

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
AUGUST 22, 2005

The Council of the City of Ruidoso Downs met in regular session on August 22, 2005. Mayor Miller called the meeting to order at 5:30 p.m. and asked Administrator Waters to take roll call. Upon roll call, the following were present:

Councilor Miller	Councilor Morales
Councilor Olivo	Councilor Garrett

Clerk Virden informed Mayor Miller there was a quorum.

Also present:

Dan Bryant, City Attorney
John P. Waters, City Administrator
Carol Virden, City Clerk/Treasurer
Dan Gens, Public Works Director

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES OF AUGUST 8, 2005 REGULAR MEETING

Motion was made by Councilor Miller and seconded by Councilor Olivo to approve the Minutes of the August 8, 2005 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 Olivo 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 Olivo to approve the following reports:

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

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

UNFINISHED BUSINESS

Mayor Miller stated next item on the agenda, consider approving Resolution No. 2005-13 Infrastructure Capital Improvement Plan (ICIP). Administrator Waters said as you know every year we are required to complete an Infrastructure Capital Improvement Plan. In the past the Council has stuck with some priorities, basically drainage, water and wastewater. Those three items are very high on the list as you can see. We have the sewer plant coming up which is a major expenditure and we have a lot of drainage work that needs to be completed. You will see they are much the same as they have been in the past. One of the things that is new, however, and going through some of the CDBG public hearings we have had in the past and serving on the Community Center Task Force with Councilor Miller, is the Community Civic Center for the City of Ruidoso Downs. This is put in at the very end of the Plan, which puts it out at the five-year planning horizon and according with the State sets it at 2011. Of course, this is a wish list in its vaguest version of it but this was something that was mentioned and received a lot of votes in the different public meetings that we had. This phase here would not include any kind of indoor swimming facility. This is primarily just a community/civic center that can be used by multi-generational. It can be used as a civic center for conventions that would come in as a revenue source for the City or it could be used as a basketball, indoor recreational center for kids and adults in the wintertime. This is, of course, an Infrastructure Capital Improvement Plan; it is what the State refers to as a wish list. One thing they did say if you don't have it on a list there is little chance that you would be considered for any special grant money in the future. It is good to go ahead and get it on the list because it has been a priority with our Comprehensive Master Plan; it came up in the two town hall meetings we had as one of the things with the highest number of votes as far as what people wanted to see in Ruidoso Downs. By this time in 2011, we ought have our wastewater issue a little more clear as to what is going on. We also will have our water system in a lot better shape. You see we will be on Phase VI of our drainage system if plans go accordingly which will get us up to Colorado and Dipaolo Hill. We are starting to see some light at least at the end of the planning tunnel. This is all dependent upon funding and the budget. We have been fairly successful at getting grants for these things. We look forward to the future and helping to get some funding for these types of projects. As you look through it, you have wastewater collection system expanses, police department facility expansion, water rights, urban interface fire

truck and a ladder truck. Both pieces of equipment are needed and we have been applying for grants for both of those items. All American Park improvements are listed. Of course, we have the Parker Bridge replacement. The priorities are still there; these are things we know we need - the water, sewer and drainage. From the staffs' perspective I am recommending for the Council to approve this. You have the ability to go in and change priorities if you wish. You can also change this at any time during the year; it is meant to be a plan.

Councilor Olivo moved to approve Resolution No. 2005-13 Infrastructure Capital Improvement Plan (ICIP). Seconded by Councilor Miller. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

OTHER BUSINESS

There was no Other Business.

NEW BUSINESS

Mayor Miller stated next item on the agenda, consider approval of Gift Agreement with Hubbard Foundation to acquire Hubbard Museum of the American West. Mayor Miller entertained a motion to approve.

Councilor Miller moved to approve Gift Agreement with Hubbard Foundation to acquire Hubbard Museum of the American West. Seconded by Councilor Olivo. 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 advertising RFP 05-04 for Professional Legal Services.

Councilor Morales moved to advertise RFP 05-04 for Professional Legal Services. Seconded by Councilor Olivo. 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 Action, increase hourly wage for Travis Atwell, Department of Public Safety, Firefighter.

Mayor Miller said it should have firefighter slash Installer. He has been installing all of the radio equipment and all of the emergency signals. He does all of the lettering for all of the police cars and the fire fighting equipment. In my opinion, he is entitled to the \$1.50 raise to keep him doing that sort of thing. I know prior to that it cost \$400 just to put the decals on one police car.

