

MINUTES OF THE REGULAR MEETING
OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
SEPTEMBER 27, 2004

The Council of the City of Ruidoso Downs met in regular session on September 27, 2004. Mayor Miller called the meeting to order at 5:30 p.m. and asked Debra Ingle 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

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 Olivo and seconded by Councilor Miller 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 SEPTEMBER 13, 2004 REGULAR MEETING

Motion was made by Councilor Olivo and seconded by Councilor Miller to approve the Minutes of the September 13, 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 Olivo and seconded by Councilor Miller to approve the Accounts Payable. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

UNFINISHED BUSINESS

There was no unfinished business.

OTHER BUSINESS

Councilor Garrett said this last week both Mayor Miller and Councilor Olivo attended the New Mexico Municipal League Governing program in the Municipal Officials Leadership Institute. Both of them completed that program and both of them received certificates and I would like to present these to both of them. Mayor Miller said thank you very much. It was a very beneficial program. Councilor Olivo said we brought back some very good information for the rest of the council.

Mayor Miller stated also under Other Business is the tetherball update.

Administrator Waters said we have an issue before the staff to get a tetherball facility put up over by the skate park. It will be located where the old volleyball facility was; it is about 100 feet from the skate park area. Currently we need to get the tetherball equipment ordered and we are looking for equipment that will withstand public facilities. They do make these tetherball setups to where there actually a loose wire attached to the pole itself. In addition to that we are going to have sand or wood shavings put down at the base. We have two of them planned for that area.

NEW BUSINESS

Mayor Miller stated next item on the agenda, consider approving Resolution No. 2004-24 Per Diem and Mileage. Clerk Virden said the only change that the Department of Finance/ Administration has approved is a ruling on Page 2 of the resolution changing the partial day per diem rate. a. stayed the same, b. increased from \$8.00 to \$12.00, c. increased from \$16.00 to \$20.00 and d. for 12 hours and over increased from \$22.50 to \$30.00. That is the standard and those are the only changes.

Mayor Miller asked for a motion to approve. Councilor Olivo moved to approve Resolution No. 2004-24 Per Diem and Mileage. Seconded by Councilor Miller. 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 issuing directive to City Clerk to advertise for legal notice for public hearing requiring the licensure of and setting forth the minimum standards for tattoo and body piercing ordinance.

Mr. Armstrong said as staff, we have looked into this issue of the tattoo parlors and body piercing. The FDA doesn't regulate enough to protect the people that are involved with this such as kids. It has gotten real popular that everybody has a tattoo or body piercing. We have looked into the issue of having a stricter ordinance for this to have better control of it. There are lots of concerns for this and the FDA generally lets the local community handle their own problems with this. We have an ordinance that I feel is appropriate for these tattoo parlors rather than have

zoning in places where they are out to control it better through this ordinance. There are lots of risks of infection and reaction to these incidents. The most common is they change their mind after they have a tattoo. The inks they use are not for being injected into the skin. There are no inks out there that are used for that. There are only a few they allow for temporary tattoos. The other issue these inks are used for printers for our computers, paint for our cars. I don't feel this is something we want to allow a business to inject into our people here in the City of Ruidoso Downs. That is why we are asking for more regulations for this type of business.

Administrator Waters said this is essentially just asking Clerk Virden to schedule a public hearing for the future. There are some health concerns. I think one of the biggest things that needs to be pointed out is if you go to your regular barber or beautician they have to be licensed through the state. This ordinance which was compiled from other municipality ordinances around the state deals with just trying to set some standards so if our young adults go to this they won't get sick. The Council will have a chance to debate in a public hearing under an ordinance setting. This is just a draft only that we are presenting to you. Obviously, any suggestions you have are certainly welcome. This is something that is starting to hit most of the communities in New Mexico. I know there are several communities in the south of the state that have recently passed similar ordinances protecting their young people.

Attorney Bryant said this ordinance is proposed under your empowering statute to protect the general health, welfare and safekeeping, State Statute No. 3-17-1. New Mexico does not have a comprehensive statutory scheme that governs tattoos or body piercing. We do have available for you if you want to look at some of the other ordinances from other municipalities. I have the Albuquerque ordinance with me tonight if you want copies. This will just be the first step. If you took action on this item tonight, you would be instructing Carol to get the matter published, get the draft ordinance out so the public can look at it and give us comments. You will have at least two weeks until the next meeting or a whole month to study the ordinance and to look at the implications of stepping into this kind of a regulatory scheme.

Councilor Garrett said I would like them to look into one thing. Most places have areas where you can send a test strip to test your sterilization equipment either quarterly or monthly. You can test both the moist and the dry and that ensures the equipment is working properly. I would like to see us look into adding that.

Councilor Miller moved to direct City Clerk to advertise legal notice for a public hearing on October 25, 2004 on proposed ordinance requiring the licensure of and setting forth the minimum standards for tattoo and body piercing ordinance. Seconded by Councilor Garrett. 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 adjustments for Robert Martinez' utility account. Administrator Waters said you will see a memo

from former Public Works Director Mosley to Suzanne Reed, our water billing clerk, talking about Robert Martinez' meter. Mr. Martinez had a very unusual meter; his usage was ten times less than what the meter was reading. This was over a period of time from October to June of last fiscal year. Being that it is in the last fiscal year, I don't have the authority to go back and adjust that, however, the City Council does have that authority if they wish to do that. It is the staff's recommendation that it be adjusted; it is a significant adjustment of \$729.91. We don't know why this older meter was doing that. In the ten years I have been in the utilities industry, I have never seen a meter do that so it is a very rare occurrence but it does happen once in a while with older meters. We do have a new meter in that works since July.

Councilor Olivo moved to approve adjusting utility account for Robert Martinez in the amount of \$729.91. Seconded by Councilor Miller. 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 Planning and Zoning report and asked Paul van Gulick to present.

Mr. van Gulick said our first item is to consider approving P&Z recommendation for conditional use requested by Marie Elena for a daycare business at 703 Utah. She has previously operated a daycare on Reservoir. She is moving the location of that daycare to 703 Utah. She was previously permitted for twelve children. She needs to get licensed for that again but the first step is for her to receive approval here. Then she goes to the state with that approval and they can give her approval for the license she needs. Our recommendation is to approve the conditional use.

Councilor Olivo moved to approve the recommendation of P&Z to approve conditional use as a daycare business at 703 Utah. Seconded by Councilor Morales. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mr. van Gulick said the next item is consider approving P&Z recommendation for the conditional use requested by Robert and Lucille Lambert to expand their business to include a tattoo parlor at what is now Sierra Blanca Scooters on Highway 70. We heard their request and this is a conditional use within the commercial zone they are in. There were no protests. I think certainly with an ordinance that will help ensure public health, safety and welfare, it will keep people from getting infections from needles and use of improper inks. Our recommendation is to approve this one.

Councilor Miller said I would like to see this tabled until we get our public hearing over on the tattoo parlor and make sure they know everything that is in this ordinance. Councilor Miller moved to table until after the public hearing.

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

Mr. van Gulick stated next item on the agenda, consider approving P&Z recommendation of approval of subdivision for the Santa Claus Ranch and the Planned Unit Development of Lots 2 and 5 of the subdivision as requested by Lincoln County solid Waste Authority for the new Transfer Station and Recycling Center. Debra Ingles gave a very good presentation on the plan for this facility. As everyone knows the current facility is within the town and we certainly want to see it moved to a new location. This location appears suitable for this; it is a large enough tract. There were three adjoiners that were present. One was a near neighbor and was very concerned about the proximity of this. After the presentation we figured out just how far the home would be from the office and how much further from that would be the actual transfer station then that ad joiner was satisfied. The other two ad joiners, Dub Williams and Kyle Wickware, were also in favor of this so there were no difficulties from that point of view. Certainly they have planned this out very well. They plan to have tire-bale fences twelve feet high to contain noise and dust. The way it is being engineered, it is intended to keep debris from flying around.

Debra Ingle of Lincoln County Solid Waste said I didn't bring the pictures with me tonight. Do you have any specific questions? Councilor Miller said I read about the fence and that sounds real good. Ms. Ingle said what we asked for is to subdivide almost a 28 acre tract into six lots. We will be maintaining Lots 2 and 5 along Highway 70. We plan to build on Lot 2. We will be utilizing Lot 5 for some road easements and also we were required to have any drainage run off ponded. The office building will be completely stucco. Our entire transfer station will be a metal building and solid waste will be inside. The only thing that will be outside will be the roll off containers. She showed a sketch of the floor plan of the waste transfer site, the recycling center, the maintenance, and the big trucks. All of these will actually be inside a building. All of your household waste and recycling of cardboard and plastics will be inside of a building. Your mattresses, couches, miscellaneous lumber will be outside in the roll off containers but they will be covered with a metal shed. We will be at the very back of the property. The forest service is on the south side of us but this entire piece of the five tracts will have tire-bale fences around it. To date we have 150,000 tires out of Lincoln and Otero counties. It is going to take more than that but we steadily are bringing in tires. I have given them until May 2005 to get us in.

Mayor Miller asked for a motion to approve. Councilor Garrett moved to approve P&Z recommendation to approve Subdivision for the Santa Clause Ranch and the Planned Unit Development of Lots 2 and 5 of the subdivision as requested by Lincoln County Solid Waste Authority for the new transfer station and recycling center. Seconded by Councilor Miller. Roll call votes: Councilor Olivo, Aye;

Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mr. van Gulick said the next item is consider approving P&Z recommendation of Planned Unit Development for the County Club Tract, Agua Fria Subdivision, Ruidoso Downs, New Mexico for the construction of proposed Griffith Park Townhouses as requested by V.R. and Sue Davis, owners and Wyatt Sparks, agent. This was the subject of a couple of meetings. There was a lot of information to consider in the hearings but basically the Country Club tract is located in the newly annexed area. The Davis' have requested to have their project considered under the guidelines of the Planned Unit Development. At the hearings they presented a complete plan that showed how they would manage the drainage, how many units there would be, and what infrastructure would be included. The plan that we saw showed 54 town homes in 13 separate buildings all within the setbacks. They propose to install an 8" sewer line across the highway and a 6" sewer line within the development which extends sewer service to the adjoining tracts of land. Twenty letters were sent to adjoining landowners. A majority wrote or signed letters against the proposal. Eight spoke against the proposal at the meeting. Their concerns included water availability, the covenants, crime, property values and traffic. Water availability was of prime concern to us. We heard testimony from the City Administrator who brought us up-to-date on the water situation throughout the City and in particular the Agua Fria subdivision. Apparently there is enough storage of water at this time to serve that area. The problem areas of town are not in Agua Fria but in other spots more westerly. With the purchase of water rights that is ongoing and with the upgrading of the well that has been completed, it was not presented to us as a concern. We don't normally consider covenants in Planning and Zoning; however, it was somewhat unavoidable in this particular case. We did note the restrictive covenants permit the use of this tract for a hotel and/or clubhouse and commercial activities for profit, which generally accompany establishments such as restaurants, bars, etc. operating in connection with such hotel or clubhouse only and I am quoting from the covenants. In short the covenants establish the commercial designation with permitted uses in exactly the same way our zoning ordinances establish commercial zones and permitted uses within those zones. The way we treat those here is to consider cases additionally to the permitted uses then any of those uses that are more restrictive being the residential uses of the commercial tract. This is apparently well established within New Mexico, the pyramid structure of the zone and this allows a more restrictive use within a less restrictive use and this appears to be the case. We didn't find that at the time of the hearing to be a difficulty with the request as they had reserved this for commercial use. Their request is actually a R-3 use in our zoning ordinances. The crime doesn't appear to be a difficulty in that these are not rental properties. It is not low-income housing; its town homes for purchase so we don't expect that to attract criminals. Property values at worst case, in our opinion, would have a neutral affect. Commercial use can certainly have a negative affect but residential use does not typically. That didn't appear to be a concern. We find that the proposed

development benefits the city by providing needed housing for current residents. There was some discussion about expanding the population within the city and that would be the case to some extent but we have a need for housing right now for people who are having difficulty finding housing within the city, certainly within the police department and other portions of the city government. We see this as providing needed housing. We voted four for approval of this development and one member abstained because of a possible conflict of interest. I see that Mr. and Mrs. Davis and Wyatt Sparks are here should you have any further questions certainly this would be the time.

Councilor Olivo said you sent twenty letters and you got eight people that voted against the proposal. Mr. van Gulick said I think we had at least eighteen against. Within the ordinances the affect of that it goes then to the Council for a vote.

Councilor Miller said you stated all of the reasons they were against it. Mr. van Gulick said yes. Councilor Miller said to me, I would much rather have town homes there than a motel. At least you know the people that buy the town homes. I don't see anything wrong with it. I think they are going to help the city out by putting in their sewer lines and helping other people too.

Councilor Olivo said with the water situation, we should be all right with the new well and the Denton well. Administrator Waters said yes, that is one of the things we did go into the emergency because we had our Denton well shut down. Now that we have a new and improved Denton well, so to speak, it appears to be doing very well. We got ourselves through that tight spot. Now I will offer that with a caveat that if the spring goes down in about five years at the same trend and obviously if we don't get any more water rights at this point and do everything against what our water plan is telling us to do, we would have problems. As long as we continue to operate along the lines of the master plan, continue to purchase water right and continue to improve our storage situation in the City of Ruidoso Downs there shouldn't be any problem. The major problem we did have during the last outage was the west side of town that was without water for about three or four hours during that one weekend that the Denton well shut down. That was the major problem and we had that problem due to a lack of storage.

Mayor Miller said we are putting in 1,000,000 gallons water storage and asked for a motion.

Councilor Miller moved to approve the P&Z recommendation for the Planned Unit Development of the Country Club Tract, Agua Fria Subdivision, Ruidoso Downs, New Mexico for the construction of proposed Griffith Park Townhouses as requested by V.R. and Sue Davis, owners and Wyatt Sparks, Agent. Seconded by Councilor Olivo.

Councilor Garrett said the people were a little concerned about the right-of-way as they will have traffic going in and out. Administrator Waters said if you are referring to the right-of-way within the subdivision itself, we will insist upon that. It will be a standard road and we want it paved. We don't want it to become a maintenance mess for the city. As you know, we have picked up a couple of roads in the Agua Fria area that have created a substantial maintenance load on us, and that has to be taken care of. Obviously in future developments we want to make sure they are up to standard. As far as the current roads that are there, that is an issue we certainly are going to have to look at across town not only in the Agua Fria subdivision. As you know, there are several streets that as we finish paving them we do widen them and we will continue to do that. I am not sure what our easements are in that area. I think Tom or Mr. and Mrs. Davis might be able to answer that more thoroughly because until recently it was a county road.

Mayor Miller said I am concerned about what size the water lines are going to be. Mr. Armstrong said they have a six inch line that is going to be installed through the complex on the roadways. The other access, I believe, is a 50-foot roadway which will allow for the other utilities, drainage and fire access. There shouldn't be any problem.

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

PUBLIC INPUT

Mayor Miller stated next item on the agenda is public input with a three minute time limit.

Mr. Bill Speegle said I live on Acequia. A moment ago you said this was already zoned for commercial and that you mentioned building a clubhouse in this country club addition. Mr. van Gulick said I didn't say it was zoned commercial, I said there was a commercial use reserved in the covenants. Mr. Speegle said he said he thought it was a step down to put 54 units in place of one clubhouse. It is a joke.

Bob Chisholm asked on Item 2. I am just curious where do you get lot 43. Attorney Bryant said it was a typo. Mr. Chisholm asked aren't you going to straighten it out before you approve this thing. Councilors Olivo and Councilor Garrett both answered that it was tabled and we did not vote on it tonight.

Sharon Paul said I live in the Agua Fria subdivision. I was at the Planning and Zoning meeting and homeowners that abutted that property and all but one did vote with signatures that we did not want that. The homeowners have obtained legal council to see what exactly is allowed under restrictive covenants if this is even allowed. There was a letter sent by Attorney Alex Chisholm to Ruidoso Downs City Council members and the Mayor. I would just like to know if you received that letter and the Council answered yes. Ms. Paul asked you reviewed it and have

decided to ignore it. Attorney Bryant said I don't think the Council ignored the letter. The letter is mistaken. It thinks there was a request to change the zoning on that lot. There was no request to change the zoning. The request is to approve the site plan for a P.U.D. We believe the language in the restrictive covenants is broader than the use we have permitted under the P.U.D. application that was before us. The case has now arrived for Mr. Chisholm to take it into court. I would add that Mr. Chisholm has been involved since early August, had a communication directly with Mr. Siddens during which he indicated he would be filing suit. I kept waiting for the suit to come and it is still not here. If there is going to be a restrictive covenants fight then this particular development may or may not be permitted. It doesn't have anything to do with those restrictive covenants. We think, in our judgment, this P.U.D. is an appropriate use. Good luck with the restrictive covenants fight to all parties. Have a good time with Judge Parsons or whomever you see in court. We will be looking forward to seeing the outcome of that. Ms. Paul asked when that is decided in court does this go back to the city council. Attorney Bryant said if the court says that this residential unit is not permissible under the restrictive covenant that is the end of it. The city doesn't have any involvement at that point in time because the judge has said the restrictive covenants say "x". The city doesn't have the power to litigate the restrictive covenant in court. That is reserved to landowners in the subdivision that have the covenant on it. Good luck and have a good time with that litigation. Restrictive covenant fights are lots of fun and they are interesting. The law is very dynamic in that area.

Councilor Miller said on Saturday we had our Trek for Trash cleanup. We had about twenty people come out on a rainy morning. We had the Cub Scout Troop No. 95, Den 7, come out and clean up the park and several other youngsters with them which was really neat seeing these kids out helping. I believe we picked up about sixty bags of trash along the highway. Mr. Armstrong confirmed it was sixty bags and two roll offs. Councilor Miller said even though it was bad weather, we got sopping wet at times, had a good lunch and had fun. Thanks everyone for coming.

Bonnie Richardson said I know everybody is aware that next weekend is Aspenfest and Ruidoso Gymnastics is hosting the 19th Annual Arts and Crafts Fair. This arts and crafts fair keeps Ruidoso Gymnastics going. It allows our tuitions to be kept as low as we possibly can so that as many young people from Ruidoso can participate in this very expensive sport. This year we would like to recognize our military and invite anyone in uniform to be our guest at the fair and also the boy scouts and the girl scouts. Of course, that includes the Webelos and the Brownies and all of you. It is Saturday and Sunday, October 2nd and 3rd at School House Park.

Attorney Bryant said involvement in the gymnastics program seems to have just exploded over the last couple of years. How many local young people are involved

in the program this fall? Ms. Richardson answered we counted 140 and that is an explosion, that is Olympic fever.

Chief Logan said Deputy Chief Hightower has been with this department for eighteen years. He is going to be ending his career with our department effective Friday, October 1st. His reasoning for doing this is to bring him in compliance with the federal Hatch Act law because he is one of the contestants for the sheriff's office. I would just like everybody who has a chance to speak with Mr. Hightower to thank him for the time he has spent with our community. He has dedicated eighteen years to our community and we are saddened to lose him. A man of his experience and depth with the community is a great loss to all of us. We have done everything we can to try to come into compliance with the Hatch Act through different suggestions of the Office of the Special Council but we have been unable to. I just ask everyone that sees David on the street to shake his hand and thank him for his time.

Mayor Miller entertained a motion to adjourn.

Motion was made by Councilor Morales and seconded by Councilor Garrett to adjourn at 6:23 p.m. Motion passed unanimously.

Bob A. Miller, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer