

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy 180, Silver City, NM
August 9, 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
Ann L. Mackie, Town Clerk
Robert L. Scavron, Town Attorney
Jim Coates, Town Planner
Peter Russell, Community Development Director

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE – Mayor Marshall called the meeting to order at 6:02 p.m., and Councilor Bettison read the Town’s Mission Statement. Mayor Marshall announced that Councilor Ray was present by phone.

2. CEREMONIES – None.

3. PROCLAMATIONS – None.

4. PUBLIC INPUT – Walter “Ski” Szymanski, Jr. thanked Councilor Morones and Councilor Thompson for taking the time to meet with his neighborhood association to discuss issues about heavy through traffic and concerns about speeding and reckless driving. He said they were very helpful and he thanked the Town for acting quickly to install stop signs to help control public safety issues. Hueteotl Lopez commented on his concerns of cultural insensitivities in the community, county, and nation and he gave examples related to Native American Indians and Billy the Kid. He said the derogatory portrayal of an entire group of people through racial stereotypes could be eliminated if the community worked together.

5. COUNCIL COMMENTS - The Council had no comments.

6. CHANGES TO THE AGENDA – None.

7. APPROVAL OF THE MINUTES – Regular Meeting, July 26, 2011 - Councilor Bettison made a motion to approve the minutes. Councilor Thomson seconded the motion. All were in favor, motion passed.

8. REPORTS – Jim Coates, Town Planner, reported that he was tasked with developing a Pedestrian and Bicyclists Routes Master Plan. He said one of the first steps was to have a neighborhood meeting at the Public Library on August 18, 2011 at 5:30 p.m. in order to provide citizens an opportunity to state what types of destinations and linkages they wanted for the routes for pedestrians and bicyclists.

9. PUBLIC HEARINGS -

A. Approval / Disapproval of Resolution No. 2011-27: a Resolution providing for the encroachment of a portion of the east 13th Street right-of-way. 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 and stated their names to Councilor Ray over the phone. Mayor Marshall read the procedures of how the hearing would be conducted. Jim Coates, Town Planner, presented the details of the encroachment permit application from the Volunteer Center of Grant County for an encroachment into the 13th Street right-of-way to allow for a designated off-street parking for future development of a

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parcel, and he read the details from the Staff Report. He stated that in order to incorporate the required 7 parking spots within the property itself, and still maintain room for the community garden, they would need to encroach 680 square feet upon the right-of-way of 13th Street. He said the parking area would not encroach into the sidewalk area. He stated the Community Development Department sent out notifications to the neighbors and received no comments, and the response from Town staff was that they needed to have access to meters, and that no sidewalk encroachment would occur. He said the curb would be cut and sloped for the parking area, and the Community Development Department recommended that the encroachment permit be accepted with the following Findings: 1) the requested permit conformed to the Town's Comprehensive Plan, the Land Use and Zoning Code, and any relevant policies adopted by the Town, 2) the proposed encroachment would not endanger the health, safety, or general welfare of the community, and 3) the proposed encroachment was the minimum necessary to make reasonable use of the applicant's property. He said the conditions were: 1) access to utility meter must remain clear, 2) the sidewalk adjacent to the encroachment into the right-of-way must remain accessible to pedestrians at all times, 3) no further encroachments shall occur, and 4) the Town could require removal of the encroaching portions of the structures after a 90-day notice to the owners. Mr. Coates answered questions from the Council.

Mayor Marshall asked the applicant, Alicia Edwards, to present her case. She stated that the application was to specifically save the 680 square feet of garden space that it would take up. She said people would be able to view the construction plans that showed the curb cut that extended the width of the 7 parking spaces that were required, and how it would be off of the sidewalk. She also said they would ensure that the sidewalk would not be blocked by oversized pickup trucks. She had nothing else to reflect in the record. There was no opposition to the application, and there were no other questions from the hearing board. Mayor Marshall asked Councilor Ray by phone if he was able to hear the testimony, and he said yes. Councilor Morones made a motion to approve Resolution No. 2011-27 with the requirements given by staff under the Findings #1, #2, and #3. Councilor Thomson seconded the motion. Councilor Bettison asked if the conditions needed to be read into the motion. Councilor Morones said he read the findings and the conditions as recommended. Mayor Marshall said that he did not need to re-state his motion, and that he basically moved to approve Resolution No. 2011-27 as presented in their packet. There was no further discussion. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Ray - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

B. Approval / Disapproval of Appeal #AP11-01 of a variance approved by the Planning and Zoning Commission on July 5, 2011, for an 1800 square feet accessory building at 4425 Langstroth, Owner: John Callahan. Appellant is Thomas Nupp, neighbor. 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. Councilor Bettison stated she had a chance encounter with Mr. and Mrs. Nupp, and that Mr. Nupp did state that he would go before the Council on a matter related to a building on his neighbor's property, but she had no discussion with him on the matter. Mayor Marshall said that he felt the topic was not discussed. He said that he had a telephone conversation with the former Councilor Nupp and they did not discuss the topic. He said that Mr. Nupp asked for a meeting and then realized that they could not talk. Mayor Marshall said that he believed they were all qualified and asked if there were any objections, and there were none. 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 6 witnesses for the hearing, and stated their names to Councilor Ray over the phone. Mayor Marshall read the procedures of how the hearing would be conducted for the appeal process.

Peter Russell, Community Development Director, summarized the Planning and Zoning Commission's Notice of Decision. He said that on July 5, 2011, Mr. Callahan appeared before the Commission to request a variance to increase the size of an accessory building structure. He said that he applied for an 1,800 square foot building and his reported measurement of his home building was 1,750 square feet so the allowed size of the building would be 875 square feet. He reminded the Council that in general the rule for sizing accessory building structures was a minimum of 600 square feet, but it could be up to 50 per cent of the principal structure. Mr. Russell said that Mr. Callahan wanted to bring in a prefabricated Mueller metal building and use it for his hobby of working on antique cars, and to have an accessory dwelling unit for family in the same building. He said that Mr. Callahan wanted them in the same building so expenses would be reduced. Mr. Russell provided further details and stated there were opponents at the hearing by the

Planning and Zoning Commission, but the Commission did award a variance with findings. He said Mr. Nupp filed an appeal, and during the process of reviewing the appeal, it was noted that Mr. Callahan had understated the size of his building because he did not include the porch as required by Code. Mr. Russell said the Town's Building Inspector made measurements and the actual allowed size of an accessory structure would be 1,400 square feet without receiving a variance, which was substantially larger than the 875 square foot threshold that the Planning and Zoning Commission first heard. He said they put out notices to the neighbors within the required distribution radius regarding the appeal and that Joyce Newman responded, and was currently present. There was further discussion and Mr. Russell answered questions from the Council and he displayed a document that showed the Town's Building Inspector's measurements of the property that was not previously submitted for the Council's review. He said the Building Inspector's measurements were 2,819 square feet so the accessory building that would be allowed would be 1,410 square feet. Mayor Marshall said the document should be made part of the record. Mr. Russell said it was new information and was not presented at the Commission hearing. Mayor Marshall confirmed with Attorney Scavron that new information was allowed, but if the Council was going to consider it then they needed to make sure that both parties had reviewed it and had no objections to the evidence being submitted. Mr. Russell took the document to both parties so they could review it. Appellant, Tom Nupp, approved it as evidence, but said he would like to re-address it later. Mr. Callahan verified that he saw the document. Mr. Russell stated that he thought the document was useful to bring forward because it changed the nature of the request; the previous request was double the size of the allowed use and this would be 25 per cent more than the allowable use. There was further discussion. Mayor Marshall asked Attorney Scavron how Councilor Ray could review the new evidence since he was attending by phone. Attorney Scavron stated that it could be described to Councilor Ray, and if in his judgment it gave him a basis to form an opinion then it would be fine. Mayor Marshall addressed Councilor Ray on the phone and described the drawing of the perimeter of the property owner's home that showed the heated/unheated and covered areas of the home, showing a square footage of 2,819.5 square feet. He asked if Councilor Ray felt satisfied that he understood the main structure. Councilor Ray and Mayor Marshall discussed the drawing and the additional square footage. There were no other questions regarding the staff report.

Mayor Marshall stated that Appellant, Tom Nupp, could present his appeal. Mr. Nupp stated that he resided at 4515 Langstroth Drive, and he was there to appeal the decision granting Mr. Callahan a variance to establish his building that seemed to be getting larger at his residence. He said it was his understanding that Mr. Callahan wanted to put a 1,800 square foot accessory building on his property when zoning only permitted a maximum of 875 square feet. Mayor Marshall said Mr. Callahan had a 2,900 square foot home and wanted to put in an 1,800 square foot accessory building. Mayor Marshall said the actual variance would be 325 square feet above the allowable. Mr. Nupp confirmed with the Council that the new allowable size would be 1,410 square feet instead of 875 square feet. Mr. Nupp said it would be the size of one of the small aircraft hangers in Mimbres Valley. Mr. Nupp said the size would be more suitable for commercial or industrial zoning and not in a Residential A neighborhood, and that several realtors told him that it would reduce property values. Mr. Nupp asked the Council to overrule the ruling of the Planning and Zoning Commission that allowed the variance. There was further discussion between Mr. Nupp and the Council.

Mayor Marshall asked if there were any witnesses in support of the appellants case. Mrs. Dana Nupp came forward and stated that she resided at 4515 Langstroth Drive. She commented on her concerns about the size of the accessory building and that it was a 2-story building; how it would block their view; how there would be limited fire protection access; drainage issues; sewer line and water meter issues; how a residence could be in a building with chemicals; and how 1,400 square feet was the same size as a lot of houses in the Town. There was further discussion about the height and whether it would be a 2-story building. Mayor Marshall said it could go up to 25 feet without a variance, and that it was not a subject for the hearing. Mayor Marshall asked if there were any other witnesses in support of the appeal. Ms. Joyce Newman came forward and stated that she was a neighbor at 3902 Tom Lyons Drive. She asked that they approve the appeal and reverse the approval of the Planning and Zoning Board. She gave details for the following 4 reasons: 1) community character, 2) existing law, 3) property values, and 4) errors in the original application. She said that she believed that the new evidence in the drawing negated the original approval. She suggested that the Council reverse the Planning and Zoning Commission's decision without prejudice and allow Mr. Callahan to start over with an accurate application which would then allow his neighbors to know the magnitude of the size of the building. Mayor Marshall asked if there were any other witnesses in support of the appeal, and there were none.

Mayor Marshall asked if there were witnesses in opposition of the appeal, and Mr. John Callahan came forward. Mr. Callahan stated he lived at 4425 Langstroth Drive and he was in opposition of the appeal. He apologized for giving the wrong square footage and said that he did not ask the question on how the city measured the square footage compared to a realtor. He said that when he bought the house over 20 years ago the realtor said it was 1,750 square feet so he put that down when he applied for the variance. He said that after the appeal came in he asked the Town's Planning and Zoning how they calculated the square footage, that they told him and then went out to measure. He said that Mr. and Mrs. Nupp lived 3 lots above him, and that it would be difficult to block their view. He described the area. He said industrial buildings were not 14 feet high, but were 20 to 25 feet high. He said the building was not getting bigger and the only thing that got bigger was the footprint of his house and that it allowed him to build more. He described other properties in the area with accessory buildings. He said the water drainage would still go toward the creek and not to the street. He asking for 390 square feet and a building that would be 13 feet longer. He said that he was allowed a 30 feet by 47 feet sized building, but he was asking for a 30 feet by 60 feet building. He said he could build a 30 feet by 47 feet building and then could build another building that was 20 feet by 40 feet because it would be allowed, but it would be cleaner and look better with 1 building. He said that he did not think it would degrade the property values in the area because similar building structures were already there. He concluded his comments. There was further discussion about how many accessory buildings were allowed; required setbacks; allowable sizes of accessory buildings depending on lot sizes; and how accessory homes would have separate water heaters.

Mayor Marshall asked Mr. Nupp to come forward. He told Mr. Nupp that Mr. Callahan could build a 30 feet by 47 feet structure without a variance and he could build another 30 feet by 47 feet structure with required setbacks, etc., between each building or if the application went through he could build one 30 feet by 60 feet building and be done. He asked Mr. Nupp if he fully understood and Mr. Nupp said yes. He asked Mr. Nupp if he had anything else to reflect in the record, and he said no. Mayor Marshall asked if the hearing board had any questions for any witness, and the Council members said no. He asked if the hearing board was ready to render a decision.

At 7:29 p.m. Councilor Morones made a motion to go into **Executive Session pursuant to N.M.S.A. 1978, Section 10-15-1(H)(3) for deliberations by a public body in connection with an administrative adjudicatory proceeding.** Councilor Bettison seconded the motion as stated. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Ray - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed. Mayor Marshall called the meeting back to order at 8:22 p.m. and stated there was no discussions outside the motion that was made to go into Executive Session and there were no decisions made in Executive Session. He said they were still on a hearing in reference to an appeal. He asked if the hearing board had any questions for the witnesses. Councilor Bettison said she had questions for Mr. Callahan and Mr. Russell. Mr. Callahan came forward and she asked him if he had intent to use the building for industrial or commercial home business or business use. He said no. She addressed Mr. Russell, and said that according to the information in the Notice of Decision, it was correct to state that due to zoning laws commercial enterprises would not be allowed in Residential A, where the property was located. Mr. Russell said that was correct, but there was a qualifying observation because sometimes home businesses would be allowed, but an industrial or auto mechanic type use was not one of those. There were no other questions. Mayor Marshall asked Mr. Nupp if he had anything further, and he said no. He asked if the hearing board had any other questions, and they said no. Mayor Marshall asked if the hearing board was ready to render a decision. Councilor Thomson stated that he wanted to remind everyone that the reason for the appeal according to the application was due to an industrial/business building in a Residential A area. He moved that the appeal that was based upon the ground that the proposed building was to be industrial/business be denied. Councilor Bettison seconded the motion as stated. There was no further discussion. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Ray - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed. Mayor Marshall said the appeal was denied and the hearing was concluded.

Councilor Bettison made a motion for a short break at 8:25 p.m. Councilor Thomson seconded the motion. All were in favor, motion passed. Mayor Marshall called Councilor Ray by phone, but the call did not go through. Mayor Marshall called the meeting back to order at 8:33 p.m. Councilor Ray was no longer in attendance by phone.

10. UNFINISHED BUSINESS - None.

11. NEW BUSINESS -

A. Approval / Disapproval of Resolution No. 2011-29: a Resolution of the Council of the Town of Silver City, NM, authorizing and approving the submission of an application for financial assistance and project approval to the NM Finance Authority; and authorizing the Mayor as the Town of Silver City's Chief Executive Officer and authorized representative in all matters pertaining to the Town of Silver City's participation in the NMFA Program. Denise Smith from the Joint Office of Sustainability presented the details of Resolution No. 2011-29 and stated they were applying for water conservation planning and the implementation would come later. She said the planning grant would be used to evaluate ways to sustain and conserve clean and abundant water sources for approximately 25,000 water users in the Town of Silver City, the extraterritorial zone, and the adjacent water associations in Pinos Altos, Tyrone, Rosedale and Arenas Valley. She said there was a list of 7 reasons in the narrative that was included in their packet. She said that her research showed that it was possible to have a revenue neutral plan. She commented on edits for the application. Manager Brown commented that many of the grants that pertained to water and sewer systems did at least provide additional points for municipalities or organizations that had water conservation plans in place so it would add to the Town's ability to apply for future funding for water and sewer improvements. Councilor Bettison made a motion to approve Resolution No. 2011-29. Councilor Morones seconded the motion as stated. Mayor Marshall asked Councilor Bettison if she read the description of the agenda or the resolution. She stated that she read it from the agenda. He said he would prefer that she read it off the resolution. Attorney Scavron stated the agenda had the words "to act" that were deleted from the resolution because he was already the Executive Officer. Councilor Bettison re-stated her motion and read the description from the Resolution. Councilor Morones seconded. There was no further discussion. A roll call vote was taken with the following results: Councilor Bettison - aye; Councilor Thomson - aye; and Councilor Morones - aye. Councilor Ray was absent. Motion passed.

B. Approval / Disapproval of Fire Protection Automatic Aid Agreement between the Municipal and Rural Fire Departments serving the County of Grant, New Mexico. Mayor Marshall stated it was an agreement that most municipalities had already considered and signed off on. He said the basis of the agreement was to increase the speed and efficiency for response to fires and bordering jurisdictions. He said that all of the jurisdictions were listed and how they bordered each other. He provided changes that he and Gary Benavidez from the County had made to the agreement. Councilor Bettison commented that there were a few other grammatical errors. Mayor Marshall said she could submit those as long as they did not change the content of the agreement. There was no further discussion from the Council. Mayor Marshall asked if there was any other discussion from the audience, and there was none. Councilor Morones made a motion to approve the agreement. Councilor Bettison seconded the motion as stated. There was no further discussion. Councilor Bettison, Councilor Thomson, and Councilor Morones were in favor. Councilor Ray was absent. Motion passed.

C. Approval / Disapproval of Bid 11/12-2: Gabby Hayes replacement well. Manager Brown requested the agenda item be postponed to the next Special Meeting. He said they received 1 bid that did not respond properly due to a few technical irregularities. He said it did not disqualify them and was getting fixed. Councilor Bettison made a motion to postpone Bid 11/12-2 until the Special Meeting on August 15th at 9:00 a.m. in the same room. Councilor Morones seconded the motion as stated. Councilor Bettison, Councilor Thomson, and Councilor Morones were in favor. Councilor Ray was absent. Motion passed.

D. Endorsement of Councilor Cynthia Ann Bettison as a declared candidate for a Director-At-Large position on the New Mexico Municipal League's 2011-2012 Board of Directors. Mayor Marshall said that he asked the item to be on the agenda as part of the application that Councilor Bettison filled out because there was a portion that requested whether the local government endorsed it. He said that she would be a very fine candidate and would represent the Town very well on the Board of Directors for the New Mexico Municipal League. He said that he would support their endorsement. He asked for discussion. Councilor Morones stated that he fully agreed with him and he moved to endorse Councilor Cynthia Ann Bettison as a declared candidate for a Director-At-Large position on the New Mexico Municipal League's 2011-2012 Board of Directors. Councilor Thomson seconded the motion. Councilor Bettison, Councilor Thomson, and Councilor Morones were in favor. Councilor Ray was absent. Motion passed.

E. Approval / Disapproval of letter(s) to support the bill introduced by U.S. Senators Tom Udall and Jeff Bingaman for a polytrauma center in southern New Mexico and El Paso, Texas region, and with special consideration of Historic Fort Bayard as a potential location. Mayor Marshall stated the Senators introduced legislation to support a study of a polytrauma center that would be located in the region and specifically named Fort Bayard as a possible location. He said they had been requested to submit a letter of support, but they were unable to do that without creating a rolling quorum unless they did it in an open meeting. He asked for discussion. Councilor Bettison said she was very pleased that they were considering it because historic Fort Bayard would make an excellent location for a polytrauma rehabilitation center or site in southern New Mexico. She said that currently the veterans had to drive to Albuquerque and this would provide a center or site that would be much closer. She said it was an ideal location and in the past was a veterans' facility, and that historically that was what Fort Bayard was changed to after its mission to be one of the forts in the region during the wars. She said that re-invigorating that mission to serve our veterans was an exceptional idea. Mayor Marshall said the fact that Fort Bayard was in need of a root and foundation for its occupancy that could be built upon would be advantageous, as well as for the economy of the area. He said that he had attended meetings that discussed it recently and he knew they would have an uphill battle because most polytrauma centers around the country were surrounded by major municipalities with many other advanced and extensive health care services available in those regions. He said it would not hurt to support the study to see what could be done, and it could possibly benefit the local economy and veterans. Mayor Marshall tried to contact Councilor Ray by phone again since he was a veteran, but he was unable to reach him. Councilor Bettison made a motion to approve the letters of support. Councilor Morones seconded the motion as stated. All were in favor, motion passed. Mayor Marshall commented that he would like to send the letters to the specific committees that addressed veterans issues. There was no objection.

F. Approval /Disapproval of Notice of Intent Ordinance No. 1182: an Ordinance amending Appendix C (Land Use and Zoning Code 2010), Article VI (Administration), Section 6.1.1 (Planning and Zoning Commission) of the Town of Silver City Municipal Code. Mayor Marshall stated that it would restore issues that dealt with the Planning and Zoning Commission that were omitted from the new Land Use and Zoning Code in error. He said that they currently had an Extraterritorial Commission so they dropped the issues that involved that area from the Planning and Zoning Commission's purview. He said that he would also like to see the Commission dropped from 7 to 5 members since the Town Council was a body of 5 members with only 4 voting and represented the Town very well. He said that when they made appointments they tried to follow districts as much as possible and at times had a difficult time finding volunteers for commissions and advisory boards. He said that it would do no harm and allowed for a continued functional committee. He said the super-majority would go from 4 to 3 votes. He said that if the Notice of Intent Ordinance No. 1182 was passed, then it would go to the Planning and Zoning Commission for review and they would send back their recommendation before the Council would hear it again. There was no further discussion. Councilor Bettison made a motion to approve Notice of Intent Ordinance No. 1182. Councilor Thomson seconded the motion. All were in favor, motion passed.

G. Appointment of members to the Mayor's Climate Protection Agreement Citizens Advisory Committee. Mayor Marshall said the committee was reviewing his comments about focusing the appointments on the committee, and had reviewed the applications. He said they recommended that he proceed with appointments of Shelby Hallmark and Linda K. Thompson. There was no objection from the Council.

12. ADJOURNMENT – Councilor Bettison made a motion to adjourn at 8:55 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