

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY  
REGULAR COUNCIL MEETING  
Grant County Administration Center, 1400 Hwy 180, Silver City, NM  
September 13, 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  
Peter Russell, Community Development Director  
Ricky Villalobos, Police Captain  
Mike Eley, Town Planner

**1. CALL TO ORDER / PLEDGE OF ALLEGIANCE** – Mayor Marshall called the meeting to order at 6:03 p.m., and Councilor Thomson read the Town’s Mission Statement.

**2. CEREMONIES** – None.

**3. PROCLAMATIONS** – None.

**4. PUBLIC INPUT** – Nick Seibel, Manager of Silver City MainStreet Project, commented on the community built park and a proposal from Charlie Deans of Community by Design.

**5. COUNCIL COMMENTS** - The Council commented on the following: upcoming amendments to the animal ordinance; how the Reverse 911 system was working well; thanks were given to the firefighters, police, and first responders for their work during the Boston Hill fire and other incidents; recently attended events; the Silver City Museum's New Mexico Centennial exhibit; how the Mimbres Region Arts Council put on an incredible production with the Pickamania event; recognition and thanks were given to Nancy Cliff for being instrumental in getting rid of billboards; appreciation to Nick Seibel for putting effort into pushing for a community built and designed park at Penny Park; the Mayor's continued talks with New Mexico's Department of Game and Fish regarding deer depredation planning; thanks were given to Dr. Joe Shepard, President of Western New Mexico University, for talking with the Town about a recreation partnership that would benefit the community; and re-scheduling the next regular Council meeting from September 27th to September 23rd at 3:00 p.m.

Mayor Marshall announced and congratulated Councilor Bettison for being elected to the New Mexico Municipal League's Board of Directors by close to 60 municipalities in the state. He said she would do very well and that it was quite an honor, and that it was a contested race.

**6. CHANGES TO THE AGENDA** – None.

**7. APPROVAL OF THE MINUTES** – **Special Meeting, August 15, 2011** - Councilor Bettison made a motion to approve the minutes. Councilor Morones seconded the motion. All were in favor, motion passed. **Regular Meeting, August 23, 2011** - Councilor Bettison made a motion to approve the minutes. Councilor Morones seconded the motion. All were in favor, motion passed.

**8. REPORTS** –

**A. State approval of FY 2011-2012 Final Budget by Alex C. Brown, Town Manager – Finance Director.** Manager Brown stated that notification was received that the final budget was approved and it was a requirement that it be read into the minutes.

Manager Brown introduced Nate Tierney from Exerplay, Inc. and stated that Exerplay was the company that came up with the concept designs for the Penny Park project. Mr. Tierney and Dan Gardiner, President of Exerplay, presented 5 concept designs for Penny Park and answered questions from the Council. Mayor Marshall commented on 288 surveys regarding the concept plans for Penny Park that were received by the public during the Red Hot Children's Fiesta. There was discussion about displaying the concept plans, etc., at the Silver City Public Library and on the Town's website in order to obtain additional public input.

Councilor Bettison made a motion for a short break at 6:53 p.m. Councilor Ray seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 7:06 p.m.

## **9. PUBLIC HEARINGS - None.**

## **10. UNFINISHED BUSINESS -**

**A. Discussion on redistricting and the proposed plans by Research & Polling, Inc.** Mayor Marshall introduced Michael Sharp, Vice-President of Research & Polling, Inc., who was participating by teleconference. He stated that Councilor Bettison had expressed the most concerns about the redistricting plans at the last meeting and that he had asked Councilor Bettison to contact Research & Polling directly about her concerns since a work session had not been possible. He said her concerns generated a new Plan A-1. Mr. Sharp reviewed some details of the previous meeting when Denise Rinehart had presented Plans A and B. He said they received input from Councilor Bettison about Plan A which resulted in Plan A-1. He discussed how Plan A changed to Plan A-1 by describing the boundary changes and stated that all of the districts were within the 5% population deviation. Mayor Marshall asked for public comment and there was none. Councilor Bettison thanked Research & Polling for working with her on the concerns of the constituents and how they were pleased with Plan A-1. Councilor Morones commented that Plan A-1 was an improvement over Plan A, but he had found that a number of people that he had talked to had an interest in Plan B because it was easier to read and to know what district they were in based on their location in the town. He commented that it was also very equitable in the dispersing of the population. He said that he had asked some constituents if they were worried about the disenfranchised argument and was told that the council seats rotated and had short terms so after about a year they would be re-enfranchised because they would get to vote on their next councilor. He said that people liked the idea of getting better districting so they would be in a better position for the next 10 years. He commented on how he wanted to come up with the best decision for the Town as a whole for the future, and that he was inclined to lean towards Plan B. Councilor Bettison said she agreed with many of Councilor Morones' points, but said they should hold a work session so people had the opportunity to state their desires so the Council could make a decision that encompassed everyone's concerns, needs, and requirements. She said that she would appreciate it if the constituents would come forward in public to talk about their concerns. Councilor Thomson said there was always the appearance of gerrymandering so he was with Councilor Morones and Plan B. He said the contiguousness of that plan was better than Plans A or A-1. He said that he liked Plan B the best because it would simplify the electoral process. Councilor Ray said the people that he talked to did not care, but he personally liked Plans A-1 and B. Mayor Marshall stated that they could not forget the principles of districting to have equal representation with one person and one vote. He said the statistics of Plan A-1 and Plan B had the narrowest deviation, and that Plan B had the closest percentages as far as race with Hispanic, White, Native American, Black, Asian, and other races per the Census. He said the Council had a long history of being very approachable and easy to contact. He said that they truly represented the Town and had to make their decisions based on the Town and not necessarily based on their district or any one or handful of constituents. He proposed that they draft a Notice of Intent Ordinance for Plan A-1 and Plan B, and that the Council was also free to present an ordinance on their own. He said that he was not inclined to do a work session on the topic because they already had two meetings with no public input. He said the principles behind redistricting were numbers based and not human opinion or feelings based, and that they had hard data based on the Census which was the tool that they were required to use. He said they had some good plans and that he wanted to act on them. There was further discussion and public comments were received from Dr. Martinez and Cissy McAndrew.

*Mayor Marshall asked that the agenda be adjusted to move Dr. Shepard's agenda item forward. There was no objection by the Council to move New Business, Item B, forward.*

## **11. NEW BUSINESS -**

**B. Approval / Disapproval of Special Dispenser Permit Application for the Inauguration Dinner and Dance of Dr. Joseph Shepard, WNMU President, to be held in the WNMU Intramural Gym on October 7, 2011, beginning at 4:00 p.m., sponsored by WNMU, License Holder: Snappy Mart #4.** Dr. Joe Shepard, the 15th President of Western New Mexico University, stated that WNMU would hold an inauguration in his honor on October 7th, and that the honor was really his to have been selected. He said that as per State law and Town ordinance that he came before the Council to ask for the approval of the Special Dispenser Permit and a waiver since the event would be within 300 feet of the location of a school. He said the University was fine with having alcohol in the intramural gym. He added that some recent developments had occurred and they were considering changing the location of the event to the Flame Convention Center. Mayor Marshall asked Dr. Shepard if he considered the Child Development Center as part of the University, and Dr. Shepard said yes. Mayor Marshall stated that as the administrator of WNMU, Dr. Shepard had the authority to state on the organization's opinion that there was no problem. Dr. Shepard stated that on behalf of WNMU, and as the organization's representative and President, he had no problem with waiving the requirement. There was further discussion. Councilor Bettison made a motion to approve the Special Dispenser Permit Application and grant a waiver, pursuant to Section 60-6B-10 of the New Mexico State Statutes Annotated, of the prohibition on the dispensing of alcohol within 300 feet of a school or church for the purposes of the inauguration dinner and dance since WNMU was a school by definition. Councilor Thomson seconded the motion. All were in favor, motion passed.

*Unfinished Business continued with Item B as follows:*

#### **10. UNFINISHED BUSINESS -**

**B. Approval /Disapproval of 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 said that he had presented the Notice of Intent Ordinance to decrease the number required for the Planning and Zoning Commission from 7 to 5 members. He said that it was heard before the Planning and Zoning Commission, but failed on a tie vote of 3 to 3. He said that he was not as committed to it as he may have once been. He commented on the issues and the Commission's comments. There was further discussion by the Council about the pros and cons of reducing the number of Commissioners from 7 to 5, how the Commission's ethics standards were different than the Council's, etc. Comments were received by Nick Seibel, a member of the Planning and Zoning Commission. There was further discussion and Mayor Marshall stated he was testifying against his own ordinance.

Councilor Bettison said they do things in the positive when they make a statement, and she made a motion to approve Ordinance No. 1182. Councilor Thomson seconded the motion. Mayor Marshall asked if there was any other discussion. Mr. Seibel came forward and asked that they approve the ordinance because currently the Planning and Zoning Commission did not exist. Peter Russell, Community Development Director, commented that the Planning and Zoning Commission had been omitted from the revised Land Use and Zoning Code and he recommended the adoption of the ordinance, but to change the part that had the reduction in the number of Commissioners. Councilor Bettison asked Mayor Marshall if she could amend her motion, and he said yes. She made a motion to change the number of Commissioners from 5 to 7. Councilor Thomson seconded the amended motion. There was further discussion about other changes to the ordinance. Mayor Marshall asked Councilor Bettison to withdraw her motion, and Councilor Thomson seconded. Mr. Russell asked if they would consider having the staff make all of the appropriate changes to the ordinance and bring it back at a later meeting. Public comment was received by resident Alan Wagman on whether it was legal for the Council to amend the ordinance after it had been published in the newspaper. Mayor Marshall said to Mr. Wagman that the Council had not been amending ordinances to a substantive amount, but if they were to change the intent of an ordinance they would be crossing a line. Mayor Marshall said that may be an issue if they amended the membership number back. He said it was left out of the overall document and the ordinance was to submit it back into the law, and that may be an issue. He stated that he would like to take no action and to direct staff to redraft the ordinance and re-enter it into the ordinance process. Councilor Bettison said that was a good idea. Mayor Marshall asked if there was any action to be done on Ordinance No. 1182. There was no response and no motions made by the Council. Mayor Marshall stated that Ordinance No. 1182 died for lack of a motion, and that staff had direction.

**C. Approval / Disapproval of 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 it was his ordinance and that the Incentive Review Committee had not been active in many years, and there had not been any requests for many years. He said the current Code allowed any one to be a member of the Town's Incentive Review Committee, and the County had their own Incentive Review Committee with policies and procedures. He said it was in the Town's interest to have a Committee of residents of the Town that were true stakeholders in the Town's Incentive Review Process. He said he would encourage that the two Committees would get together on issues that crossed, but it was important that decisions were based on the true stakeholders of the Town. He said that it was also brought to his attention that having the Executive Directors of Economic Development entities that were recognized by the Town to be represented in the Committee, and how that may be something they would consider in the future. He said that he supported Ordinance No. 1183. Councilor Bettison made a motion to approve Ordinance No. 1183. Councilor Ray seconded the motion. There was no further discussion. 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.

Councilor Bettison made a motion for a short break at 8:10 p.m., and Councilor Ray seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 8:18 p.m.

**D. Approval / Disapproval of Ordinance No. 1184: an Ordinance authorizing the issuance of the Town of Silver City, NM gross receipts tax improvement and refunding revenue bonds.** The Town's bonding attorney, Chris Muirhead of Modrall, Sperlring, Roehl, Harris & Sisk, P.A. presented the details of Ordinance No. 1184 and stated it was the next significant step because it would be the Council's approval to issue the bonds that would be subject to certain parameters that were included in the ordinance. He said the parameters related to the size of the bond issue to say they would be authorized up to a \$7 million par amount, and that the interest rate would be no greater than the statutory maximum of 12% which was considerably higher than the current municipal market. He said the ordinance would authorize the issuance of the gross receipts tax bonds up to the amount of \$7 million for the purpose of capital improvements and refunding potentially up to 4 New Mexico Finance Authority loans that were outstanding from 2003 to 2007, and 2 loans from 2008. He said the Town would be pledging as a primary source of repayment for the bonds (special limited obligations under the New Mexico statutes) one increment of the municipal gross receipts taxes which would be a 1/8 increment. He said the Town would also be pledging the State's share of gross receipts tax revenues which was a 1.225% distribution from the 5.125% State's gross receipts tax that was currently in place. He said that pledge would serve to strengthen the credit so the Town would increase the bond rating and obtain lower interest in the borrowing costs. He said the structure of the transaction was such that it was the intention that the Town would never have to touch the State's share of gross receipts tax for debt service. He provided further details of the ordinance and the financing schedule. There was further discussion by the Council and Manager Brown, and public input was received by Nancy Cliff and Alan Wagman. Councilor Morones made a motion to approve Ordinance No. 1184. Councilor Ray seconded the motion. 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.

**11. NEW BUSINESS -**

**A. Approval / Disapproval of Public Celebration Permit Application (2) for the Mimbres Region Arts Council's 15th Annual Weekend at the Galleries on October 7-9, 2011, to be held at the Seedboat Center for the Arts, 214 W. Yankee St., Silver City, NM, License Holders: High Desert Brewing Company, Las Cruces, NM and La Esperanza Vineyard, LLC, San Lorenzo, NM.** Faye McCalmont, Artistic Director of the Mimbres Region Arts Council, presented the details of the event and asked the Council for their approval of the Public Celebration Permit Applications. Councilor Thomson said he had an association with High Desert. Mayor Marshall stated that Councilor Thomson had a business interest with High Desert that was minimally financially advantageous to him, and he asked what was the Council's desire as far as the need for Councilor Thomson to recuse himself. The Councilors said they had no problem with it, and Mayor Marshall told Councilor Thomson that he may participate in the agenda item. Councilor Ray made motion to approve the Public Celebration Permit Applications. Councilor Morones seconded the motion. All were in favor, motion passed.

**B. Approval / Disapproval of Special Dispenser Permit Application for the Inauguration Dinner and Dance of Dr. Joseph Shepard, WNMU President, to be held in the WNMU Intramural Gym on October 7, 2011, beginning at 4:00 PM sponsored by WNMU, License Holder: Snappy Mart #4.** This item was moved after Unfinished Business, Item A.

**C. Discussion and possible amendment(s) of the 2013-2017 Infrastructure Capital Improvement Plan (ICIP).** Manager Brown presented the preliminary proposal for the 2013-2017 infrastructure improvements and stated it was the staff's recommendation. He said the focus of the plan was for 2013 because the staff had identified funding sources for the projects. He said the ICIP had to be adopted by the last meeting in September. There was further discussion about the list of projects, adding other projects to the list, and re-prioritizing the list.

**D. Approval / Disapproval of certification of Emergency Operation Plan.** Police Captain Ricky Villalobos stated that he was the Emergency Operations Manager and he presented the details of the Emergency Operation . He said the plan was a living document that would be updated and he requested the Council's approval. There was further discussion and Mayor Marshall stated to Manager Brown that it was critically important that the Town had to make sure that Captain Villalobos would receive sufficient training to conduct his job very effectively. He said he supported the plan, but they would see a different plan after Captain Villalobos received training. There was further discussion and Mayor Marshall commended Captain Villalobos for his good work. Councilor Bettison and Councilor Morones made comments and stated they supported the plan. Mayor Marshall stated that it was important for the Police Chief and the Town Manager to understand that when the Town assigned Captain Villalobos to do the job that he would actually be responsive to the Town Manager and that he could bypass the Police Chief by Federal requirement in Homeland Security's Presidential Executive Order #3 that stated they must follow the National Incident Management System. He said they could not bury the security into a department because he had to be able to step out and operate as the Emergency Manager within the authority that was allowed by the Town's Codes. Councilor Bettison made a motion to approve the certification of the Emergency Operation Plan. Councilor Morones seconded the motion. All were in favor, motion passed.

**E. Approval / Disapproval of Bid 11/12-3: Homeowner rehabilitation.** Manager Brown stated the Town received 1 bid from Chavez Plastering and Cement Construction in the amount of \$53,099.63. He said it was staff's recommendation to award the housing rehabilitation project to Chavez Plastering and Cement Construction. Councilor Bettison made a motion to approve Bid 11/12-3 per staff's recommendation. Councilor Ray seconded the motion. All were in favor, motion passed. Mayor Marshall asked if it was within the approved funding. Manager Brown said the funds were available in the budget.

**F. Approval / Disapproval of Bid 11/12-4: Homeowner rehabilitation.** Manager Brown stated the Town received 1 bid from Oakridge Home Industries, Inc. in the amount of \$56,876.54, and it was staff's recommendation to award the bid to Oakridge Home Industries, Inc., and the funds were available. Councilor Bettison made a motion to approve Bid 11/12-4 per staff's recommendation. Councilor Ray seconded the motion. Mayor Marshall asked Mike Eley, Town Planner, if it was a mobile home swap and if it fit within the program as long as the mobile home was HUD approved. Mr. Eley said yes, and he provided details and said the State's Construction Industries Division was responsible for the inspection of the set up. There was further discussion. All were in favor, motion passed.

**12. ADJOURNMENT** – Councilor Thomson made a motion to adjourn at 9: 43 p.m. Councilor Bettison seconded the motion. All were in favor. Motion passed.

/s/

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James R. Marshall, Mayor

Attest:

/s/

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Ann L. Mackie, Town Clerk