Councilor Garrett asked are we actually changing the description of the job. Attorney Bryant said if you are of a mind to approve this and to attach an hourly rate to it, a motion needs to be made contingent upon the development of the job

description and job title. The job description is in your memorandum from Steve Dunigan. We need to take a list of all of the things this individual is doing and just craft those as additional elements of his existing job description. Administrator Waters said we have already proceeded with a new job description and entitlement sufficient for that if the Council approves this tonight. I believe the title is firefighter/vehicle technician.

Councilor Garrett moved to increase the hourly wage for Travis Atwell by \$1.50/hour with the understanding that his job description will be changed to firefighter/vehicle technician and that there be a new job description with his new responsibilities. 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 on the agenda is Planning and Zoning with Paul van Gulick, discussion and consider approval of final plat for Escondido Hills, Agua Fria Tracts. Mr. van Gulick was not in attendance.

Attorney Bryant said the date on the Agenda Briefing Memo says it was approved preliminarily on September 27, 2005, which is about six weeks in the future. Jim Burrow said this was approved in September 2004. Attorney Bryant said my recollection is about a year ago a preliminary plat was brought through P&Z and this Council. This is the final plat approval and that is why I raised the date issue. Councilor Garrett asked what has transpired and whether or not it met requirements but I don't know if we have anyone here to speak to that. Attorney Bryant asked if the developer was in the audience.

Scott Rowe said I am the developer. We have gone through the stages of getting this final plat ready to get it before the Council and have it approved. The changes that were made to the original plat to what this plat is now is that some of the townhomes have been changed from townhomes to single-family dwellings. The densities are the same. I have had conversations with Mr. van Gulick and Mr. Waters so we kept the densities the same. The only thing we changed were some townhouses to single-family houses as we thought that better fit the community. Attorney Bryant said are you able to give us some idea of which ones are single family and which ones are townhomes. Mr. Rowe said on the original preliminary plat all of the lots were townhomes. Lots 4 through 15 are townhomes and they are fourplexes. Lots 16 through 21 is a sixplex. Lots 22, 23 and 24 is a threeplex. Lots 51 and 52 is a duplex. Lots 47 and 48 is a duplex, 43 and 44 is a duplex, 41 and 42 is a duplex, 38 and 39 is a duplex, 29 and 30 is a duplex. Everything else is single family. Another reason for changing these from townhouses to single family houses and doing some adjustments on the lot sizes is that rather than go in and remove the dirt and flatten the piece of property out and build townhouses on it, we can make each home that we have chosen for these lots so there will not be major excavation on each individual lot. Councilor Garrett asked are these two story townhouses.

Mr. Rowe said not overall. Lots 8 through 15, 16 through 21 and 22 through 24 are two-story. Councilor Garrett asked how large are the homes. Mr. Rowe said houses range from 1,014 feet to 1,454 feet. We chose houses that were small in size to accommodate more of a middle-income family and then we placed the house on the lots two feet within the setbacks. We were working more with the City here than we were with actual lot sizes. Councilor Miller asked him to explain the sixplex. Mr. Rowe said a sixplex is six townhouses that are connected together. The ordinance says that you can't have over six or more than 160 feet in length. Councilor Miller said they are connected but they have their own lot. Mr. Rowe said that is correct. That is the definition between a townhouse and a condominium. Even though we are building a smaller home here, they are going to be stucco homes. We tried to build the homes to fit the area. He then showed pictures of what the houses would look like. Attorney Bryant asked has a copy of this booklet been submitted to the City and Mr. Rowe said it has not. Councilor Miller asked what are the price ranges. Mr. Rowe said we are looking at \$115 to \$125 a square foot price range, which I believe is below market value at this point. Attorney Bryant asked Mr. Rowe to give the City a copy of Plans for homes/floor design so we can attach it to the Minutes of the meeting tonight. Exhibit A is attached and made a part of the Minutes.

Mayor Miller asked for a motion to approve or disapprove. Attorney Bryant said when a proposal moves from preliminary plat to final plat, the discretion of the Body is essentially to review the final plat and satisfy themselves that it is in substantial compliance with the preliminary plat. There are always adjustments and changes because we learn things about topography and things of that nature. It does require an action of the Board so we do need a motion. If you are not satisfied that we are in substantial compliance with the preliminary plat then we need to ask more questions to get to that place. Councilor Garrett asked has Tom Armstrong approved this plat. Mr. Waters said both Tom Armstrong and Paul van Gulick have looked at the plat. I know both have spent a lot of time with Mr. Rowe as well as Mr. Siddens and then amongst themselves looking at the conditions that were attached to the original approval. As far as an approved, signed document from either one of them, no, I don't have that. However, Mr. van Gulick was supposed to be here this evening but something must have come up. If it is the Board's pleasure to table it certainly that would be understood.

Councilor Olivo moved to table final plat for Escondido Hill Aqua Fria Tracts to the next meeting. Seconded by Councilor Garrett. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

PUBLIC INPUT

Mark Eckersley said I live on 114 Escalante and I am not part of this subdivision that is going to go in. I have several hundred thousand dollars invested in my house on Escalante and now we are talking about bringing in these low cost homes; you are

going to lower the value of my property. I think now I should have never considered coming down here. What about the people that bought lots around there years ago, had their houses built. This is supposed to be a park out there I think Mr. Griffith put in at the time the restrictive covenants saying this will stay a park. Now all of a sudden somebody comes up with the idea that those covenants are no good. I don't understand it. If it goes through you have devalued my property.

Sharon Paul said since September of last year when this went through the residents of Agua Fria formed an association to enforce our covenants and I would like to submit to you a list of 46 names of signatures who are against this development. This plat is a totally different plat than you presented to us in September last year that was townhomes. If you look at this plat and you look at those lot sizes and you look at your own code, they don't conform to your own code for lot size. I have a copy of that here. It is really disheartening when our elected officials just ignore the people they were elected to represent. I would like to leave you a copy of this. The petition is Exhibit B and made a part of these Minutes.

Bob Chisholm said I have a lot of complaints to you people but I think the main thing is all get the book on Open Act because this is not an Open Act. You don't follow the book at all; you break all of the rules as far as I am concerned.

Carmen Chisholm said the \$1.5 million endowment; what does that mean for ten years. To me an endowment means you are not getting \$1.5 million are you? You are getting the interest from the endowment for ten years or are you getting \$1.5 million a year? I don't understand. Attorney Bryant said in the proposal the Hubbard Museum made to the State they offered the State \$150,000 a year for ten years. That is a \$1.5 million. In our discussion with the Hubbard Museum, we asked them to donate the \$1.5 million to the City for the support of the museum so we can take those funds immediately and invest them so we have both the principal and the interest that it will earn to help us, if necessary, defray the cost of operating the museum. It will be invested in accordance with the State Statutes concerning public investment. There are special safety requirements built into the State code. Ms. Chisholm asked has the Village considered how much it is going to cost outside of the interest from the \$1.5 million and what it is going to cost the taxpayers to maintain it. Attorney Bryant said we have worked out a budget and Mr. Waters knows more of the details about that but there are a series of fund raising events. That is why we invited Ms. Stoddard to come to the Council meeting at 5 o'clock tonight. Pursuant to her presentation this evening, the Lincoln County Cowboy Symposium nets \$50,000 for its operations every year. The car raffle, silent auction and open auction nets a combined \$165,000 this year toward operations, the golf tournament, etc. all of those things defray the cost. Ms. Chisholm asked how much is it going to cost Ruidoso Downs; have you thought about it aside from all of these fundraisers. Mayor Miller said there are admission fees; I feel safe in accepting this and I think it will totally benefit the City. Attorney Bryant said in terms of public

documents, the operational costs projected for the coming fiscal year are in the budget. That is a public document and you are welcome to get a copy.

Mya said what we are seeing here this evening is exactly what I was trying to solve as a potential problem for us back in July when I was more formal. I do not have my notes tonight. If you would simply make some kind of amendment to the order and put Public Input ahead of New Business. People will come and voice their opinion before their Council people vote on a very important resolution that affects their lives. We are all sitting hear talking about the museum and everything after the fact. When do we have an opportunity to express ourselves to help you make the best vote possible.

Scott Rowe said at some point I would like to answer some of the questions that have been raised. Administrator Waters said as that item was tabled it will be considered under Unfinished Business at the next Council Meeting on the next agenda and that will probably be the best time to discuss that. Certainly, I would encourage any members of the public that have any questions. The time to contact your councilors is any time. They are your councilors, you elected them, call them up they are all available. I am sure they will take it up under advisement and when the time comes if they don't know the answer, I am sure they would be obligated to ask. Attorney Bryant said the reason Jean Stoddard was here tonight was because my bosses, the councilors, were on the phone saying I have been called and asked "X"; what are the fundraisers, where does the money come from, how is this going to work, are the Hubbard's going to continue to participate in the fundraising. We set that workshop up to answer those public questions because they came through representatives and we were able to put it on the agenda and make that happen.

