

MINUTES OF THE REGULAR MEETING
OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
JANUARY 8, 2004

The Council of the City of Ruidoso Downs met in regular session on January 8, 2004. Mayor Pro-tem Garrett called the meeting to order at 5:30 p.m. and asked Shane Garner to lead the Pledge of Allegiance.

Upon roll call, the following were present:

Councilor Miller	Councilor Morales
Councilor Olivo	Mayor Pro-tem Garrett

Mayor Miller was absent but Administrator Waters informed Mayor Pro-tem Garrett there was a quorum.

Also present:

Dan Bryant, City Attorney
John P. Waters, City Administrator
Carol Virden, City Clerk/Treasurer
Ken Mosley, Public Works Director
Tom Armstrong, Licensing & Permit Supervisor
Robert Logan, Director of Department of Public Safety

APPROVAL OF AGENDA

Mayor Pro-tem Garrett entertained a motion to approve the Agenda. Motion was made by Councilor Morales and seconded by Councilor Olivo to approve the Agenda. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye. Motion carried.

APPROVAL OF CONSENT AGENDA

Mayor Pro-tem Garrett entertained a motion to approve the Consent Agenda. Councilor Miller moved to approve the Consent Agenda. Seconded by Councilor Olivo. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye. Motion carried.

APPROVAL OF MINUTES OF DECEMBER 29, 2003 RESCHEDULED REGULAR MEETING

Motion was made by Councilor Miller and seconded by Councilor Olivo to approve the Minutes of the December 29, 2003 Rescheduled Regular Meeting. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye. Motion carried.

ACCOUNTS PAYABLE

Motion was made by Councilor Miller and seconded by Councilor Olivo to approve the Accounts Payables. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye. Motion carried.

MONTHLY REPORTS

Motion was made by Councilor Miller and seconded by Councilor Olivo to approve the following reports:

- | | | |
|--------------|----------------------------|---------------------|
| Fire Report | Animal Control Report | Maintenance Report |
| Court Report | Code Enforcement Report | Public Works Report |
| DPS Report | Permits & Licensing Report | |

Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye. Motion carried.

UNFINISHED BUSINESS

Councilor Olivo asked for the citizens do we have any progress on our skateboard park. Administrator Waters said we have applied for some grants. Most recently we applied for a \$35,000 Special Appropriations Grant. We have not heard back from the Tony Hoff Foundation Grant yet. My assumption is we probably didn't get it if we didn't hear back from them. The other grant we will know about at the end of this month when the legislature meets. We do have some money set aside for the engineering process. We will be coming forward probably early February with the engineering specifications to start the design work. We currently do not have the amount of money necessary to construct the park at this time but we have enough to go ahead with the initial design. Councilor Olivo asked how much do we have right now and Administrator Waters answered actually \$61,200. We did have a \$1,200 donation from the local youth from the barbeque.

NEW BUSINESS

Mayor Pro-tem Garrett said next on the agenda, consider approving Resolution No. 2004-02 - Allowing City Administrator to sign contracts to expend public funds that have previously been budgeted for expenditures on behalf o the City of Ruidoso Downs up to \$.

Councilor Morales said this is what we discussed before about going out for bid on things we have already budgeted. Administrator Waters said that is the intention of this but there are a lot of blank spaces there to modify it. It is really more to make sure Council puts what they want in this. We were unclear at this point as to how much money but this is the time to do that and amend it as you see fit. There is an amount level as well as what types of things we are authorized to do like water rights.

Councilor Morales said it was my thought that it was anything we were adverting for bid or RFP. If it is already budgeted and approved basically, I think we are creating more steps by having to come before the Council for approval for a RFP or

approval to go to bid. I think if it is in the budget already, I don't know why we can't go ahead and adopt this resolution.

Mayor Pro-tem Garrett said I have a problem with it because it says allowed to sign contracts and expend public funds. That wasn't what we talked about. This whole resolution isn't what I thought it was going to be.

Administrator Waters said I think this came from the Minutes when we were talking about primarily dealing with water rights to try to facilitate a quick closure to some of the water rights purchases we are looking at so we don't lose to Ruidoso or someone else who may have quick cash but we could add that into it.

Councilor Morales said I would like to see that added because I think we are wasting time to get approval of Council. Mayor Pro-tem Garrett asked if this could be reworked and brought back at a later time and Administrator Waters responded yes.

Councilor Morales moved to table Resolution No. 2004-02 and to add to go out for bids and requests for proposals. Seconded by Councilor Miller. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; and Councilor Morales, Aye. Motion carried.

Mayor Pro-tem Garrett stated next item on the agenda, consider approving purchase recommendation - Addition of city offices to City Hall.

Administrator Waters said this particular item has graced the table of the Council several times. We have gone out for bid, we have gone out for re-bid and for some reasons we can't get contractors interested. Once you have gone out for bid so many times and you can't get credible bids then you are allowed to go out on the open market. We asked Council to do that, you approved it and this is what the open market brought back to us. This is the best credible bid that we received. It is almost \$28,000 more than we originally budgeted. We had budgeted \$30,000. You can see the cheapest cost we received was almost \$58,000 including gross receipts tax. This is for the office space at the side. As you are aware we have the Personnel Department outside; we are pretty cramped in here at City Hall. This was also to allow for an executive meeting chamber as well for the Council. We do have the money to cover this in the General Fund. It is a large expenditure; it exceeds \$20,000 so it still has to have the Council's approval if you so desire.

Mayor Pro-tem Garrett said just for the public's information the bids were \$54,000, \$75,000 and \$89,000.

Councilor Miller moved to approve the purchase recommendation of addition of city offices to City Hall in the amount of \$54,320.63 (excluding GRT). Seconded by Councilor Olivo. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; and Councilor Morales, Aye. Motion carried.

Mayor Pro-tem Garrett stated next item on the agenda, Steve Snidow and Shane Garner - Presentation of Beer and Wine License Question Special Municipal Election first available date in accordance with State Statutes 60-5A-1(f).

Mr. Snidow said we prepared a presentation we would like to pass out. The presentation is in two parts. The summary is on Page 3 and the rest of the presentation supports the summary. The question we would like to ask is would City Council vote on having a Special Election on the local option question. The local option question is having the right for a beer and wine permit. Beer and wine permits are not a liquor license; they are just for restaurant settings with many stipulations set down by State law. Some of them are 60 percent of the gross receipts has to be from food, you have to have four menu items and you have to have wait people. It can't be self-serve. Under Senate Bill 57 that was just passed this past year in 2003, local districts now have the option of instead of calling for a petition to bring this question to vote to have the administration of city government, in this case, to vote on the question of having a Special Election. We have done a lot of research and we believe there are significant economical benefits to having this question go before and having this opportunity in the city. The research that I have says that you can expect at least \$1.6 million increase in tax revenue. Mr. Snidow thanked everyone for their time.

Councilor Morales asked Clerk Virden if we are looking at a timeframe when we could have an election. Clerk Virden said I must tell you that Mr. Snidow and Mr. Garner are very professional. In accordance with State Statute 60-5A-1(f), the election cannot be held within 42 days of any prior general, municipal or school election. I have taken the calendar and we have a window of opportunity of four days, April 14, 15, 16 but April 17th is on a Saturday. I have come up with a timetable for a Special Election on Thursday, April 15, 2004.

Attorney Bryant said I am having conversations with Santa Fe but my advice is to push forward with this and get the proclamation on the agenda and go with the Special Election. It is easier to stop the process than to start it. We have some time because we have to pass the proclamation on or before February 12th.

Clerk Virden said the only window for that would be the next Council meeting in order to follow the timetable.

Administrator Waters said if the Council wishes to go ahead with this, you can request this item be placed on the agenda for the January 22nd meeting to consider it and that will set Carol's timetable and her schedule in motion to proceed with the election. There may even be another question, I understand, that could possibly be coming before the Council regarding the name of the municipality.

Councilor Morales moved to approve calling for a Special Election of a beer and wine permit on the next agenda. Seconded by Councilor Miller. Roll call votes:

Councilor Olivo, Aye; Councilor Miller, Aye; and Councilor Morales, Aye. Motion carried.

Mayor Pro-tem Garrett stated next item on the agenda, consider approving Resolution No. 2004-01, Planning and Zoning Commission - Architectural Control Committee Participation Plan.

Paul Van Gulick said the Planning and Zoning Commission put this forth as an idea to take care of some problems we have had in the past where zoning ordinances are not in agreement with the covenants. The City is not in a position to enforce the subdivision covenants and two there is not an Architectural Control Committee in the Downs so this tends to allows them to participate in the planning and zoning procedure. Paul Van Gulick read Resolution 2004-01:

Whereas, the City recognizes that restrictive covenants, where they are not at variance with state and federal law, are generally in accordance with the purpose of the City zoning ordinances, that being to encourage the most appropriate use of land and to promote the health, safety and general welfare of the community; and

Whereas, the City considers that its Land Use and Zoning articles are minimum requirements to meet its purpose and that where the provisions of any local ordinance or covenant impose greater restrictions than those of its Articles, the more restrictive provisions shall prevail; and

Whereas, Architectural Control Committees have been established within subdivision to: approve plans for buildings and other exterior improvements including fencing, to ensure compliance with or to approve variations from lot line setbacks, and to generally enforce the terms of the restrictive covenants.

Now, Therefore be it Resolved the Planning and Zoning Commission of the City of Ruidoso Downs will require that any Site Plans for development within, and any requests for Variances, Conditional Use Permits and Zoning District Changes within the boundaries of a subdivision that has an existing Architectural Control Process, shall include the signed approval of that Committee when submitted to the Commission.

Paul Van Gulick said essentially this keeps us out of the business of enforcing subdivision covenants which we can't do before this process takes place. Mayor Pro-tem Garrett said it gives that committee the right to look at it before it comes before Planning and Zoning. Paul Van Gulick responded exactly. One question that does come up is what happens if the Architectural Control Committee doesn't approve it. There is a procedure in place where we essentially stay out of it until it is resolved.

Councilor Olivo moved to approve Resolution No. 2004-01, Planning and Zoning Commission - Architectural Control Committee Participation Plan. Councilor Miler

seconded. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; and Councilor Morales, Aye. Motion carried.

OTHER BUSINESS

Chief Logan said last Saturday night we had a large fire at a structure within the city of approximately 8,000 square feet that basically burned to the ground. The official weather service at the airport said the wind gusts were up to 79.5 m.p.h. With the assistance of, and I hope I don't leave anybody out, Hondo, Glencoe, Bonito, Ruidoso, State and U.S. Forest Service as well as Ruidoso Downs fire departments on the scene. Although the structure was not saved, the commitment and participation and the teamwork by all of those departments were able to keep anything else from catching on fire in 80 m.p.h. gusts. I would like to congratulate our fire department and thank all the other fire departments and everybody else that helped for a job very well done. I can't say enough for our department and the participation and the teamwork involved.

Councilor Olivo said I was listening to my scanner since I don't have a radio anymore when Don Smith came on the air requesting if you needed assistance. He could have communicated with our fire department. Something has to be done so the other fire departments can talk to our fire department.

Mayor Pro-tem Garrett said I would like to see that a letter is sent to each one of those fire departments and thank them for their participation.

Mayor Pro-tem Garrett asked Administrator Waters if we know where we are with the wastewater treatment plant. Administrator Waters said this morning I sent an e-mail to the attorney and the manager for the Village of Ruidoso. I haven't received a response yet but from what I have seen previously we now have eight days of violations. The EPA essentially will take action when they see it in writing. It will appear on a Discharge Monitor Report due the 15th of February. When that is submitted it will state to the EPA the 30 day average, daily maximum and how many violations that happened in that month. I have requested for the Council and for my own information the report on how many exceedings there have been and try to get any tort funds that come from the EPA to come directly to us because, as you know, if a fine is levied against the plant, it is against both municipalities. As far as current information, we do know there has been some correspondence between the JUAB attorney from Santa Fe and an attorney from the EPA. The correspondence has been very minimal in nature; essentially the EPA attorney said this is the process that is going to be involved and coming up with an administrative order which is the precursor of any administrative action that is taken against the city. The attorney for the JUAB talks about some type of negotiation between the entities. That will be great if it happens but I have never seen it happen before. There needs to be some serious conversations and serious work between the two municipalities, the EPA and the JUAB before that order is given to the municipalities. We can be pretty sure we are exceeding the phosphorus level at this time.

Attorney Bryant said the next step here is to get with the New Mexico Environment Department Ground Water and Surface Water Bureau and design a watershed treatment program. Lots of communication on that subject is happening between Mr. Kendrick and staff at the New Mexico Environmental Department and the EPA has been brought into the loop for those discussions but they are not at the point yet where everybody is ready to sit down and make all of those elements we have to put together to make that make sense. In terms of the JUAB itself, that is the next process they have to be involved in. I think what is happening in fairness to Santa Fe, Dallas and everybody that is involved, they are trying to focus their attention and time on getting us ready for that. That is why they are not far enough along for us to meet to have any real substance to go over. On the February 15th Discharge Monitor Report, all of the lawyers involved in the process agree that the two cities should not wait until February 15th to submit a Discharge Monitor Report. As a result at the end of December, Mr. Kendrick sent a letter to both the New Mexico Environment Department and the EPA notifying them that we are going to exceed ahead of time and reminded them of all of these efforts and ongoing processes. I think at least part of that has already occurred and certainly we will be providing them with actual monitoring results of the nitrate and phosphorus output. The last thing we want is to give the impression that we are developing complacency.

Administrator Waters said we are looking at two issues here. One is all of the additional pressure coming out of the line. Mr. Mosley did quite a lot of work and he proved, at least in my mind, we are seeing a pretty good amount of water coming into the interceptor line and possibly some of our lower laterals. It tracks when the river is high, the flow picks up. This is the flow after Hollywood and before the plant. This is important; we know it is happening. The other issue is we have to get our engineers to start on that plant and start their preliminary engineering plan. This goes a long way towards pacifying the EPA to see that we are doing something. We have to either have a plant designed for .1 milligram per liter of phosphorus or a 1.0, some where in that range, either of which will be a large plant. One is approximately \$15 million, the other one is \$21 million. We prefer the lesser of the two evils but we still have to show the EPA we are beginning on this. One of the steps staff is instructed to do is to put the authorization together.

Councilor Olivo said some of the kids want to know when they are going to be able to play basketball. Attorney Bryant said 3B's has identified and proposed a new surfacing fix. Our engineer on the project, Fred Curnutt, has reviewed that process and he likes it. He is sending me a description of it so I can get with Mr. Waters and make a decision of are we willing to accept it. While we are doing that part, I asked Mr. Curnutt to go back to 3B's and tell them that a central element of this is that the concrete subcontractor gets paid in full as soon as possible. According to Mr. Curnutt this resurfacing process has been used a lot in the colder climates of the Northeast. I would imagine we are looking at 90 to 120 days to complete.

PUBLIC INPUT

Smokey Davis came forward and asked that the name of City of Ruidoso Downs be changed to Green Tree.

Sue Davis asked why citizens are not allowed to have input on what the Councilors vote on. At the County Commissioner meetings the public gets to comment before it is put to a vote.

Attorney Bryant said a public entity conducts its business meetings in the presence of and before the public. A public entity does not conduct its business meeting as a town hall meeting. It is the responsibility of the citizen in a representative democracy which is the way our cities and counties and even your legislature work. You as a member of the public don't get to go to Santa Fe and participate in a legislative discussion. You get to go to Santa Fe to see your legislator and your legislator participates in the discussion. I want to invite you to call the Councilors and discuss these issues with them on a case by case basis. Occasionally the mayor or mayor pro-tem will take public input on an issue. If you are passionate about an issue and want an opportunity to speak, our rules of procedure that are codified in the City Ordinances allow a member of the city council to ask the mayor to please recognize a particular member of the public on a subject and then you would be allowed to come up and speak. What you have to remember it is not a town hall meeting; it is this entity who are your representatives conducting a business meeting before the public.

Sue Davis said I personally think you would be better represented if you would allow the public to speak. You are supposed to be representing us, not dictating to us. You are going to get better input if we are allowed to come to the meetings and give our opinion.

Councilor Miller said when we do the annual budget for the year that is when we decide more or less what we are going to put into the budget and when we discussed putting money into the construction because we are crowded here. During that time when we are planning for the year maybe you could come to some of the budget meetings and give your input.

Administrator Waters said the process that Mrs. Davis speaks of is still handled here. It is handled in public hearings; statutorily we require public hearings to change ordinances. Resolutions and items of a more mundane nature like changes of budget and daily business are currently not practiced at the council meetings through public input. I will also remind you that county commissioner meetings last almost 12 hours.

Bonnie Richardson said we are anxious to get on with our parks program. We would like to have a ribbon cutting. I think we never did acknowledge the Heights Park. Someone suggested that markers be placed along the walking trail to see how

far they had walked. Councilor Olivo said it is .12 of a mile one way. You have to make five trips to make a mile.

Mayor Pro-tem Garrett asked where the map of the All American Park is located. We spoke of having the plan on the wall in the council chambers so we could all see.

Administrator Waters said we made a copy for the Parks and Rec Department. We only have one copy and it is more like a cartoon. I would like to get it done professionally. When we go forward to design the drainage for the parking lot which is the next step in the All American Park to try to get the parking lot done so we can get the rest of the walkway in. We probably need to include that in the engineering specs to have a large, professional drawing of the park plan that Planning and Zoning and the Council had voted on back in 2001.

Mayor Pro-tem Garrett said I think the residents of Ruidoso Downs should have a place where they can come look at the plan and its phases.

Bonnie Richardson said if we could put a copy of it up here at City Hall and a copy at the Senior Citizens Center that would be nice.

Barbara Bauer of Agua Fria asked if this is going to be a new water treatment plant. Administrator Waters said it will be a wastewater plant and essentially a lot of the current plant will have to be scrapped. It does not perform the functions that are necessary to clean the water down to either level the EPA is requiring. There will be some new parts to the plant. Some parts of the plant are fairly new. Recently from 1995 to 1999 they worked on solid handling which is what is left over when you take out the water. They recently installed some new drying beds and a polymer mixer; those are perfectly fine. It is all a matter of what the engineers design, what can fit on the property and what is required as to the best available treatment technology. That is still on the drawing board but there will be some parts kept and a lot will be completely new. We know if we started tomorrow we would be looking at late 2006 before the plant was actually complete.

Barbara Bauer asked how would it be funded. Administrator Waters said we have several mechanisms and that would be up to the Council to determine. One of the mechanisms recently passed by the citizens of Ruidoso Downs is the increase in the gross receipts tax. That is specifically dedicated to water and wastewater project. That money could be bonded to raise additional monies to complete the project. There are going to have to be additional mechanisms. We have secured a \$500,000 grant from Governor Richardson. Ruidoso is working on a \$1.2 million grant. I am working on a legislative grant that we are applying for in the amount of \$450,000. We are going to be looking at money from all different kinds of sources. We do have approximately \$1 million in bonding capacity. If you are interested, you are welcome to come to the budget workshops that start in late spring. I am sure those items will be on the agenda.

Kathy Frazier complained about the new street light shining in their bedroom and keeping them awake.

Ken Mosley said Ruidoso Paving had completed the paving project on Allison Lane and invited Council to take a drive. He also thanked his crew for the hard work and good job they had done.

Administrator Waters said I would also like to let you know that today I turned in the grant applications for another \$1 million into CDBG that will go towards the improvement of the water system, upgrade the water lines, fire hydrants as well as 2.5 million gallon reservoir to be placed up by the Spring. That will hopefully be decided by the end of this month. Remember last year it was drawn out until May. It is a competitive process. Last year Ruidoso Downs was the winner in the State. In addition we have also applied for a Coop grant to finish Turkey Canyon Lane. That will also give us some additional money to possibly go towards Wright Lane. The drainage problem on Turkey Canyon is a large one. Water currently drains underneath someone's home. We have to solve that problem first and it might take all of the monies from the Turkey Canyon project to fix it.

Councilor Olivo thanked the people from Agua Fria for coming to the Council meeting.

Mayor Pro-tem Garrett entertained a motion to adjourn. Motion was made by Councilor Morales and seconded by Councilor Miller to adjourn at 6:38 p.m. Motion passed unanimously.

Bob A. Miller, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer