge, to the position and that he was very deserving of the 5% increase that was proposed by the Resolution. Councilor Bettison stated she was impressed by Alex Brown and his financial management skills and the ability to run the Town as well as he did, and how the department heads respected him. She said that she agreed with what the Mayor and Attorney Scavron had said; that she enjoyed the relationship she had with him and the ability to talk freely with him about concerns that citizens had, and the wealth of knowledge that he provided to her and others.

Councilor Bettison made a motion to approve Resolution No. 2011-24. Councilor Morones seconded the motion. Councilor Morones stated that Manager Brown was probably underpaid for either one of his positions singularly, and that he definitely believed that he was entitled to a minimum of 5%. A roll call vote was taken with the following results: Councilor Bettison - aye; Councilor Thomson - aye; Councilor Ray - aye; and Councilor Morones - aye. **Motion passed.** Manager Brown thanked the Council.

D. Appointment of 1 member to the Library Board. Mayor Marshall recommended the re-appointment of Maureen Craig to the Library Board . The Council gave their consensus of the appointment.

ADJOURNMENT – Councilor Bettison made a motion to adjourn at 8:05 p.m. Councilor Thomson seconded the motion. All were in favor. **Motion passed.**

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk