

MINUTES OF THE REGULAR MEETING  
OF THE CITY COUNCIL  
OF THE CITY OF RUIDOSO DOWNS  
SEPTEMBER 13, 2004

The Council of the City of Ruidoso Downs met in regular session on September 13, 2004. Mayor Miller called the meeting to order at 5:30 p.m. and asked Bonnie Richardson 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  
Robert Logan, Department of Public Safety Director  
Tom Armstrong, Planning, Licensing & Permits Supervisor  
Ken Mosley, Public Works Director

APPROVAL OF AGENDA

Mayor Miller entertained a motion to approve the agenda. Motion was made by Councilor Morales and seconded by Councilor Garrett 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 Miller and seconded by Councilor Morales 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 AUGUST 23, 2004 REGULAR MEETING

Motion was made by Councilor Miller and seconded by Councilor Morales to approve the Minutes of the August 23, 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 Miller and seconded by Councilor Morales to approve the Accounts Payable. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

MONTHLY REPORTS

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

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

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

UNFINISHED BUSINESS

Mayor Miller stated next item on the agenda, consider moving to Phase II Water Restrictions and asked Mr. Mosley to comment. Mr. Mosley said at this time the Denton Well tank is full producing 160 g.p.m. We only ran it once this month. The Spring tank is almost full and I would like to say thanks to the public for conserving as much water as they have. With the water status we have right now, I would consider recommending that we go back into Phase II.

Councilor Olivo moved to go to Phase II Water Restrictions. Seconded by Councilor Garrett. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

OTHER BUSINESS

Councilor Olivo said I would like see about cleaning our streets after all of this rain. I wish we could get our crew out their to mow the weeds. Mayor Miller said I noticed the weeds along the sidewalk on Highway 70. We need to remind the Highway Department.

Councilor Olivo said we have been getting calls about the streets where the water lines were replaced. The streets are real bad. Councilor Miller said that is on the agenda tonight. Councilor Garrett said we should mention that we voted to increase the budget so that we could do the street chip seal repair. Administrator Waters said the item on the Consent Agenda that passed was not changing the budget up. It actually allowed us to use the contingency fund. We didn't increase the budget on that project; it is still well within that budget. We have a contingency fund that allows us to use additional monies for things like this.

NEW BUSINESS

Motion was made by Councilor Miller and seconded by Councilor Morales to approve purchase recommendation, Engineering Services for Turkey Canyon Lane Phase II and Wright Lane to URS Corporation. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Motion was made by Councilor Miller and seconded by Councilor Morales to approve Change Order No. 1 for Colonias Water System Improvements Phase 1-B in the additional amount of \$21,262.50 including GRT, Contractor Carl Kelley Construction. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda, consider approving personnel recommendation for Police Department. Chief Logan said I would like to introduce you to Lawrence Chavez. Lawrence is currently employed by the Village of Tularosa and has been since April 2002. Lawrence is a certified police officer and also carries a Level 2 firefighter certification for the State of New Mexico. Lawrence is excited about the possibility of moving up to Ruidoso Downs becoming a member of the Department of Public Safety both in the police and fire service. I would like to ask approval of hiring Lawrence Chavez.

Councilor Morales asked if Mr. Chavez speaks Spanish and he answered yes.

Councilor Miller moved to hire Lawrence Chavez as police officer for the City of Ruidoso Downs. Seconded by Councilor Olivo.

Councilor Garrett said my only hope is that he is able to find housing. Chief Logan said we lost Mr. Stockman because he wasn't able to find housing that was going to work for him. We will help all that we can.

Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried. Mayor Miller said welcome aboard.

Mayor Miller stated next item on the agenda, consider approving personnel recommendation for Street/Shop Laborer. Mr. Mosley said both the Public Works Foreman and the Personnel Manager interviewed four applicants for the Street/Shop Laborer. Nathan McKibbin is their recommendation as he met all of the necessary requirements and qualifications. It would be my recommendation that we hire this man for this position.

Councilor Garrett moved to hire Nathan McKibbin as the Street/Shop Laborer. Seconded by Councilor Morales. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda, consider procurement of Caselle Software for Municipal Court and asked Judge Mansell if he wanted to comment. Judge Mansell said your City Manager asked me to get on the agenda. It's not my liking to be here.

City Administrator John Waters said Mr. Mayor and members of the Council, as you can see in your packet, there are a couple of issues that we needed to straighten up.

The Judge does need to come before the Council on any purchase of \$10,000 or more that is required in the Statute. It may be budgeted but is not an item that has been approved by the Council until the Council actually makes the approval. That's the same with anything from the executive branch; as you know, we have to bring these issues to Council before we go ahead with the purchase. In addition, we were presented with an invoice and we have a memo from the Clerk/Treasurer. I'll let her go over the findings of that department and our concerns and then we'll turn it over to the Judge at the point.

Clerk/Treasurer Carol Virden said on August 23, 2004 the Purchasing Department received an invoice dated 8/17/04 from Caselle, Inc. for SQL Application Software for the Court Management for the amount of \$14,500. On 8/25/04 the Purchasing Department received a requisition from the Courts requesting a purchase order for the "Caselle Court Software" dated 8/24/04 for the \$14,500 along with a Budget Adjustment Form. From the dates on the invoice the purchase of the software was made before a purchase order was issued. And in accordance with City of Ruidoso Downs Large Purchase Procedures - Policy 2003-3 any purchase exceeding a threshold of \$7,500 and the New Mexico State's threshold (Chapter 13 NMSA, 1978) is anything over the \$10,000 must be procured through a formal bid or RFP and this amount exceeds both.

And, pursuant to Resolution No. 2000-12 Procurement Regulations states:

"Section 1 - General Provisions 1.5 states: Any purchase, which does not substantially comply with the provisions, shall be considered an unauthorized purchase. Any individual initiating any unauthorized purchase may be subject to disciplinary action and may be held solely responsible for payment." This purchase has been determined to be unauthorized.

1.6 states: "All purchases determined to be an unauthorized purchase shall be considered by the City Clerk/Procurement Officer who will make a recommendation to the Council to approve or not approve an unauthorized purchase for payment."

We are recommending to the Council that the Municipal Court return the software, as the software purchase is an application, which requires a Network, and if the Courts move to another building, the City's networking system would not be available. This company does offer a "stand a-lone" application. After return of the software we should start the process again following City and State Procurement Regulations.

And furthermore, we took further steps in trying to locate a city that had the Caselle Software for the courts so we could piggyback off and we were unsuccessful in that search. We did try our very best to find someone.

Judge Mansell asked who is "we" and Clerk/Treasurer Virden answered Terri and I and that is our recommendation.

Mayor Miller entertained a motion.

Councilor Morales made a motion to return the software and start the process again following City policies and State Procurement. Seconded by Councilor Miller.

Mayor Miller said the motion has been made and seconded, is there any other discussion.

Judge Mansell answered yes. I have a letter from my attorney for each one of the Council members and the Mayor.

The very first thing, the court of Ruidoso Downs did not order the Caselle package. The Caselle package was ordered by Zella Cox who works with the Administrative Office of the Courts. When she ordered it, she had talked to the woman from Caselle, and she thought that there was a purchase order issued. And when she talked to my court clerk, my court clerk was totally under the impression that it was going to be a demo that was going to be sent down, not the package. So, it was a failure in communication between Caselle. As far as the three cities, they've already been told to the City that they were Deming, they were Lordsburg and we could piggyback off of them. And, as you can see what Mr. Beauvais has said in there that I think that is the way the law is interpreted. Now, we are looking for two or three judges that have had run-ins with the treasurer/clerk in various cities and to see what the outcome was.

It is utterly stupid, I mean the City of Artesia got \$80,000 from this system when they moved over to their new court. The Village of Ruidoso got \$40,000. It's not a tax, it's a fee that we collect and send up there. It's my understanding, and I may be totally wrong, but the way it has been expressed to me that only a tax has to go through this, that the judicial branch does not have to go through a bid deal.

Now, you can sit there and throw your head because you're the clerk that caused the judge in Carrizozo to resign because you wouldn't buy him a new desk.

Councilor Morales said, Harrold, excuse me just a moment. No, we' are not going there. Councilor Garrett said we are not going there. Let's stop that now.

Judge Mansell said well, then what is she doing talking. That letter is for you three.

Councilor Morales said we are talking about this item that was purchased over the amount of \$10,000. It has nothing to do with anything previous to that. So we will not go there at all. I'm sorry.

Mayor Miller said is there any other discussion.

Councilor Garrett said can I ask Carol a question. When we had the auditor here, it was my understanding that this is what the auditor told us that we had to do, and is the City paying this bill?

Clerk/Treasurer Virden said the process for this is the Administrative Office of the Courts will reimburse the City of Ruidoso Downs for purchasing this particular software package.

Councilor Garrett said but is has to go through our purchasing first.

Clerk/Treasurer Virden said it filters down through here and then back to the Administrative Office of the Courts.

Councilor Morales said and anything over \$10,000 has to be RFP or bid. I mean, there's no deviation from that, anything over \$10,000 must come to Council.

Clerk/Treasurer Virden said that's correct.

Judge Mansell said this is made up of three items. I think maybe a six six whatever. But it's actually made up of three items. If, in fact, the Administrative Office of the Courts thought that was going to be the way, I am sure that Zella Cox is smart enough, which she would have broken it down to three things. But between her and the lady from Caselle they just got their wires tangled up. And, like I said, we ended up with something. Again, we will mail the thing back; I don't care because all they are going to do is ship it again. Unless you're going to be naive enough and not let the State spend their money down here on us, it's only a temporary. I would consider it a loan to the judicial section from that because of other monies that have been spent here. In fact, I am going to ask the State Auditor to come down here and do some auditing on this situation along with some other things and I think they're other people that's going to ask you to do the same thing.

Councilor Morales said one thing I would mention to you Harrold, is that we do have an invoice from Caselle. It has SQL application software Court Management for \$6,000 on site training, \$6,000 start up, and history data conversion \$2,500 for one total invoice of \$14,500. It is broken up, but it is in one invoice and it's over the \$10,000.

Judge Mansell said as I told you, we didn't order it; they shipped it to us and then they sent us the invoice and until Mr. Waters sent it into us, we didn't even make out a purchase order because we thought what was on the way, we had. It was shipped to him, not us.

Councilor Morales said one of the things that I think we probably need to clarify is we are not saying you can't have this, what we are saying is we need to go through the proper procedure and that is RFP or Bid. We're not saying you can't have it and

we're not saying we won't approve it, we are just saying we need to send it back and start the process over again, and get it done the right way.

Judge Mansell said no, all they're doing is causing me trouble. Councilor Morales said no. Judge Mansell said well, I truly believe that.

Councilor Morales said no that's not true, Harrold. It has been the policy of this Council since I have been here that anything over \$10,000 goes before the Council. It goes out for bid, it goes out for RFP and we either approve it or disapprove, but its not their collective choice to say no to you. It is a purchase of over \$10,000.

Mayor Miller asked is there any other discussion. If not, would you take the roll please. Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Judge Mansell asked are you going to get me a letter, Mr. Mayor, telling me to ship this back. Mayor Miller said we are going to do what is necessary to get this thing straightened out. Judge Mansell said well I need an order of some type.

Councilor Morales said I would probably direct John that you send Judge Mansell a letter or a memo saying that he is to return or that we will return the equipment and go out for RFP or bid.

Councilor Miller asked where is their equipment. Clerk/Treasurer Virden said it's the program. The equipment was done correctly because Terri Mosley, who is our Purchasing Agent, did that for the Courts. What we need to do is just send the program back and start from scratch and do it correctly in order to not get a finding in our audit for this fiscal year.

Administrator Waters said Mr. Mayor and members of the Council, as soon the motion has carried, I will notify the courts of the wishes of the Council.

Councilor Morales said I would also ask John that you be very clear that this is a procedural matter and not a vindictive or whatever.

Mayor Miller said thank you Judge.

#### EXECUTIVE SESSION

Mayor Miller entertained a motion to go into Executive Session pursuant to Section 10-15-1(H)7, Threatening and or Pending Litigation.

Motion was made by Councilor Garrett to go into Executive Session pursuant to Section 10-15-1(H)7, Threatening and or Pending Litigation. Seconded by Councilor Morales. Roll call votes: Councilor Olivo, Aye; Councilor Miller, 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 5:53 p.m.

Motion was made by Councilor Garrett to go back into open session. Seconded by Councilor Morales. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller called the regular meeting back in session at 6:41 p.m.

Councilor Morales declared that the only thing discussed in executive session was threatening or pending litigation and no action was taken.

Councilor Morales moved to authorize City Attorney Bryant to file a condemnation suit to acquire the 45-foot easement along Parker Drive. Seconded by Councilor Olivo. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Councilor Garrett moved to ratify the City attorney's filing to protest the decision of the State Engineer's office. Seconded by Councilor Morales. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller said your case coming up, for the record Mr. Terlecky, we are offering you the opportunity of holding this appeal during an open session or a closed session. Mr. Terlecky answered closed session.

Mayor Miller entertained a motion to go into Executive Session pursuant to Section 10-15-1(H)3, Administrative Adjudicatory Hearing.

Councilor Garrett moved to go into Executive Session pursuant to Section 10-15-1(H)3, Administrative Adjudicatory Hearing. Seconded by Councilor Miller. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller closed the regular meeting at 6:47 p.m. and invited City Attorney Bryant, City Administrator Waters and City Clerk Virden to attend the Executive Session. Mayor Miller asked Chief Logan and Steve Dunigan, Personnel Manager, to be participants.

Councilor Morales moved to call regular meeting back to order. Seconded by Councilor Miller. Attorney Bryant said the record should reflect that the City Council entered into the deliberations. By my watch they were deliberating about twelve minutes and it is now 7:47 p.m. and we are returning to an open meeting.

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

Councilor Morales attested that the only item discussed in executive session was the discharge of Dana Terlecky and no action was taken.

City Attorney Bryant said to clarify your agenda, you have another executive session that is on the agenda that was intended to allow you to go into executive session for the purpose of deliberating in the event Mr. Terlecky and his attorney chose to do the appeal in an open meeting. That final executive session is not necessary because we did close the meeting, conduct the appeal hearing and you have already deliberated.

Mayor Miller asked for a motion. Councilor Olivo moved to uphold the termination of Dana Terlecky. Seconded by Councilor Garrett. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

#### PUBLIC INPUT

Councilor Miller said Saturday, September 25th, is Trek for Trash Day. It is going to be a lot of fun. I want to invite everyone in the community to come and meet at the All American Park at 8:00 a.m. There will be cleanup supplies like gloves, bags, T-shirts for the first sixty, refreshments and door prizes. We are going to have lunch with music from our Lieutenant Denny, his wife and another member. They are disc jockeys and they will be playing great music for our lunchtime and giving away door prizes for us. The solid waste will also be open from 7:30 a.m. until 2 p.m. for large items. We will not have them in the park but we will direct them to solid waste to dump it all. It should be an exciting day and we want to invite everybody.

Mayor Miller entertained a motion to adjourn.

Motion was made by Councilor Morales and seconded by Councilor Garrett to adjourn at 7:50 p.m. Motion passed unanimously.

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Bob A. Miller, Mayor

ATTEST:

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Carol Virden, City Clerk/Treasurer