

MINUTES OF THE REGULAR MEETING  
OF THE CITY COUNCIL  
OF THE CITY OF RUIDOSO DOWNS  
MAY 10, 2004

The Council of the City of Ruidoso Downs met in regular session on May 10, 2004. Mayor Miller called the meeting to order at 5:30 p.m. and asked Don Coleman to lead the Pledge of Allegiance. Upon roll call, the following were present:

Councilor Miller	Councilor Morales
Councilor Garrett	Councilor Olivo

Administrator Waters informed Mayor Miller there was a quorum.

Also present were:

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

APPROVAL OF AGENDA

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

APPROVAL OF CONSENT AGENDA

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

APPROVAL OF MINUTES OF APRIL 19, 2004 REGULAR MEETING

Motion was made by Councilor Morales and seconded by Councilor Garrett to approve the Minutes of the April 19, 2004 Regular Meeting. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

ACCOUNTS PAYABLE

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

#### MONTHLY REPORTS

Motion was made by Councilor Morales and seconded by Councilor Garrett to approve the following reports:

Fire Report	Animal Control Report	Public Works Report
Court Report	Permits/Licensing Report	
DPS Report	Maintenance Report	

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

#### PUBLIC HEARING

Mayor Miller stated next item on the agenda, City of Ruidoso Downs Ordinance 2004-02. An ordinance amending Ordinance 2001-01 Article 10 Zoning and Land Use Division 1. Generally titled "Definitions" under Chapter 9 Article 10 Section 1 of the City of Ruidoso Downs Code of Ordinances.

Councilor Garrett moved to table the Public Hearing. Seconded by Councilor Miller. Councilor Morales said we do not have enough information. Roll call being: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

#### UNFINISHED BUSINESS

There was no unfinished business.

#### NEW BUSINESS

Mayor Miller stated next item on the agenda, City of Ruidoso Downs June 30, 2003 - Audit by Ronnie C. Hemphill, PA, CPA. Mr. Hemphill introduced himself. Back in November we had an exit conference on this audit. The audit was submitted timely to the State Auditor's Office. The audit was due December 1st but they were overwhelmed and it took them forever to get the review done. Unless you want to discuss actual numbers, what I would like to do is go direct to the findings. On Page 70 we have Summary of Audit Results: 1. The auditor's report expresses an unqualified opinion on the general-purpose financial statements. 2. Four reportable conditions disclosed during the audit with none of the reportable conditions considered to be a material weakness. 3. No instances of noncompliance material were disclosed during the audit. 4. There are no major federal award programs.

The first reportable condition is actually one I share in some of the responsibility. State auditors have come down hard on independent auditors doing contract work for government agencies. They are only allowing that if they pre-approve the contract. You are required to have a Lodgers' tax audit in your contract with me. As a result prior written approval will be requested on all future audit contracts. The second audit finding is expenditures in excess of budget. The City had four funds which had expenditures in excess of budgeted amounts. The Emergency Medical Services Special Revenue Fund and expenditures in excess of budget of \$4,502, the Federal Emergency Management Agency Grant Special Revenue Fund had expenditures in excess of budget of \$5,486, the Court Animation Special Revenue Fund had expenditures in excess of budget of \$1,946, and the Street Paving Revenue Bond Debt Service Fund had expenditures in excess of budget of \$1,381. I think the main reason this happened in 2003 is just a lack of a clean-up budget resolution at year-end. You are going to have expenditures in excess of budget but there is a legal, acceptable way to go in and clean this up by adopting a year end budget resolution in the future.

The third finding is a repeat of the prior years. We think it is important for the City to invest excess cash even though interest rates are extremely low. You now have a cash management policy in place so that will take care of this problem.

The fourth finding is a bit unusual as the City had bank balances at State National Bank that were under collateralized according to State Statutes. The problem actually went back into 2002. The reason why it existed in 2002 and spilled over into the year 2003, when we sent a bank confirmation for the June 30, 2002 audit, State National Bank issued an incorrect confirmation of collateral pledged when actually there was none. Due to an internal problem within the bank, the collateral pledge had been released. Fortunately, there wasn't a bank failure. The bank pledged collateral for the account balance in October of 2003. The City now requires the bank to send a monthly pledging report which is reviewed by staff.

At the bottom of Page 72, there is a summary of prior audit findings. It is important to go over these because our report for the year ending June 30, 2002 was not a very good one. The good news is the basic accounting controls have been fixed. General Fixed Assets Records problems were resolved, the Bateman Act violation was resolved, disbursements not in compliance with purchasing policy was resolved, payroll withholdings was resolved and investing excess cash was repeated as we talked about but now has been resolved. I think it is John and Carol and the whole staff that is working hard to clean this up. Clerk Virden said I want to add that Terri Mosley should be taking a big part of the pat on the back because she is the one that had the knowledge and experience to get the majority of the fixed assets and the general ledger in order.

Mayor Miller stated next item on the agenda, Lincoln County Community Collaborative report by Sergio Castro. Bobby Wise introduced herself and said I am with the Lincoln County Community Collaborative. We wanted to come back and give you a report on the continuing services project we have going. We are making an application for a grant and you had given us a letter of support. We put an application in for \$185,000 and we were awarded \$55,000 which is quite a drop. We had a large application with lots of details about statistics in this county and why this program was so necessary. The program they targeted for this \$55,000 is the Citation program. The Citation program has worked in other areas and we would like to see it be successful here. We will have to have tickets printed up and the police officers will give minors citations for some things for a first offense. They will be required to go to the JPDO office within one week and there will be a coordinator that will be hired part-time for this program to do monitoring and following up for compliance. Those two people will decide on giving them either community service or counseling. The parents needs to be involved and agree that they will follow up with their children to do this. The purpose of this program is to keep these kids from being in the system. Other organizations have been giving us some options for community services they felt were really good. It is a vital program. It will save us money because it will keep them from going into the system. We are going around to each of the entities in the county and letting them know what we did get, what the program is about and if we can get some money from each town for that. We are asking each for \$3,000 to \$5,000. It did cover all of the programs we had listed but now we are going to target the citation program. We do need to get some matching money.

Mayor Miller stated next item on the agenda, Reba Ivey, Bobby W. and Ruth Ann Crumpton, request to vacate easement. Attorney Bryant asked is Mr. or Mrs. Ivey here and Mr. Crumpton said no, they are deceased. Bob Crumpton said I live at 810 Highlands Lane and handed documentation to the Council. In 1990 Reba and Lee Ivey bought and paid for this right-of-way easement from the Village of Ruidoso Downs. We later purchased the property from Mrs. Ivey. In the meeting where this was unanimously approved by the Ruidoso Downs Village Council it states this land was no longer necessary for public use with the exception of reserving the right to drill a well for municipal purposes on the property and the right of ingress and egress of at least 15 foot easement on the property to the well and the right to maintain pumps and water lines to and from the well and further restriction that no permanent buildings except to house a municipal well. On September 10 of 1990, after receiving payment from Mr. and Mrs. Ivey, the Village executed a Quitclaim Deed to them (see attached) and incorrectly added the 30 ft. easement from the road to the river back into the description. This was in contradiction to the agreement that was made by the Village Trustees in the Council Meeting. This easement from the road to the river was the very thing Mr. and Mrs. Ivey had purchased. They were elderly and he was ill. She apparently did not realize that this error had been

made in the description on the Quitclaim. When we bought the property from Mrs. Ivey she told us that the easement had been removed except for the 15 ft. piece from the road to the possible well site. When we refinanced the property in 2000, it came to our attention that this particular piece was not included in the deed. Therefore, in March of 2000, Bill Pippin on behalf of Mrs. Ivey, requested that the Village sign another Quitclaim Deed (see attached) to Mrs. Ivey and again incorrectly included the 30 ft. easement from the road to the river. The same incorrect description was included in the subsequent Quitclaim from Mrs. Ivey to us. (See attached.) Note that these two Quitclaim Deeds are stamped "Courtesy Recording Only - No Title Liability", and that they were recorded in the wrong order (first from Ivey to Crumpton, then from Village to Ivey). Mrs. Ivey has since passed away, but I can assure you that she would not have paid for this piece of property and then knowingly allowed the Village to retain it. Bernice Jones, our neighbor was a good friend and neighbor of Mrs. Ivey and was at the 1990 council meeting where this agreement was made. At the time, the property was fenced into the Jones' pasture and they were given first right to purchase the property. They declined in favor of Mrs. Ivey with the understanding that the easement was going to be eliminated. We are asking that this Council affirm the exact agreement made by the Council in 1990, as described in the minutes, and vacate that easement with the exception of the right to drill a well and maintain a 15 foot easement from the road (Highlands Lane) to the well only.

We did talk to her son, Larry Squires, and he said she did purchase the property with the exception of the well site.

Attorney Bryant said I have been looking into this for a little more than a month now and this is just one of those things where I go back in time and start going through the records to find out what happened and I don't get a good answer. It is clear from the minutes of the July 9, 1990 meeting that Mrs. Ivey asked the City to sell her the right-of-way except for the well site and a 15 ft. easement on the property to the well to provide for maintenance. Unfortunately, under the New Mexico Statutes in 1990 and today, there are only two ways a municipality can dispose of real property or an interest in real property. Option A is to call an election and have the voters of the municipality decide. Option B is to advertise the property for sale. It has to be advertised one time in a newspaper of general circulation at least 30 days ahead of time. In the advertisement you have to specify what the conditions are under which the municipality is offering to sell the property. Everybody has the right to come in and bid. On the bid date you open the bids and you accept the bid most favorable for the City, then you come back before the City Council and you close the transaction. So I went digging back in the records to try to find where we ever did the things we were suppose to do in 1990 to sell this property and there is nothing. The newspaper doesn't have any records that far back and the City doesn't have any records that far back. I have no paperwork,

nothing. Then I come to the 2000 Quitclaim Deed and it was submitted and signed by Gladys Dillard as the City Clerk and the city clerk has no power to dispose of municipal property. It was signed by Ms. Jones as a notary but again there is nothing in 2000 that shows that we put it out for bid, advertised it and did all those things. I don't have a quarrel with you making whatever decision you think is appropriate in terms of this property but I do want us to go through the steps that are necessary under the law. Here's the rub. You don't get to just go do something. We have to follow whatever procedures are set out by the State Statutes because the legislature has said we are managing their property. We have to do that and be able to prove that we did that and right now I can't do any of those things. If the Council is interested in entertaining this request, then my recommendation is that you take action on the request tonight pursuant to which staff will put together a thirty day advertisement and a bid. Mr. Crumpton we will do the advertising, the bid and the closing. You all can come in and respond to that request and we will try to get this done correctly. It is certainly far less expensive and far less time consuming than the other process.

Mr. Crumpton said Mrs. Ivey, as it states in the Minutes, paid for the property and I paid her for the property; how can it be put out for public bid. Attorney Bryant said here is the problem. The motion that was made that the Council has determined the land used in the right-of-way is no longer necessary for public use, it excepts out that easement and then that motion was seconded. Mrs. Branum's motion didn't say I move we sell this property to Mrs. Reba Ivey for "X" amount. It says I move that it isn't necessary for public use any more. In order to sell for "X", the advertisement and bid has to be done and I can't find anything to tell me that anything after this motion was voted on or that anything was ever done by anybody. I have no way of delivering to you a valid title without following the statutory steps. Without following the statutory steps, if I am writing a title opinion for the title company in five years when you want to sell, I am not going to insure title for that thirty feet because I am going to say to you there is nothing here showing me that the City of Ruidoso Downs did what they were suppose to do to sell this property to either Reba Ivey in 1990 or in 2000.

Mr. Crumpton said it doesn't seem fair that I have to pay for it twice. Attorney Bryant said municipalities are stuck with being creatures of statute. The law tells us who we are and what we can do and how we can accomplish this. If I could find one shred of evidence from anywhere that indicated that anybody had followed the statutory purpose, we wouldn't be having this discussion now. There is nothing in the title records, there is nothing at the newspaper records, there is nothing at Mr. Mitchell's office and there is nothing at City Hall. From this I can't, as the lawyer for the City, tell the City that it was paid for this easement because there is nothing in this motion that tells me what the purchase price or terms were.

Councilor Morales said I was on the Board at the time but I am very sorry I don't recall this.

Mr. Crumpton asked if Mrs. Jones remembered anything about this and she said she remembered everything about it. Mrs. Jones said I was married to Kenneth Jones and we bought the property that the land is on that is in question. When we bought it, the real estate people came to us and said you have fenced in half of Lot 9 that belongs to the Village of Ruidoso Downs and if they ever want it, you will have to move your fence back. We said no problem. There wasn't any problem, the fence stayed until one day the village clerk came to me and said you need to move your fence back. The neighbors are wanting to put a street in here on that 50 foot of land so their children can go back and forth to the river and we are going to petition the Village to put a park there for the kids to play in. In the meantime, Reba Ivey already owned the land on one side of it and we owned it on the other. If we moved our fence back, it would leave Reba's land open to the world as she would not have a fence along side of the house. The property line ran within five feet of her bedroom window. Reba had not moved there yet. I called her and said people from the Village are here asking us to move our fence back. It is going to leave your property open. She said I will be right there; she lived in Cree Meadows. She talked to the Village Clerk and I think the attorney for the Village and they said the neighbors are petitioning for us to open this up and to put a park in here. I don't know if they would have been able to do that but there wasn't any question about who owned the land. It belonged to the Village; it was told to us plain and simple because the Velli family owned it and they had traded to the Village for 50 foot on the other side of our property. When we bought it, we knew we didn't own 50 feet. Reba said one of us needs to buy that land and put a stop to this because we don't want kids running through there and a park that narrow. She needed it because she didn't have much land. She said either you buy it or I will buy it. My husband said we don't need it. Reba got with whomever she needed to get with to come before the Village Council, the Mayor and Gary Mitchell was the lawyer then. Mr. and Mrs. Ivey said we want to buy the land but we know that the Jones' have first choice because of the fence. As we weren't willing to buy it, they went in the back room. The complete Council was here, they talked about it and came to their decision. They came out and said the Village is not in the real estate business. The only reason we would want to hold on to that piece of land would be to drill a well. We would sell it to you Reba if you agree that if we ever needed to drill a well there we could and she said of course. The agreement was made, Reba paid and she had it in her possession when she sold it to the Crumptons. They didn't know anything about acquiring this extra land; they just thought it came with their property. For several years they didn't realize they had to have a separate deed for that little 50 foot strip of land. They got a deed but it was something that was made up after the Minutes. They had Minutes that said one thing and some Minutes that said another but nobody tried to take the land back. Bob was unaware of it and I think he

refinanced his place and paid Reba off before she died. Reba bought it to keep them from opening it up, put a road through there to the river and a park. She bought and the Mayor and Council agreed to it and it is paid for and it has been in these people possession for all of this time. These people right now need to sell their property. They have a son that is desperately ill. They need to sell their house and get their hands on some money and we are sitting here holding them up over something that happened in 1990. We thought it was all done legally and above board and to everyone's satisfaction.

Councilor Morales asked do we not have any records of receiving this money from Mrs. Ivey. Attorney Bryant said based on what you know about our records, are we going to be able to find anything to prove this purchase and Clerk Virden answered no sir, I don't think so.

Attorney Bryant said the question I need to ask you if you don't care about merchantable title, don't do anything. Sell your property. If you care about merchantable title, I need for this Board to authorize me to put it out for bid, do an advertisement once for thirty days. Mr. Crumpton said I understand that but if I have a buyer and I go to them and say the Village of Ruidoso Downs has an easement 100 feet deep and 30 feet wide and has a right to that, who is going to buy it. I wouldn't have bought it had I known that. Attorney Bryant said I am trying to fix it in a way that it is legal. Mr. Crumpton said if it was quit claim deeded twice, it can't be quit claim deeded again. Attorney Bryant said I can sign a quit claim deed for you tonight but it would be worthless. Mr. Crumpton said if the Village doesn't have records back to 1990, something is wrong with the system.

Councilor Garrett said what bothers me is it isn't typed right. It should have been only a 15 foot easement to the well and that is not what any of these say. All of these show a 30 foot easement to the river so none of these quit claims deeds are right.

Attorney Bryant said if the Council thinks they have enough information, I would have you instruct us to do the advertisement for bid and in thirty days we will know if we have a problem or not. The bid process establishes market value. Market value is what is a willing buyer and willing seller willing to do on this day. That is why the statutory scheme has that process to keep city officials from hoodwinking the public and selling the great properties in town to their buddy, the developer. That is the way to deliver clear title to somebody that a title company can actually insure. Now that the title company knows about this if we don't fix this with the appropriate statutory steps, there is going to be an exception in there.

Councilor Garrett moved to advertise the easement in the newspaper for bid. Seconded by Councilor Olivo. Councilor Morales asked that Clerk Virden look to see if she can find anything on this. Mr. Crumpton said I am going to ask Mrs.

Ivey's son to see if he can find anything. Attorney Bryant asked Mrs. Jones if she remembers the purchase price and she said I think she paid \$3,600. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Motion was made by Councilor Morales and seconded by Councilor Garrett to award RFP No. 04-04 to State National Bank for banking services. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Motion was made by Councilor Morales and seconded by Councilor Garrett to award Bid No. 04-013 to the one bidder, Wagner Equipment, with a bid of \$26,500. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Motion was made by Councilor Morales and seconded by Councilor Garrett to award Bid No. 04-014 to the low bidder, Wagner Equipment, with a bid of \$36,000. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Motion was made by Councilor Morales and seconded by Councilor Garrett to approve Resolution No. 2004-11 authorizing signatures. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda, consider waiving construction permit fee and water meter installation fee for Ruidoso Downs Chamber of Commerce. Barbara Green, President of the Ruidoso Downs Chamber of Commerce, said when we came before you we asked for use of City land on Highway 70. At that time, you agreed to let us use that land and you were going to furnish the water and sewer. In the meantime, we found out that we could get water but sewer would not be available for quite some time. It was not acceptable for us to use a port-a-potty so we found another property we could use for our Chamber. I think they have already hooked up the water and the sewer and I wrote a check for the deposit. We are asking that you waive these fees.

Administrator Waters said there were a couple of issues; I have the authority to waive the sewer inspection fee. Mr. Mosley said he found a spot where he didn't have to cut the street so that saved \$250. Mr. Armstrong has the building permit fee and asked the amount of the fee. Mr. Armstrong said about \$47. Mr. Waters said I forget what our hookup fee is for the water but essentially we are talking less than \$250 we would be giving to the Chamber to help them start the Chamber on that property.

Councilor Olivo moved to approve waiving construction permit fee and water meter installation fee for Ruidoso Downs Chamber of Commerce. Seconded by Councilor Miller. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Abstain. Motion carried.

Mayor Miller stated next item on the agenda, set dates for budget workshop(s). Administrator Waters stated the Budget Committee will be meeting this week. This will be an entry into it so if there are questions of the staff, they can call them in. We need to meet next week prior to the next Council meeting then we are required to send it to Santa Fe the following week. Councilor Morales suggested meeting for Budget Workshop on Wednesday, May 19th at 5:30 p.m. and tentatively Friday, May 21st at 4:30 p.m. The Council agreed on these dates.

Mayor Miller stated next item on the agenda, consider personnel recommendation of temporary laborer position for the Parks & Recreation Department. Public Works Director Mosley said we interviewed Anthony Taylor for the temporary parks laborer position. His interview went real well and I believe he would be a great asset to the City.

Councilor Miller moved to approve recommendation to hire Anthony Taylor as temporary laborer for the Parks & Recreation Department. Seconded by Councilor Olivo. Chief Logan said I just want to make sure it was fully disclosed to the Council that Anthony is my stepson. He is listed as my son-in-law on the personnel recommendation. He won't be working for me at all. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda, consider accepting Lodgers' Tax Committee allocations recommendation for 2004-2005 fiscal year. Administrator Waters said I just want to tell the Council that this is the accepting of their report to you and that the final approval of this will come at the budget approval at the second meeting in May if there is some issue you want revisited between now and that time. Barbara Green is here from the Lodgers' Tax Committee to present the recommendations to the Council.

Barbara Green said this year the total amount requested was \$88,540 and the funds we had to allocate were \$39,000. Barbara Green read the list of the Lodgers' Tax Committee recommendations:

All American Arts & Crafts Fair	\$4,000
Golden Aspen Rally	1,500
Aspen Cash Rally	500

Ruidoso Valley Greeters Christmas Jubilee	700
Lincoln County Cowboy Symposium	5,000
Mountain of Blues Festival	1,000
Oktoberfest	700
Billy the Kid Scenic Byways	1,000
Ruidoso Chili Society	1,000
KEDU Community Radio	1,000
Tim Keithley Radio Advertising	7,500
2004 Race Track Concert Series	3,000
Ruidoso Downs Chamber of Commerce	<u>12,000</u>
Total	\$39,000

Councilor Miller moved to accept Lodgers' Tax Committee recommendations for allocation for fiscal year 2004-2005. Seconded by Councilor Olivo. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda, Planning and Zoning report. Paul van Gulick said the first item is consider approving recommendation from P&Z to approve land division and lot line adjustment of Lot 56, Block 1, and Tract C of Ruidoso Downs Heights Subdivision into Lots 56A and Tracts C-1, C-2, C-3 and C-4. Mr. and Mrs. Gustin own all of this property. They have a plat prepared showing the subdivision and we reviewed it. Notification was sent out and we received no complaints either written or verbal by the time of the meeting. It appears to meet the conditions for a subdivision so we recommend this be approved by the Council.

Councilor Garrett said I don't think we have enough information to make a decision. We haven't seen anything other than this memorandum. I would like to table it until I can see the plat. Paul van Gulick said I would like you to know that Tracey Allred is here to answer any questions and Ken Mosley has reviewed it all. Councilor Miller asked what size are the lots. Paul van Gulick said in terms of the lots they are creating, whether one could put a house on the lot with setbacks, they do meet those requirements. Tracey Allred said I am with Eagle Surveying. The lots there are 75 feet by 120 feet. Councilor Miller asked if there would be road in between and Ms. Allred said no. Mayor Miller said I live across the street and I didn't know anything about it.

Councilor Garrett moved to table recommendation from P&Z to approve the land division and lot line adjustment of Lot 56, Block 1 and Tract C of Ruidoso Downs Heights subdivision. Seconded by Councilor Morales. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried. Councilor Garrett requested that the Council get a copy of the plat.

Mayor Miller stated next item on the agenda, consider approving recommendation from P&Z for Variance 2004-02 for setbacks as requested by Robert and Catherine Olshaskie.

Paul van Gulick said what they want to do is continue the existing line of their house. They have an addition in the back. It is not changing the overall distances of their property to the lot line but rather to continue the way the house sits on the property. We reviewed this and recommended to approve the setback they already have along the lot line. As far as I know everyone was notified and we didn't have any protests.

Councilor Morales moved to approve recommendation to approve Variance 2004-02 for setbacks as requested by Robert and Catherine Olshaskie. Seconded by Councilor Garrett. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda, consider approving recommendation from P&Z for continuation of non-conforming use for placement of mobile home at 424 Reservoir as requested by Jose and Maria Soto, owners.

Paul van Gulick said the owners had a trailer on their property removed within the last few weeks and they want to bring in a newer model. They have agreed to install a permanent foundation per the City's requirements so this amounts to continuing a non-conforming use that they had prior. We received no protests in writing or at the meeting. Our recommendation was to approve the variance.

Councilor Olivo asked was it a singlewide or doublewide removed from there. Mr. van Gulick said I believe it was a trailer. Mr. Armstrong said it was a 1946 singlewide. Councilor Garrett said the only question I had when I read it was there have been some neighbors very close to this whom we insisted when they pulled out their singlewide that they replace it with a doublewide. I don't want us to do something that in any way causes us any kind problems with the residents that we informed they had to have a doublewide because they were in a R-1 subdivision. I know we did do that with neighbors across the street. If they do it within thirty days they could replace it. If I understand the ordinance right, they have thirty days to continue the non-conforming use. Mr. van Gulick said it is my recollection that it was within the last thirty days. Attorney Bryant said we need to get the record clear so if anybody knows when it was taken off. Pete Baca introduced himself and said this is Jose Soto and he bought a 16' by 60' and I thought the ordinance was ninety days. Mr. Armstrong confirmed that it is ninety days. Mr. Baca said it was removed about three weeks to a month ago. Councilor Garrett said if that is the case I don't think we need to do this because if it is within ninety days they can automatically do it. Attorney Bryant said the nice thing about going through the process, now we

know this is absolutely indefensible continuation of a non-conforming use and we are not asked to address it after the fact.

Councilor Morales moved to approve recommendation from P&Z for continuation of non-conforming use for placement of mobile home at 424 Reservoir as requested by Jose and Maria Soto. Seconded by Councilor Miller. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

#### OTHER BUSINESS

First item under Other Business, Proclamation of Emergency Medical Services Week, May 16 through 22, 2004 as follows:

**WHEREAS**, advances in emergency medical care have resulted in hundreds of lives saved in Ruidoso Downs and Lincoln County each year; and,

**WHEREAS**, the Physicians, Nurses and EMT/Paramedics in Ruidoso have devoted their lives to saving others; and

**WHEREAS**, the citizens of Ruidoso Downs and Lincoln County benefit daily from the knowledge and skill of these trained individuals; and

**WHEREAS**, Emergency Medical Services Week has been established to educate the citizens of Ruidoso Downs and Lincoln County about steps they can take to prevent an emergency and actions they should take at the scene of an emergency; and

**WHEREAS**, Emergency Medical Services Week also is being observed to recognize the accomplishments of all members of the emergency medical care team.

**NOW, THEREFORE**, I, Bob A. Miller to hereby proclaim the week of May 16 through May 22, 2004 as Emergency Medical Services Week in Ruidoso Downs and urge all citizens to join me in observing this occasion.

**PROCLAIMED AT RUIDOSO DOWNS, NEW MEXICO THIS 10<sup>TH</sup> DAY OF MAY, 2004.**

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**/s/ Bob A. Miller, Mayor**

Mayor Miller asked if there was any Other Business.

Councilor Olivo said on the basketball court it's almost summer and we don't have them fixed for the kids to use them. Can we put some nets up there so the kids can use the basketball courts? Attorney Bryant said the good news is we were able to look at the new surfacing material that has been proposed on the ground in Albuquerque. It looks great; it is wonderful stuff. The problem with the site in

Albuquerque is the material has been on the ground less than one year and it was covered by an awning so it had some protection from the weather. We have gotten a hold of the people who make the material and we have found another site in Colorado Springs, Colorado. It is on a driveway which means it is subject to harsher use than the basketball courts will be. It has been down for five years. I am arranging to get photos of that driveway made and e-mailed to me so we can look at those. Fred Curnutt is of the opinion if we can get all of that done, they can have the material on the basketball courts by the end of the month. It is moving along very quickly and I feel like by the time the kids get out of school the courts are going to be ready. The second issue, can we put up nets now. This is just one of those questions you don't want to ask the lawyer because the lawyer's answer is always no because of liability concerns. But, the last thing you let the lawyer do is manage your city because the lawyer's answer is always to eliminate liabilities. Mr. Waters and I discussed it at length this afternoon. We had nets up for a while although we did not authorize their installation. We pulled them down for the wintertime because we didn't want somebody slipping on a puddle of ice and hurting themselves which is what the dispute is with this pad. The liability concerns with putting them back until we get the surface done is really pretty small. There are some irregular areas in the concrete. We call it falling and what you see are little flakes of concrete coming up where they tried to fix the low spots and it didn't work. There is a slight risk that someone playing basketball could trip and hurt themselves. The area is not fenced off so kids are playing on it anyway so I don't think it is a huge issue if we put the nets back up while we are getting things worked out.

Councilor Garrett said for informational purposes only I think we have been told that 3B's is going to reimburse the Beavers. I spoke to Mr. Beavers this afternoon and no money has been forthcoming. Attorney Bryant said we are working on that issue. 3B's has committed to make a good faith payment of at least fifty percent of the outstanding balance.

Councilor Olivo asked Administrator Waters if we have had any information on the proposed traffic light on Highway 70 and Downs Drive. Administrator Waters said Mr. Bob Curt came down last week from the State Highway Department and wondered around in a bunch of different areas before making it to my office. One of things he first asked was did he say overpass or stop light. Of course the issues we are addressing is not only the kids crossing but we also have all of our emergency vehicles here. If you have an overpass there is some concern that they are not going to see the fire truck coming out. He agreed with that. The next conversation was regarding the nature of the stoplight. We both agreed that we probably need a four-way stoplight there. There is quite a bit of truck traffic that comes out there. It won't be an exact 90 degree angle but it will be satisfactory to the State Highway Department. Their idea is to channel the fork of traffic coming through there either

going right or left. They asked about the possibilities of putting in turning lanes and I don't think that will be a big issue. For the price that the State is going to invest in this, I pointed out that there are no drop inlets for drainage on Highway 70 for whatever reason. We discussed the possibility of putting in a drop inlet there as well as channeling the water. Whoever gets an opportunity to talk to the Governor, be sure and thank him because we are probably looking at between \$200,000 to \$250,000 project the Governor gave us. The State Highway Department and the Department of Transportation are committed. They are not jumping for joy that this got added on to their project but they are going to do it. As a side note, the engineer also went down to Parker bridge and he may help us get some funding for redoing Parker bridge as well. Councilor Olivo thanked Jane Haizlip for asking the Governor for the traffic light.

### PUBLIC INPUT

Bonnie Richardson said I am Chairperson for the Park and Recreation Committee of Ruidoso Downs. I just wanted to update you on our market in the park. We have unavoidably been postponed on our market but in conjunction with our market, we were going to have our plant sale. We will go ahead with our plant sale, however, it will not be held May 22nd either. So both of those two events have been rescheduled for a future date and I will keep you updated.

Susan Goodrich said this is my husband Fred and we live at 107 Burke Lane. Our questions are addressed to Mr. Bryant. Upon hearing through the rumor mill, the parties across the street from us were given a thirty day extension to remove their junk and trash. Thirty day ago as of tomorrow I placed two calls to you leaving my messages on your voice mail asking for more details. Again, no return calls so we felt we needed to be here in person. We would like to know why these people are continuously given extensions when the two weeks before the last thirty days were up, nothing was removed from the property. Here we are tomorrow thirty days again are up and nothing has been moved from that property. Finally, they are residing there at night; they have been evicted. Why are they living there. We would like some answers; we are getting tired of dealing with it.

Attorney Bryant asked whom are you talking about. Ms. Goodrich said Wesley Owens. Attorney Bryant said I don't know anything about a new thirty day extension. My understanding is they were evicted from the property. I was given that information. There was clean up that was occurring at the time. My staff and I monitored it on a daily basis. I saw the trucks loaded in the driveway and I saw the things being hauled away. There is still a lot of stuff there; I am not going to argue with you there. Neither my staff nor I have given anybody a thirty day extension that is expiring tomorrow. Ms. Goodrich said the dispatcher said they had been given another thirty day extension and that would be up as of tomorrow. They have moved the majority of the spools, a few vehicles, etc. and a bathtub that were

on our side of their property to the other side of their property but they are still there. Attorney Bryant said I will check all of those allegations out and let you know what I learn but I am not aware of any that. I have been dealing with the successor of that property that was awarded that property through the court action in Judge Parson's court and I am currently working with him on a cleanup plan.

Councilor Morales said I am hoping you won't have to come back again and that property will get cleaned up.

Chuck Mitchell said I am the owner of Exclusive Homes. I received some paper work this morning and I thought it was part of the regular agenda. I am assuming it is going to part of the public forum to address some of the issues brought up in the Downs about some of the requirements and restrictions being put on manufactured housing. Am I at the right meeting? Councilor Garrett said yes, we tabled it because we need more information. Attorney Bryant said we got a letter from Keleher & Mcleod on behalf of the manufactured housing. I will get in touch with Mr. Rasmussen and we will have a thorough discussion before it gets back on the agenda. Councilor Morales said we did not want to make an uninformed decision. Mr. Mitchell said if I could just make a couple of comments. The Manufactured Housing Association has been fining several issues in the State and the largest one was held in Rio Rancho. It was similar to some of the restrictions trying to be implemented by the Downs, one of which was a 16" eave. One, we are going to have a huge transportation problems. Not only that, there is an 18" perimeter footer that runs the perimeter of the home, things like this that are not even required by site built housing they are trying to implement on manufactured housing. I just think it is very unfair and it really isn't going to do any good as far as the looks of the homes. These are not trailer houses anymore; they are building some nice looking units especially when we get through with them. In most cases they are being ground set if possible. If you require them to be ground set you are going to have huge problems because everything up here is built on rock. You are talking blasting and taking the affordability out of affordable housing.

Mya said I am a member of the CCC. Downloading the Minutes, I noticed the official heading was not on each page nor and I.D. footing on each page. I urge the Council to seek advice regarding the legal identification of an official document. Any page of the Minutes can be downloaded legally by the international community of the internet and not be identified.

It is has been six weeks since I brought attention to the Mayor's photo in the City's official website. Well focused pictures of other people since that time have been placed on the website but still the embarrassing photo of our Mayor remains as the welcome to our city. This photo depicts a blurry face, a striped shirt similar to jail issue, no eye focus to the people he is greeting, in general, a photo of an old man

who can't remember he reflects a community of people, not just himself on the worldwide web. Those photos demonstrate what the City has put up on the City's website.

Last thing is the library has a wonderful computerized system of notifying itself when new information/books come in to the library. When something specific comes in we are also able to put peoples names to be notified that the information has come to the library. Six weeks ago I asked that you look into the possibility of submitting the ordinances and laws for the City of Ruidoso Downs to the library as a reference. The Village of Ruidoso has done this since the nineties. I am encouraging you one more time to allow the citizens of Ruidoso Downs to have access to these ordinances in the reference part of the library which we support financially.

#### EXECUTIVE SESSION

Mayor Miller stated I would like to entertain a motion to go into Executive Session pursuant to Section 10-15-1(H)8, Real Property and Water Rights.

Motion was made by Councilor Morales to go into executive session pursuant to Section 10-15-1(H)8, Real Property and Water Rights. Seconded by Councilor Garrett. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated I would like to invite City Attorney Bryant, City Administrator Waters and City Clerk Virden to attend the Executive Session and closed the regular meeting at 7:31 p.m.

Mayor Miller entertained a motion to go back into open session.

Motion was made by Councilor Morales to go back into open session and declared that nothing was discussed in executive session except real property and water rights and no action was taken. Seconded by Councilor Miller. Roll call votes: Councilor Miller, Aye; Councilor Olivo, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller called the regular meeting back in session at 7:34 p.m.

Mayor Miller entertained a motion to adjourn.

Motion was made by Councilor Garrett and seconded by Councilor Morales to adjourn at 7:34 p.m. Motion passed unanimously.

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Bob A. Miller, Mayor

ATTEST:

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Carol Virden, City Clerk/Treasurer