

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy 180, Silver City, NM
August 23, 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
Mike Eley, Town Planner

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE – Mayor Marshall called the meeting to order at 6:04 p.m., and Councilor Ray read the Town’s Mission Statement. Mayor Marshall said he would like to go out of order and he asked the Council if they could proceed with Report, Item A because the presenter had another engagement to go to. There was no objection.

REPORT, A. Grant County Community Health Council's update on events and activities by Tiffany Knauf.

Ms. Knauf and Gary Stailey from the Grant County Community Health Council reported that they held a retreat and 80% of the members had attended. Ms. Knauf discussed their organizational/strategic planning session and how they worked toward a community planning profile; membership; upcoming events; the success of the Red Hot Children's Fiesta; how their office expanded to include a Medicaid kiosk with 5 trained staff to expedite the process; different trainings, health fairs, etc.; and how the Community Enhancement Fund gave away \$32,000 to the community last year and over \$250,000 had been given away since it began.

2. CEREMONIES – None.

3. PROCLAMATIONS – None.

4. PUBLIC INPUT – Kristy Rogers, Advocate Coordinator of the Silver Regional Sexual Assault Support Services, commented on their broad range of services and how they were committed to lessening the amount of sexual assault in the area. Polly Cook commented on how she was cited for having chickens and that she felt she did not need to pay the fine because the chickens fed her and entertained her, etc. She asked the Council to put together a moratorium on giving tickets to people with chickens, and that she would like to see the government be progressive as far as chickens were concerned. Susan Aumann commented on water issues; how she wanted to be appointed to the Interstate Stream Commission and her plans to accomplish that; and how she thought the chicken law was ridiculous. Lori Ford, Executive Director of Cable Access Television of Silver (CATS), introduced Cody Whitfield, the new office manager/technician of CATS. Nancy Gordon commented on how the old Silver City Waterworks or Rockhouse had provided water to Silver City from 1887 to 2000; how it was Town-owned property and was on the National Register of Historic Places; how the walls and roof were in disrepair and that the Town needed to keep that in mind when looking at capital improvements; how they were awarded a grant from the Freeport McMoRan Foundation; and a service learning project in masonry repair that would be at the Waterworks.

5. COUNCIL COMMENTS - The Council commented on the following: recently attended events; how the Royal Drive Neighborhood Watch Program's Night Out Event had presented Fire Stations 1 and 2 with certificates of appreciation to thank them for everything they had done during the fire season and for what they continued to do; a reminder to the public to go to the Town and County's websites to opt into the E911 program (Reverse 911 System); upcoming sectional changes to the animal ordinance that would include issues about livestock and fowl; the ordinance process and how changes must take everyone into consideration; issues with the current animal ordinance and how the revision of the complete ordinance was taking too long; how several persons had their chickens taken because they

were in violation of the animal ordinance; reconstruction of Cooper Street for water run-off issues; the possibility of speed bumps on Cooper Street; the possibility of resurfacing Arizona Street from Garcia Street to San Vicente Street; how the sidewalks on Black Street were very old and brittle; the possibility of putting a walkway on Cooper Street for pedestrians; an update on Penny Park; how changes to the animal ordinance needed to have a balanced approach that balanced the individual home owner's rights to utilize their property to their fullest desire and the neighbor's rights to not have a nuisance; how the current animal ordinance was written 40 years ago; how the governing body needed to make a decision on the Silver City Waterworks building as to whether it should be preserved; an idea that perhaps a car club in town could restore the old 1950's Dodge Power Wagon that was a Waterworks truck so the history could be preserved; improving the relationship between the Town and Western New Mexico University (WNMU) and how they could make some headway with President Dr. Joseph Shepard's leadership and guidance; how the Town was investigating different options with WNMU to make their athletic facilities more accessible to the town; the Mayor's upcoming meeting with the Game Commission regarding a deer depredation plan in and around Silver City over the next 3 years and how the Council would not allow killing of anything within the Town limits; and how funding the Up With People organization was not a government function.

6. CHANGES TO THE AGENDA – None.

7. APPROVAL OF THE MINUTES – Regular Meeting, August 9, 2011 - Councilor Bettison made a motion to approve the minutes as presented. Councilor Ray seconded the motion. All were in favor, motion passed.

8. REPORTS –

A. See Item 1 above.

B. The Wellness Coalition's report on the Youth Volunteer Corps' service to the community. Becca Anderson, member of the Wellness Coalition, introduced another member and several youth volunteers. She reported that the Youth Volunteer Corp of Grant County was an affiliate of the National YVC America Program and was 1 of 58 in the United States and Canada. She said the mission of YVC was to create and increase volunteer opportunities to enrich youth, address community needs, and develop a life-long commitment to service. She provided details of their successful summer block program and the youth volunteers spoke about their experience. There was further discussion.

Manager Brown reported the State Auditor's Office would fix the Town's audit.

9. PUBLIC HEARINGS -

A. Approval/Disapproval of Beer and Wine Restaurant Liquor License. Applicant/Licensee #778139, Applicant name: HRH, Inc., Doing Business As: Isaac's Grill, 107 E. Broadway and 200-202 N. Bullard St., Silver City, NM 88061. Mayor Marshall stated 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 1 witness for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted and he asked if there was anything else to add to the record. Clerk Mackie reported that she called the Alcohol and Gaming Division to confirm the liquor license status of Isaac's Grill and they confirmed that Isaac's Grill was still able to serve during that time. Applicant, Bob Rowland, said the application for a beer and wine restaurant liquor license was an economic decision because with that type of license they could serve people under 21 years of age, and could have more family dining. He said it would be good for the restaurant and good for the town. There were no other witnesses in support or against the application. Mayor Marshall asked Mr. Rowland questions based on the Town's Code, Section 4-36, regarding persons that were prohibited from receiving licenses. Mr. Rowland stated no to all of the questions, and concluded his case. Mayor Marshall asked if the hearing board was ready to render a decision. Councilor Morones made a motion to approve the Beer and Wine Restaurant Liquor License. Councilor Bettison seconded the motion as stated. There was no other discussion. All were in favor, motion passed.

Councilor Bettison made a motion for a short break at 7:00 p.m. Councilor Thomson seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 7:14 p.m.

B. Approval/Disapproval of Resolution No. 2011-28: a request for an Encroachment Permit to allow a portion of eight (8) single-section manufactured homes on the property described as Lots 1, 2, 3, 4, and 5 of Block 4 and Lot 2 of Block 3 of Ward Subdivision of the Townsite of Silver City, Grant County, New Mexico, and addressed as 1600 Canal Street, that encroach into the Canal Street right-of-way. The applicant was Cathy Bower of Silver City. Mayor Marshall stated 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. Attorney Scavron stated that he confirmed with Peter Russell, Community Development Director, that the applicant and the applicant's representative were both ill and unable to make the meeting. He said they had been advised that the public hearing could be postponed, but they wanted the Council to deal with the application. The Town Clerk swore in 2 witnesses for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted. Jim Coates, Town Planner, affirmed Attorney Scavron's statements and presented the details of the Staff Report and the encroachment permit application. He said the 8 manufactured homes were grandfathered in and were in non-conforming use currently because the tips of the manufactured homes were encroaching on Canal Street's right-of-way. He provided further details and said the older manufactured homes could not be replaced by newer manufactured homes unless an encroachment permit was allowed. He said that property owners and residents within the 300' radius did not have comments about the encroachment permit request, and the comments from Town departments were to make sure the meters and hook-ups were in compliance and accessible. There was further discussion. Mayor Marshall stated for the record that the comments received and included in the packet from the 2 emails or letters would not be allowed as evidence in the hearing because they were addressing irrelevant information as far as the standards of an encroachment permit within the Land Use Code. He stated the applicant was not at the hearing, but the record included a letter signed by Cathy Bower, dated July 25, 2011 that would stand as her testimony and request. He asked if there were any other witnesses in support of the application, and there were none. He asked if there were any witnesses in opposition of the application, and there were none. Councilor Morones asked Mr. Coates if it was staff's belief that the buildings and structures that were currently there had endangered the health, safety, and general welfare of the community, and if they anticipated any danger to the health, safety, and general welfare of the community if new buildings were put in the exact same spots. Mr. Coates said no to those questions. Mayor Marshall asked if the hearing board was ready to render its decision. Councilor Morones made a motion to approve Resolution No. 2011-28 with staff's recommended conditions and Finding #2 that the proposed encroachment did not endanger the health, safety or general welfare of the community. Councilor Ray seconded the motion. Attorney Scavron said the motion should adopt the conditions in the Resolution. Councilor Morones said he did that by saying "with staff's recommended conditions". Councilor Ray said he understood the same. 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.

Following New Business, Item A on the agenda, Councilor Morones moved to reconsider Public Hearings, Item B. Councilor Bettison seconded the motion. There was no discussion. All were in favor to reconsider Public Hearings, Item B. Motion passed. Councilor Morones made a motion to modify his motion, and he moved to approve Resolution No. 2011-28 to include all of staff's recommended conditions under Section 1 and he read Findings #1, #2, and #3. 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.

10. UNFINISHED BUSINESS - None.

11. NEW BUSINESS -

A. Presentation of the principles of redistricting, an overview of the process, and presentation of proposed plans by Research and Polling Inc., with Council discussion. No action was taken. Attorney Scavron stated the Town Clerk brought to his attention that as a result of the decennial census that the Town had an obligation to look at its districting. He said it was a very vague State law regarding municipalities, but with the approval of the Town Manager

he made an inquiry with Research and Polling, a very well known redistricting business in New Mexico. He said he commissioned them to do an initial analysis of whether the Town needed to redistrict, and upon their analysis they concluded that the Town did have to redistrict primarily because of population shift. He said the Town asked for proposals and that Research and Polling responded. He said they would present 2 proposed redistricting plans and would be available to answer their questions regarding redistricting and the process.

Denise Rinehart introduced herself, and Zane Taylor, of Research and Polling, Inc., and said that she had been with the redistricting team of Research and Polling since 1990. She said Research and Polling had 26 years of redistricting experience, the staff had 45 years of redistricting experience, and they had done over 100 redistricting projects for state and local governments. She discussed the following regarding redistricting: State statute 3-12-1.1; how the Census data was used for redistricting; the timeline for redistricting before the next election; the principles of redistricting that had been set by the courts; how the population for Silver City was 10,315 and that dividing that number by 4 districts would indicate an ideal district population of 2,579; how districts needed to be substantially equal and no more than 10% total deviation or within a plus or minus 5% of the ideal population; how the 5% plus or minus of the ideal population of 2,579 would be 129 to bring a range of 2,450 to 2,708 as the ideal district population for all 4 Silver City districts; how the minority population had to have an opportunity to elect a candidate of their choice; how voting strength of ethnic/language minority groups could not be diluted (Voting Rights Act, Section 2); how districts could not be created in which race was the predominant criterion in subordination of traditional districting principles (Shaw v. Reno, 509 U.S. 630(1993)); how measuring compactness was difficult and referred to the shape and not the geographic size; how contiguity meant there were no islands of territory; and how communities of interest could be considered if the other principles had been met.

Ms. Rinehart commented on redistricting plans and presented the current district map and 2 other proposed plans, A and B. She said the initial plans were for discussion. She stated that the current boundaries for District 1 were technically contiguous, but were not contiguous in the spirit of the redistricting principle and guideline because there should also be a measurable distance of contiguity along the boundary and how District 1 touched at a point. She said that a person should be able to walk a district without leaving the district when talking about contiguity. She said another issue was that District 2 was minus 11.8% from the ideal population and District 3 was plus 5.7% from the ideal population or a total 17.5% deviation that needed to be reduced to less than 10%. She said Plan A was a minimal change plan and she described the adjustments. She said Plan B was an attempt to avoid splitting precincts and she described the adjustments. Councilor Bettison commented that she preferred Plan A because she did not want to disenfranchise the people that she had made a relationship with. She said that much had been removed from District 1 to offset the deficit in District 2, and they should consider taking more from District 3. She commented on various neighborhoods that would be split. Ms. Rinehart said they wanted that type of input. Mayor Marshall stated that the Council had to remember that it was not about them, but it was about equal representation. He said that they all would come and go so they needed to make sure they had equal districts as much as possible. There was further discussion about having a work session to obtain further input from the Council and the public; notifying the public about the plans and future work session; population disparities within districts; and how the redistricting ordinance must be approved prior to the election resolution deadline of December 13, 2011.

Following the discussion about redistricting, Councilor Morones made a motion to reconsider Public Hearings, Item B. See the agenda item above for details.

B. Approval / Disapproval of Resolution No. 2011-31: approving the submittal of a grant application to the New Mexico Mortgage Finance Authority for the 2011-2012 "House by House Homeowner Rehabilitation Program." Mike Eley, Town Planner, presented the details of the Resolution and stated it was not required in the past, but there was a policy change with the Mortgage Finance Authority. There was further discussion, and Mayor Marshall asked if there was any objection to adding another "Whereas" paragraph that stated, "Whereas, the Town Council finds that supporting the Rehabilitation Program fulfills the needs identified within the Silver City Housing Plan." There was no objection. Councilor Bettison made a motion to approve Resolution No. 2011-31 with the additional "Whereas" paragraph. Councilor Morones seconded the motion as stated. 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.

C. Approval / Disapproval of Resolution No. 2011-32: supporting a public - private MainStreet Economic Development Partnership. Nick Seibel, Manager of the Silver City MainStreet Project, stated that MainStreet had served Silver City for 26 years, and had enjoyed the support of the Town government and the citizens and business people of the community. He said the New Mexico MainStreet Program required them to do a Memorandum of Understanding between the community and the State program to receive the support and the services that they provided. He said that over the past year they had received \$48,995 worth of services from the New Mexico MainStreet Program. There was further discussion. Councilor Ray made a motion to approve Resolution No. 2011-32. Councilor Morones 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. Mr. Seibel commented on their latest accreditation from the National MainStreet Center and the National Historic Trust for Preservation. He commented on a package of 3 plans (Downtown Action Plan, Metropolitan Redevelopment Plan, and Theater District Plan) that they had worked on for the last 2 years, and he said the package of plans was nominated by the Community Development Director for an award from the New Mexico Chapter of the American Planning Association. He said that they found out on that day that they had won the Downtown Plan award.

D. Approval / Disapproval of Notice of Intent Ordinance No. 1183: an Ordinance amending Chapter 16, Sections 16-42 and 16-46 of the Town of Silver City Municipal Code, relating to the composition of the Incentive Review Committee. Mayor Marshall said that it came to his attention that the Incentive Review Committee membership was allowed representation from the 4 districts and 3 at-large. He said the ordinance would propose to make it 5 members that were within the Town limits because Grant County had its own Economic Development Plan and Incentive Review Committee. He said the citizens were due to be represented completely as the issues came up. There was further discussion. Councilor Bettison made a motion to approve Notice of Intent Ordinance No. 1183. Councilor Ray seconded the motion. All were in favor, motion passed.

E. Approval / Disapproval of Notice of Intent Ordinance No. 1184: an Ordinance authorizing the issuance of the Town of Silver City, NM gross receipts tax improvement and refunding revenue bonds. Manager Brown said that at the last Council meeting they adopted an ordinance that dedicated the 1/8% of what was currently dedicated to the water/sewer fund to the payment of debt for new bonds. He said Notice of Intent (NOI) Ordinance No. 1184 authorized them to issue the bonds. He said they would begin the process to get their bond rating and the actual number of the amount of bonds that would be issued, and the percentage rates. He said the NOI listed the laws required for them to issue revenue bonds. He said he would have to come back to the Council for final approval and the blanks in the ordinance would be filled in at that time. There was further discussion about an upcoming Resolution in October and how it was a good effective way to utilize resources. Councilor Morones moved to approve Notice of Intent Ordinance No. 1184. Councilor Bettison seconded the motion as stated. There was further discussion. Mayor Marshall stated that it was due to Manager Brown's expertise and creativity in setting the stage that they were in a position to pick up the shortfall of what was previously capital outlay coming back from the State, and to take care of their own. He said he did a lot of research on it by looking at bonds that were out with many other municipalities, etc., and that they were in some of the best shape in the State. He commended Manager Brown for that. Manager Brown said that he was glad that it was a good time to issue revenue bonds for municipalities because it was considered a very safe investment for investors and there was a very good market for it. All were in favor, motion passed.

F. Appointment of a member to the Mayor's Climate Protection Agreement Citizens Advisory Committee. Mayor Marshall said there had been quite a shift in the Committee and Sam Castello had reapplied. He said for the stability of the Committee and their ongoing work that it would be advantageous to re-appoint him since he was a productive member of the Committee. There was no objection from the Council.

12. ADJOURNMENT – Councilor Bettison made a motion to adjourn at 8:30 p.m. Councilor Ray seconded the motion. All were in favor. Motion passed.

/s/

Attest:

James R. Marshall, Mayor

/s/

Ann L. Mackie, Town Clerk