Ursula Eckersley asked when are we getting our road paved. Mayor Miller said the weather is not cooperating but we want to do that. Ms. Eckersley said we would like to have some speed bumps because they are just flying down the hill all of the time and other people that don't even live there come through there to avoid the traffic on the highway. Not the thick speed bumps but maybe just the easy speed bumps. Ms. Rodriguez would like to have one in front of her house too because she has a little kid that plays and they are just speeding up and down. Then my house is on a curve and we see a lot of cars sliding around the curve speeding on that gravel. Could you consider that please? Councilor Miller said I have had that same request this week from someone on our street because they have small children. I know what she is talking about; they are scared to let their kids out. Councilor Garrett said they are going to kill someone on Colorado. Councilor Miller said there are a few places or at least a sign "Children are playing". Attorney Bryant said twelve to fifteen years ago, speed bumps were the state of the art answer to how you slow people down in residential areas and they were being installed by the zillions all over the country. Seven to nine years ago local public bodies were being sued by the zillions because people were knocking their mufflers off, the catalytic converters and their gas tanks over speed bumps. From an engineering perspective, speed bumps

are no longer the state of the art way to slow people down. When you have a speeding problem you increase enforcement, you want to run radar vehicles, you buy or rent the radar placement machines like you see on Main Street. You try to educate the drivers and slow them down. I am just trying to let you know about that history because I don't want in ninety days for this Council to be accused of being insensitive and uncaring when speed bumps don't go in. When we ask our engineers should we put in a speed bump I am pretty sure they will consistently tell us no. So, we are going to have to find other ways to control speed in those areas and step up enforcement. I have written down Colorado, East Circle, Escalante. Mr. Waters said I have added Agua Fria to that list as well. The increased enforcement has been noted and I have a list of things to address with the DPS chief when he gets back, primarily about neighborhood enforcement because I have also received some of the comments we have heard. If it is predictable and happens at a particular time do call the police department and we will take care of it. Councilor Garrett said we have another serious problem on Colorado; we have kids going on skateboards down the road and they can't stop. We have that and the off road vehicles that are constantly out on the streets. When I see it I call the police department because someone is going to get seriously hurt.

Bonnie Richardson said I would like to add my two cents worth to the speeders and also give the police department a big pat on the back. Last week on Hilltop which is just a little cul-de-sac about 400 feet long behind my house, I walked back there in the evening and there was a police car that had pulled over a speeder. One of the neighbors commented it was about time they got them because they take off down that street like it was a raceway and that street happens to have up a sign that says "Blind Crossing" and the people just happen to know it that got stopped. I was walking back and before I got to the end of the street here comes another car and low and behold there is police car right behind it and had him stopped. If I baked I would make those policemen a cake. I really appreciate that because those people have been speeding down that street for months. Also I think it would help on several corners in the municipality, for instance, I think there is a four-way stop on the way to Lincoln County Solid Waste. At many corners in our city the elm trees have taken over and you can't even see the stop signs let alone any oncoming traffic so the two-way stop is a hazard.

Carmen Chisholm said consider advertising for professional legal services; why, we have a lawyer. Administrator Waters said we do have professional services on board but according to the State procurement code every four years you have to advertise for that service. Every four years you have to put the contract out for public advertisement and consider it again. Ms. Chisholm said so your position is up for grabs.

Mayor Miller called for a five-minute break before continuing with the work session for the Council.

Randy Van Vleck said I am the General Counsel to the New Mexico Municipal League. My task, not just tonight but 364 days a year, is to educate elected officials. I was asked to come here to give kind of a refresher course for some and maybe an introductory course for others on what kind of government you have here in Ruidoso Downs. What we have here in the City is a hybrid government and I am going to call it, for lack of a better word, a mayor/council/administrator form of government.

The slide presentation is Exhibit C and is a part of these Minutes.

Questions and answers of the Executive Board:

Attorney Bryant asked how does a majority of the members of the City Council call a special meeting when under the Open Meetings Act a majority of the City Council can't take action unless they are in an open meeting. Mr. Van Vleck said I think the way this works is that Councilor "A" calls up the administrator and says we need a special meeting to discuss the Hubbard Library. Another councilor calls up and says we need a meeting on the Hubbard Library. When he gets the third call that is the majority of the council expressing their desire to have a meeting. Those three councilors haven't met and they have not had a meeting, they just expressed their desire to the administrator or to the clerk that they need to have a meeting and that is a majority. But you are absolutely right, if the three of them sit down at a coffee shop and say we need a meeting, let's call the administrator now they have violated the Open Meetings Act because the three of them have had a meeting discussing public business.

Clerk Virden asked when you were discussing if one councilor calls the administrator or city clerk for a special meeting somewhere down the line if you are going to get a majority they have already spoken about it regardless if they were together at a coffee shop or by phone. That is quorum and that is a violation of the Open Meetings Act. Mr. Van Vleck said that depends on whom you talk to. I will tell you right now that I have had serial meetings with city councilors. I had a city council that was six members and the mayor and I did what I call playing the part of Noah. I marched my city councilors into a meeting two by two. By my analysis of the Open Meetings Act, that is not a violation. The Open Meetings Act says a quorum of the Board shall not meet. I said I never had a quorum of that Board because I never had four members of that Board together; therefore, I did not violate the Open Meetings Act. Now, the attorney general and others will say that I held a serial meeting and by the time I got to the second meeting I had four people and that was a quorum; therefore, I violated the Open Meetings Act. It is a matter of how you look at it. If you take that strict of an approach these people can't talk outside of these particular public meetings. You may say that is a great thing and in theory it is. The government should function in the sunshine as much as possible but I think you also have to admit there are certain things that just need to be talked about privately. There has to be a balance there but I don't know where that balance is

going to strike. We don't have a court of appeals or supreme court decision on this issue. I am kind of afraid of where this might go but I can tell you where it has gone in other states. In New Mexico a meeting is a quorum of the governing body. In this city, a meeting of three people is a quorum and has to be open. In the State of Florida, meeting is defined as a gathering of two or more individuals so that means two city councilors in the State of Florida can never get together and talk. I personally think that is overkill but that is my personal opinion.

Attorney Bryant said the other piece that is in the Open Meetings Act is the meeting of a quorum outside of a public forum is properly published, etc. a meeting is prohibited for the purpose of formulating public policy or discussing public business. I agree but that should not prohibit the administrator or the attorney from sharing information that his Board has to have because they have to make important decisions in two weeks when they have a meeting. Mr. Van Vleck said I agree and that is why I took that position. I wanted these people to have that information in advance of the meeting. It is still an open question but I urge you to keep this as open and upfront in the sunshine as possible. That is good government; that is the way to keep your citizens happy and that is the way for you to keep your job.

Regarding Personnel, Attorney Bryant said we have a pretty comprehensive personnel ordinance. There is a selection process, qualifications are advertised, the applicants are screened, the final group is interviewed and out of the interviews a recommendation comes to the city council and background checks are performed. The employee usually has a good reason that they cannot attend the meeting to be introduced. Administrator Waters said we have a form that is provided. It has minimal information as far as meeting the checks. The self-insurers fund requires checks as well. Physical screens are performed on jobs that require that type of activity. We do quite a bit of screening before the Council receives recommendations. With the director positions, which are appointed positions in the City, the mayor takes a very active part in that either appointing a city councilor to be a part of the process or the mayor himself sets on the interview committee. Even in the classified ranks, the hourly wage folks, there is pretty tremendous screening because we don't want to bring someone in with a problem. If someone decides to quit two weeks later because they can't take the work that is not is something you are going to find out ahead of time. Mr. Van Vleck said it has been my experience the council members don't take that active a role with the rank and file employees. They rely on their managers for making the recommendations or the administrator. That is not saying that they can't take a more active role if they want to but there has to be a balancing because it really isn't their function to hire those employees; it is there function to vote up or down.

Regarding the city administrator does not have the authority to dismiss employees, Councilor Miller asked does this include probationary employees. Mr. Van Vleck said that will be covered by your personnel ordinance but I suspect that even a probationary employee has to come before the city council to be dismissed.

Attorney Bryant said I cannot say off the top of my head; I would have to look at the ordinance. Mr. Van Vleck said in the personnel ordinances that I have written it still has to come before the city council. But, it is one of those situations that they are still probationary which means you can be dismissed for any reason or for no reason but not for the wrong reason. Wrong reason means for race, religion, political affiliation or gender. You have to look at your own personnel ordinance to see who has that authority. Administrator Waters said there is a clause that it is a lot easier to get dismissed as a probationary employee but everyone that we have done still has to come before the city council. They don't have a right to an appeal hearing before the council. Mr. Van Vleck said you have to be real careful to stick to your personnel ordinance when you have one and when it gives you a particular procedure on how to do something that you stick to it so you don't get caught in a situation where they claim there is an implied contract and implied contractual obligations on the municipality.

Mayor Miller thanked Mr. Van Vleck for his presentation.

Mayor Miller entertained a motion to adjourn.

Motion was made by Councilor Morales and seconded by Councilor Miller to adjourn at 7:36 p.m. Motion passed unanimously.

Bob A. Miller, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer