

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
SEPTEMBER 12, 2005

The Council of the City of Ruidoso Downs met in regular session on September 12, 2005. Mayor Miller called the meeting to order at 5:30 p.m. and asked Doug Siddens to lead the Pledge of Allegiance. Upon roll call, the following were present:

Councilor Miller	Councilor Morales
Councilor Olivo	Councilor Garrett

Administrator Waters informed Mayor Miller there was a quorum.

Also present:

Dan Bryant, City Attorney
John P. Waters, City Administrator
Carol Virden, City Clerk/Treasurer
Robert Denny, Department of Public Safety Director
Dan Gens, Public Works Director
Tom Armstrong, Licensing, Planning & Permitting Supervisor

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 22, 2005 WORKSHOP

Motion was made by Councilor Miller and seconded by Councilor Olivo to approve the Minutes of the August 22, 2005 Workshop. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

APPROVAL OF MINUTES OF AUGUST 22, 2005 REGULAR MEETING

Motion was made by Councilor Miller and seconded by Councilor Olivo to approve the Minutes of the August 22, 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.

UNFINISHED BUSINESS

Mayor Miller stated Planning and Zoning, Paul van Gulick, consider discussion and approval of final plat for Escondido Hills, Agua Fria Tracts. Mr. van Gulick apologized for not being at the last Council meeting. Basically this is a Planned Unit Development that received initial approval some time ago. At that time we looked at 56 townhomes. Between that time and now the developer and builder were looking at it to see how things will actually work on the ground and at that time it appears to me they made some changes. We had a meeting with the staff that was involved, Mr. Armstrong, Mr. Waters, Mr. Gens, myself, and the developers and looked at the changes. It was our opinion those didn't raise to a level of a brand new class. We were looking at minor changes that could be handled administratively. Those being how the infrastructure was affected and how the overall lots were laid out. We didn't see any cause for concern at that time. The drawing that I looked at did have some single family units added. The road has been changed along so the entire roadway is interior to the tract now rather than on the boundary. I think that improves things for the adjoiners right in that area. In a conversation with Sue Garrett, the issue of open space was raised. Indeed we do have a requirement for seven percent of a subdivision being open space. In the first plat we were given since they were clustered townhomes there was certainly that. In the last plat they were lot line to lot line so conceivably people could build fences so then there wouldn't be the same open space. I had a discussion with Mr. Sparks, the surveyor for this project, regarding that. I haven't seen the plat since but it was the single issue that needed to be addressed. The rest of them are really minor changes. The number of units is reduced down to 52 from 54. It appears to me that all of the changes have been improvements. To my mind we still really are looking at minor changes to what was originally approved. They are asking for approval of the final plat. I will allow the developers and Mr. Sparks to address particularly the open space and answer any questions you have.

Alan Morel said I am here on behalf of the developer, Mr. and Mrs. Davis and the Davis Trust. We believe that the plat that has been presented to you for approval tonight is actually is in substantial compliance with the previous plat that was submitted. I would like to show you an artist's concept of what this subdivision is going to look like. We also have a copy of the plat that has been presented for your approval. I just found out today there was an issue with the seven percent open space. I have obtained a copy of the Agenda Briefing Memorandum from Mr. Bryant's office today and that was the first time I knew there was an issue with respect to the seven percent requirement. I did talk to the developer, Mr. Rowe, and he indicated there is 44 percent of this property that is not actually being utilized for construction that includes open space. Councilor Garrett asked does that exclude the roads. Mr. Morel said actually that includes the roads and the yardage. I guess I am going to need a definition from Mr. Bryant as to what is open space.

Does that actually mean open for use by the public in general or does it mean that it is just not being built on because there is 44 percent approximately that is not being built on. Mr. van Gulick said it is my understanding that open space means just that; it would be an area that is not fenced off and is open for use by the public. For example, it would be a park area or a pathway as opposed to simply that area that doesn't have a house on it. Mr. Morel said it was not defined in the ordinances so I will accept that definition. I did want you to take a look at what the subdivision actually looks like as it is currently drafted. If we are required to provide for seven percent open space then that will have to be accommodated through some revision of this plat. I may have to have Mr. Sparks see where that can be accommodated if that is in fact a requirement to get the final plat approval. As Mr. van Gulick stated the original plat provided for 54 units; this one provides for 52. The original plat was only four townhomes and this one provides for 33 townhomes and 19 single-family homes. This concept actually opens it up and in our opinion has more open space. The entire area around the subdivision is now going to be backyards with the adjacent properties. The roadway has been moved. On the original plat it was actually abutting on the east side the tracts that were already platted. Again, we don't believe there are very significant changes other than what we are building. Again it went from all townhomes to a mixture of townhomes and single-family residences. There are really no changes to the sewer, water or any of the infrastructure so all of those should remain the same. In the restrictive covenants we probably are going to have to provide for some type of a homeowners association to transfer responsibility for the open space if we are going to have open spaces for public use. Then we are going to have to have some insurance to provide protection to the owners of the property within that subdivision. It isn't contemplated on this plat but we can, in fact, make a revision to the plat to provide for that if necessary. Hopefully, we can get it adopted as is but if we have to provide for seven percent open space, we will certainly comply with your request. I guess at this time I will have Mr. Sparks come up and address the open space issue.

Mr. Sparks said I calculated it and it appears to be about 24,000 or 22,000 square feet if you have seven acres. I think that is the amount of land we are probably looking at. Mr. Rowe said there are some areas that are going to be open space. There is an area at the top of the plat that is going to be retained as an easement and drainage will be open space and won't be used for a lot. Then, there is some area, Lot 52 that is open space. That basically is going to be about 10,000 square feet of area that is designated right now that is not part of the housing. My question is I don't understand exactly, we basically we went from townhouses which had common space to residential type property. My thinking is we have gone from a more commercial use to a more residential use. It seems to fit the residential uses there which is basically single-family units with backyards and that is basically what we are going to have here as opposed to townhouses. The only other suggestion I have is we may be able to restrict some fencing along the outside perimeters and leave that as open space and designate that as a walking path easement or something along that line that might open that up for some foot traffic. Otherwise, I don't know other than designating a lot as a park area how we are going to get more open space.

Mr. Morel said actually open space is defined in your ordinance and it states "at least seven percent of the total area of the Planned Unit Development shall be set aside for public and/or private open space and recreational use. The Village shall determine what portion of the seven percent shall be private and what shall be public". Again, the backyards that are going to be built on actually would be private space within the development. You can designate how much is private versus public. Attorney Bryant said the photographic rendition that has been passed around to City Council reflects fenced backyards and unfenced front yards. Is there going to be a covenant in the development that prohibits the fencing of front yards? Mr. Rowe said the covenants haven't been completed or haven't really been done at this time so that is not a problem to designate that. That is kind of generally what happens in this region anyway. Most people in residential end up fencing the backyard area and leaving the front yard unfenced has been my experience.

Councilor Garrett said my concern between Planned Unit Development and actually subdivisions is in our subdivisions we have a requirement for 75 foot lots and I noticed there are lots where there is only 61, 62, 63 feet. What you are doing is saying in one place well it is residential and in the other place it is a Planned Unit Development so if it is a Planned Unit Development you have to meet the seven percent in my mind in order to do that. If you are going to do residential then you need to meet the 75 feet. I know what you are saying but we do require 75-foot frontage in a residential district. Mr. Rowe said this whole thing has been kind of confusing because it a Planned Unit Development. We never had any zoning here establishing whether it was residential or whether it was R-4 commercial area so we based it on housing density in that area. It has been hard to interpret exactly what subdivision or what Planned Unit Development it falls under.

Mr. Morel asked has the Council ever addressed between private and public uses in a Planned Unit Development as far as open space. Mr. van Gulick said if you look at it as a practical matter rather than a purely legal one and you look at subdivisions around here and how cities like to be developed, the idea is you like to see some open space. You like to see park areas or you just like to see some openness for the use of that land purely as a practical matter which is why townhomes with smaller actual lots if you are going to have higher density which this is that gives you that open space because you are clustering homes to leave space open. To say that private open space is individual open space I think maybe is incorrect. In my mind if you look at a townhome area you might gate the whole area and then have within that some open space that is for use of the residents only. That is how I would interpret that. I am not, of course, our attorney. Like I say from a purely practical standpoint as people who worry about how our citizens live here I think the open space has a very clear intent at least that there be open areas for people who live there to use. Public or private, I can't see interpreting private open space to mean a backyard. I just can't see that. Mr. Morel asked how about an open front yard. Mr. van Gulick said if children are allowed to walk through there as much as they want why that would be open space. I think certainly in looking at this it shouldn't be that difficult to come up with either walking corridors or walking easements or a recreational buffer around the outside. I think there is a number of ways to do it either by reducing lot sizes so the fit the townhome

concept. Where there are townhomes if you make them townhome lots that is going to open up some area. In fact, I don't see how that would be a problem. I am going to leave that up to you guys since you are the developers. At the end of the day, again I would say that open space from a practical point of view ought to be pretty clear. Mr. Morel said I guess we just need to know what your definition is as relates to drainage and utility easements; those are open areas. What are we going to take into account when we come up with our seven percent; do roadways count?

Councilor Garrett said personally I think you need a place for the children to be. You have an open space but nobody can get to it. You have a small open space and it is just closed in to those people that live there. You are building a subdivision where you are going to have children and I don't see that subdivision giving any place for those kids to play. The seven percent when I would listen to the P&Z before I was even on the Council I would come to their meetings when they were doing this book, the seven percent the intent of the group I think was to make a place for people to be from the community knowing that when you do a Planned Unit Development you do a lot of close construction so there is some place in there. That is my take on it personally. I guess the rest of the Council needs to speak to that.

Attorney Bryant said I want to try to get some information in the record, where is that big plat that was the original 2004 drawing we had? Councilor Miller asked would the roads be wide enough to allow for sidewalks along the sides of the road? That might help for some open space. I see they are on the inside on the front of the houses but maybe on the outside where the roads go around. Councilor Garrett said the original plat, to me, just seems like there was a lot more open space, a lot more area.

Attorney Bryant said while I was trying to read the plat there was some discussion out there I didn't catch. Was there a proposal exchanged or something? Mr. van Gulick and Mr. Rowe said we were talking about townhouse area and how lots 17 through 21 are basically townhouses and we could open some space up around there instead of making them lots. Attorney Bryant said that is why I wanted to look at the 2004 plat because rather than drawing lot lines, the plat draws building sites. It appears if you went into the townhome units and you erase the lot lines and went back to this style of a drawing for those and only drew the lot lines where the residential housing is you are going to be way over the seven percent requirement. On the issue of is there a place for the kids to go, when the preliminary plat was approved in 2004 there wasn't any indication on the plat for playgrounds or swing sets or any of those things. I didn't find any requirements for that when I reviewed the Minutes of the Planning meeting and the City Council meeting in 2004 so I am not sure we can go in and now try to, and I will use the word carefully, interpret open space to mean playgrounds and things of that nature. As Mr. Justice Roberts is about to find out this week as he is questioned by the esteemed Senate of the United State of America lawyers don't interpret. Lawyers advocate for their client's position. We argue the law and the facts in support of the result that our clients desires. Judges interpret and I don't see a judge in the room tonight so I won't be looking for an interpretation of open

space in the ordinance. I do think that erasing the lot lines in the townhouse sections of this plat creates more than seven percent open space with the other areas that are open in the plat. On the issue of walking trails, etc. I notice that the photographic representation of the P.U.D. reflects sidewalks on the front lot lines adjacent to the street on both sides for all of the unit. Sidewalks, by definition, are spaces that the public is free to use to walk up and down. The issue that is before you when you move from preliminary plat approval to final plat approval is the issue of substantial compliance. A lot of times people think later on I should have thought about this, well now, can we add a swimming pool and a swing set. When you do planning and zoning and subdivision work the reason that all of the due process requirements are built into the preliminary plat stage is because that is the stage at which all of the investments go into the property. It really is unfair to change the rules after all of that time and effort and investment have gone in. As long as the plat substantially complies the case law and the statutory provisions are virtually unanimous nationwide that the plat substantially complies and your discretion is limited in terms of exercising authority. The developer, the contractor, the subdivider is always free to address those concerns at their whim and pleasure as they hear them come up so I am not limiting that part of it. In terms of our ability to enforce a particular requirement it is limited to the notion of substantial compliance. I went back and pulled the Minutes of your September 27, 2004 meeting. I looked at the plat this afternoon from the 2004 presentation. The road in 2004 was interior to the lot lines; in 2005 it is interior to the lot lines. The layout has changed a little bit. In 2004 there were 54 to 56 townhomes or if you will 54 to 56 individual family living units proposed in the development. Today there are 52. There was an 8 inch sewer line coming across the highway in 2004 and in 2005 there is an 8 inch sewer line coming across the highway. A six inch sewer line inside the development in 2004 and a six inch sewer line inside the development in 2005. There were issues raised concerning water consumption, water use and the City's ability to satisfy those needs. Mr. Waters testified in that public hearing about City's needs. Rather than read three pages of testimony, I will summarize it as follows: On the east and south side of town the City is in good shape in terms of its ability to convey water, store water, produce water. We do have some conveyance and storage issues on the west side of town but this development won't be affecting those. Other issues that were discussed in 2004 was the fact the road was going to be paved, that it was going to loop through the subdivision so that it did not create a cul-de-sac. There was testimony to the affect that putting in the 8 inch sewer line across the highway was going to allow the City to accelerate hooking neighboring property owners to the sewer system and getting them out of their septic tanks. The EPA, the Environment Department, the Forest Guardians and other plaintiffs in that lawsuit will all be glad to hear about that. In 2004 the City had not zoned the newly annexed area. As a consequence of which in 2004 you really had no ability to accept, reject, review, modify any development occurring in that area. In spite of that at that time it was Smoky and Sue Davis, Mr. Sparks and Mr. Siddens who were coming to us and they nevertheless agreed to seek P.U.D. approval and to shine some sunshine into the project and that is how it came before the planners and before you in 2004. Now in 2005 we have zoned that area and the zoning for this area was listed as P.U.D. pursuant to the landowners request in 2004. In 2004 you all had received a letter from a lawyer in Albuquerque, New Mexico. His name is Alex

Chisholm asking you to delay approval and asserting that a restrictive covenant fight was coming. At that time I expressed the legal opinion that the City of Ruidoso Downs does not have a dog in the restrictive covenant hunt because we don't own a lot in Agua Fria Estates that is subject to the restrictive covenants. By law we don't have standing in that proceeding and could not express an opinion in a court of law as a result of that. Accordingly whatever you do here today doesn't affect the restrictive covenant issue. I have learned that a lawsuit has in fact been filed. It was filed on September 8, 2005, today is the 12th, the 8th was Thursday of last week. The lawsuit, I obtained a copy of it and I have read it because I needed to see if there is any indication that the City of Ruidoso Downs is a party or a potential party in that case. It is strictly a restrictive covenants complaint. We don't have a dog in that hunt so I don't see any basis in September 2005 like I didn't see in 2004 for the City to delay taking action one way or the other. On the issue of substantial compliance this plat is different. I don't believe as a matter of law based on the case law and statutory interpretations that have been given to the notion of substantial compliance in the land use field that we have a significantly different plat to review tonight. I think the Council is free to take action at its pleasure. If a restrictive covenant fight goes forward based on a complaint, a judicial decision will be issued. If the judicial decision ultimately prohibits this use then the plat is a nullity and every one goes back to square one and they start over. I told you in 2004 and I will remind you again tonight because I have the covenant. The Country Club Tract in Agua Fria Estates contains the following language: "the Country Club Tract may be used for a hotel and/or clubhouse and commercial activities for profit which generally accompanies such establishments such as: restaurants, bars, rooms, halls for dancing, tennis courts, swimming pools, fishing, boating and other athletic events and activities operating in connection with such hotel or clubhouse only". In 2004 I submitted to this Board that reviewing that language leaves me with the impression that that is a pretty broad, pretty intense commercial use of a tract of land in a residential area and that it was at least this lawyer's opinion that a proposed townhouse, residential-type development for the tract fits within the spirit of a hotel and is significantly less intensive and intrusive in a neighborhood than the uses permitted in the restrictive covenants. How the restrictive covenants case comes out will be up to the lawyers that handle that but nothing has occurred in the one year that has intervened to cause me to change that opinion.

Mr. Morel said we believe that this plat is going to provide for a better development than the plat originally filed. It is simply going to be more workable development. I have spoken to my clients and they have in fact agreed to erase the lot line on all of the townhouse lots to comply with your seven percent open space requirement. We can address playground issues or those issues in the restrictive covenants that are yet to be drafted. That is obviously a selling point for the developer. He can address those issues in those restrictive covenants. With that we would ask for your approval on the final plat.

Councilor Garrett said this drawing shows that it is going to be fenced. Is it going to be fenced? Mr. Rowe said I plan to fence it, yes. Councilor Garrett said so the fencing and the sidewalks are a definite part of the plat.

Mr. van Gulick said I would like to say two things. As Mr. Bryant has pointed out playgrounds and recreational equipment were never contemplated in the original approval and really don't have any place here. The open space actually is the reason we are even talking about it is because that is a significant change between the two. I think it is a matter of surveying. Mr. Sparks can determine whether the sidewalks alone or sidewalks with the lot line adjustments will satisfy that. I would suggest that probably goes to a matter of purely administrative review if the Council should approve this tonight we can assure that is complied with. Finally, just for general information, the issue of screening is a general one. If the developer wishes to put a privacy fence, that's fine. That would typically be in place between a commercial area and a residential zone. This is not that case anymore because it is not commercial at least in the City's eyes. Having said that, screening can also have a broader sense in having hedges of natural screening or combination of fencing and hedges. I just mention it so you will be aware of that; you have a certain amount of latitude on that issue.

Mayor Miller asked is there anything else. I will entertain a motion to approve.

Councilor Olivo moved to approve the plat of Escondido Hills of the Agua Fria Tract with the seven percent open space and subject to administrative review. Seconded by Councilor Morales. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

OTHER BUSINESS

Mayor Miller stated the next item on the agenda, recognition of August 2005 Employee of the Month, Joint Water and Sewer Department, Mr. Dan Gens. Public Works Director Gens said unfortunately Shane isn't here. We tried to reach him several times; something must have come up as he didn't respond to his cell phone or regular phone. Even though he is not here, I will say a couple of nice things about him anyway. He is one of those guys that shows up everyday ready to do his job. It doesn't matter if he is out until two o'clock in the morning on a water leak he is still there at 7:00 a.m. ready to go. I am sure with all of the changes in Public Works he doesn't like all of them but he has not let anything interfere with his duties. Shane does water leaks, drives the chipper, he does pretty much anything you ask of him. I look for Shane to keep advancing his licenses and growing with the City and he is definitely a benefit to the City and I feel happy to make him the first Public Works employee to receive Employee of the Month. Councilor Olivo said we have a certificate we were going to present to him. Mr. Gens said he would give it to him tomorrow.

Mayor Miller stated next on the agenda, local update involvement in Hurricane Katrina crisis. Chief Denny said as you know the hurricane affected most of the Gulf Coast severely. What they were doing were evacuations enmass. At first we heard there were going to be evacuees coming to New Mexico in numbers of thousands. As of last week when I met with Bill Barton who is the Office of Emergency Management for the County and the liaison between the County and the State, they told me there would be thousands.

We met last week and it was down to a hundred and then they told us as of Friday there wouldn't be any evacuees brought to Ruidoso area or Lincoln County. However, that doesn't keep the people that want to self evacuate and move here on their own and they are estimating about 25 families may be relocating to the Lincoln County area. At this point we are not going to be too affected but just prepared in case something else comes up that could cause more evacuees to have to leave the area and come here. At this point right now we shouldn't be affected at all or very minimally. Gateway is set up to help out any family that are in need so they are the contact point for any families that are in need of housing, transportation, clothing, etc.

NEW BUSINESS

Mayor Miller stated next on the agenda, consider approving agreement for Professional Legal Services related to the Regional Wastewater Treatment Facility and Joint Use Board.

Attorney Bryant said Items 10.A and 10.B are related. They are both professional services related to JUAB and the wastewater EPA issue. The first is an agreement for the Joint Use Board, the two municipalities with the law firm of Montgomery and Andrews. That is the law firm that Ned Kendrick works for and that is the lawyer that has been handling the EPA issues for the last two or three years. Item 10.B is an extension only of the agreement we entered into with Ross & Associates who are technical experts helping us analyze whether or not we can put together a workable watershed approach to reducing nitrates and phosphates in the river system through the elimination of all of the non-point pollution sources that are up and down the river. A point pollution source, there are two of them in the watershed that have been identified and recognized by the EPA. They are the racetrack and the wastewater treatment plant that the two municipalities operate. All other sources of nitrates and phosphates in the system are considered non-point because they don't reach the mass loading threshold that qualify as point pollution sources. They are things such as lawns and gardens, golf courses, washing machines and laundry soaps, dish detergents and things of that nature that all end up in the system through septic systems because they are not part of the wastewater treatment plant. When you are trying to improve the quality or restore the quality of a stream system like ours you can treat the point pollution sources and you can treat the non-point. The Water Quality Trading Plan is designed to allow the communities to get credit for a reach out effort that goes into those other areas and try to reduce those. What we have agreed to do with Ross and what the amendment asks you to do tonight is to extend the agreement with Ross that is expiring in October through December of 2005 because primarily the New Mexico Environment Department Service Quality Bureau is about to issue a new TMDL which is Total Mass Daily Loading requirement for the stream system. The Water Quality Trading System is dependent upon what are the TMDL requirements. They can't finish the analysis until we know what the new numbers are so that extends that contract. The Ned Kendrick contract is reducing to writing what has been a verbal agreement between the JUB and Ned Kendrick in order to comply with the procurement code and to get an agreement in writing.

Administrator Waters said to clarify this, Item B has already been passed as part of the Consent Agenda. The only one we are looking at right now is the agreement for professional services with Mr. Kendrick and Montgomery and Andrews firm.

Councilor Garrett moved to approve Agreement for Professional Legal Services with Montgomery and Andrews for the Regional Wastewater Treatment Facility and Joint Use Board. I don't think this would be the time to change. Seconded by Councilor Miller. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Councilor Miller moved to approve Amendment No. 1, Agreement with Ross & Associates Water Quality Trading Program Wastewater Treatment Plant. 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 awarding Bid No. 06-004 Drainage System Improvements.

Administrator Waters said this drainage system improvements project is a \$500,000 CDBG grant. We did go out for bid again. Gas jumped up to \$3.00 per gallon, concrete prices jumped up so the cost of the project has just jumped up again. We have \$610,218.75 with the grant included budgeted to complete this project. The total actual cost of the project came in to bid at \$634,965 and this of course is above the amount plus the GRT. We are negotiating to reduce the price somewhat with some changing in the project with the City taking out trees using the City's equipment. It is within the ten percent and we are legally allowed to take approval from the Council. Either way you look at it the Finance Department, Carol and myself are going to sit down and come up somewhere between \$28,000 to \$68,000 to complete this project. We will not get all of the amendments that we asked for or the additions we asked for to this project. We will have to go out and get another phase to this grant. It will complete about 85 percent of what we wanted to do for this project. We can do what we can so we don't lose the grant if it is the Council's wish to proceed. If the Council does approve this I will come back with a budget adjustment for the first quarter, which is due at the end of October. This is a high priority to Council. In the last four years of the ICIP it is a high priority with the citizens especially those that live in that area. We are obligated to do this and it would be a shame to lose the \$500,000 grant that we have riding on it. We can't do anything about the gas prices, we can't do anything about the concrete prices but if we delay it and go out again that will delay it more, which will do two things. Number one it will cause us to get closer to our December 31st deadline. Number two it is going to increase the cost of the project. We are asking the Council's approval of the base bid of the award with the understanding that the City staff is going to have to come up with monetary funds somewhere between \$28,000 and \$68,000. While I cannot guarantee I will have the project complete by the end of December, and I rather doubt it right now, if we have some of this project moving I have some indication from Mr. Garcia that he will consider an extension. We are not applying for another CDBG grant this

year because they have a new policy with the CDBG committee that they are only going to award a grant every other year. As you know we also got one for our water system that we are proceeding with this year so we would not be eligible for another one anyway. That would have been the caveat that I also would have brought before the Council is that if we were going to apply for another grant we would have to have the project completed by October to allow us to apply for one. Since we are not going to be even eligible for one next year that will not hurt us but it will cost more. There is money available that we can achieve this and I will present the Council with the options during the quarterly budget adjustments. I will give you more than one option as to where to come up with the funds for this. By then we will know if it is \$28,000 or closer to the \$68,000. Either way it is fairly clear in my mind that the more we wait on this the worse the situation is going to be. We have been lucky two years in a row to not have a flood event down there. Anything that is not done on this project, I will apply for another grant and we will go forward to finish what hasn't been done. We also know we have other areas in the River Park Subdivision like North Central and areas on River Lane that are also problems.

Councilor Garrett moved to award Bid No. 06-004 Drainage System Improvements to Guardiola Construction. 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 recommendation, Department of Public Safety position for Police Officer Fabian Picazo.

Chief Denny said I ask the Council to consider approving the hire of Fabian Picazo for DPS Safety Officer. He comes to us with three years experience, first with Tularosa and currently with Alamogordo DPS and he wants to leave there and come up here. He is in his mid-twenties and is excited about coming to work here. He was going to come here once before but we didn't have a position available at that time so he opted to go to Alamogordo. In addition, we also have a new officer starting Saturday by the name of Tinka, a four-legged officer that we are training right now with Lawrence. In three weeks she will be fully trained and out on the road.

Councilor Miller moved to hire Fabian Picazo for the Department of Public Safety. 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 approval personnel recommendations for Museum Department positions.

Administrator Waters said as you know we have accepted the Hubbard Museum of the American West into our family within the City. This is just formalizing the process of bringing in new employees. We had some open spaces and we will still have two open spaces with the museum being the director and the curator of exhibits, which we are

currently looking for. I am happy to report that the national search has yielded many good, qualified people for both positions. I am really excited to close out the interview process and bring the names before you for those two positions. However, we do have three new employees, Ashley Harkey, Darcy Holmes, and Christina Ontiveros. All of these people have applied for positions. We have the museum gift shop, receptionist position and part-time receptionist positions. All of those filled slots that were available before the City taking over the facility and we ask that the Council approve these three individuals in total and then we will be asking for the entire list of folks who are current employees. This is kind of a lateral transfer for them from being non-employees to being employees. The statute requires that you have to approve all of your employees. They are great folks. When Jean came before you and talked about them being hard working, I guarantee you that they are hard working. They do have a lot of projects. They are going to have to learn how to adjust to be a City employee but I think they are all able to do that. They are working really hard getting the Cowboy Symposium together. I am going to pass this on, they have asked for volunteers if anybody is interested in helping out with the Cowboy Symposium. It will get you a free pass if you want to volunteer for three hours during the Symposium. If any members of the public or any of the Council or their family would like to volunteer that would be great.

Councilor Garrett asked Administrator Waters to talk about the next set and we can approve them all at one time. Administrator Waters said the only difference between them is the employees listed under F. were full-time and they are transferring in. E. are essentially new employees. Jamie Stroud who has worked in the Billy the Kid Center for a while. She will be the Billy the Kid Senior Attendant. The senior attendant has similar responsibilities related to the gift shop and some minor management responsibilities that go along with it. Isabel Cadena is also a Billy the Kid Center Attendant. Kim Williams is currently the Curator of Collections and anything else they have given him. He actually put the exhibit on which means he has been acting as a curator of exhibits and collections. He is hired as their collection curator but he does quite a few other things. I invite you to go over and look at the new Visions of the West exhibit that is set up and remember he did it by himself. Coda Omness is the Curator of Education and Outreach. She is also going to be over the volunteer docent program so she would be the one to contact anytime the schools need to be involved with the museum and kid's tours. Also some of the Outreach programs doing education in the schools in addition to bringing new volunteers in to help out. The museum does use a lot of volunteers. Diane Romero is being kept on. She is actually moving up to the gift shop manager as the previous manager moved away. She was formerly employed there in another position. Eddie Parker is a part-time receptionist position. He is certainly helpful and I know he works a lot with our finance department on getting purchase orders delivered back and forth. Sunny Hirschfeld is the Special Events Fundraising Coordinator. She is instrumental in putting on the promotional events at the museum. Most key is the Lincoln County Cowboy Symposium. She is the head staff member that organizes that and she is very experienced in putting these promotional activities together. Janis Rowe is the Advertising and Membership Coordinator. She puts together some fantastic exhibits for the brochures and all of the mailings are produced by

Janis Rowe. Now we have someone experienced to take care of some of our promotional activities for the City. Bobby Brown, Sr. is Security Officer. Odis Calhoun is also a Security Officer. Both of those folks have been there for a while and they are the two most senior of the security officers. Ivan Munoz is a facilities maintenance laborer, janitorial and the facilities outside. Patricia Valdez is the seasonal laborer that also helps out the facility with maintenance. I have assigned Ivan and Patricia to the Public Works Department until we get a director on board. There are some housekeeping things that need to be caught up on. Certainly the monument outside that has been expressed to me by Board members and Council members that it needs some attention. It is being looked at now. We have the equipment in Public Works like weed eaters and things of that nature that they will be able to utilize to take care of that exhibit. In addition we will also use our Public Works Department to fix lighting and there are some lighting issues and roof drainage issues. It is a fit right now and we will look when we get the museum director on board to see whether it fits better in the Public Works Department or the museum. Those are the employees that we give you at this time. There is a total of fifteen employees; some of them part-time but most of them are full time.

Councilor Miller moved to approve personnel recommendations for the Hubbard Museum, transfers as well as new hires. Seconded by Councilor Garrett. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

PUBLIC INPUT

Mya said chainsaws are noisy. I call upon the Mayor and Council to place on the City's next agenda resolution to revise the Unreasonable Noise Ordinance 88-3, Chapter 6, Article 2, Section 6G which currently reads "pounding: the pounding and hammering on a metal object or thing except in the building or in connection with construction of a building is unlawful for any person to make." Please write a resolution that includes chainsaws.

Several times I have pointed out several inefficiencies on the City's website that the whole world can view and receive the first and last impressions of our City. Again, I must bring to the Council's attention a significant flaw. Capitan has their act together with regards to a link from our State's website as does Ruidoso. We, however, don't exist when someone searches the State website. Our City administration should contact webmaster at state.nm.us and immediately share our URL address.

This is freedom of speech. A mayor is a leader and as a leader is the person who directs others, who guides other and who decides for others what is in the best interest of the community. The Mayor of New Orleans is a leader. Sadly the Mayor of the City of Ruidoso Downs regarding the Hurricane Katrina crisis is not. How did you lead this City during the immediate crisis of the Hurricane Katrina. Were you on the radio telling your people here in the Downs how they could help. Did you order the marquee that is out here to post a message of how to help another mayor and his city. Did you call upon the City auxiliary to be the collection agency for whatever products were needed and could be transported to

another larger national agency for use. Did you lead your citizens to help and heal from this crisis by suggesting buying \$5 Wal-Mart shopping cards for toys, for toiletries that could easily be dropped off at City Hall into an auxiliary drop box. How did you lead us, Mayor, in our hours of need guiding our desires to help the cause. Did our Council members ask you to do anything to help the people in crisis and unite this community behind one project to help others. You have isolated the City of Ruidoso Downs from being part of the positive contributing world of caring.

Administrator Waters said the website our citizen pointed out that does not have our link on it, that is correct. I will also point you to the New Mexico Department of Tourism website which also doesn't have us on it. I will also point you to the New Mexico Department of Transportation website which doesn't even show Ruidoso Downs on a map that includes Hagerman, Dexter and several other smaller towns that have been incorporated for a lot less time than Ruidoso Downs has been incorporated. I guarantee you that every time I find one of those including this one, I contact the webmaster. I also call the State Department that oversees it. To date, not a single State Department has changed their website to add Ruidoso Downs link on it. I have been successful on some of the private ones. The Waterworks, for example, now has Ruidoso Downs listed. We were a subcategory under Ruidoso. When we find these things we notify them immediately. Trust me there is nobody out there working harder on the web to make sure we are visible and I will continue to do that. If you see it I would encourage you as a citizen to do the same thing. Obviously one little city administrator of a little town that they don't think exists is not enough. There have been letters sent to these folks but I guarantee you if several folks e-mail these individuals they will know that we do exist. Any time you see it, let us know and let them know as well. Hopefully the squeaky wheel will get the grease but we do not sit idle when we see these things. We ask them to change it but the State is not always very quick at it. I think the Department of Transportation actually told me it would cost them too much to change their map.

Mayor Miller said Mya, for the record, I have been protecting the people of Ruidoso Downs, Ruidoso and Lincoln County for years and years against all disasters. I am the one that starts everything, pushes the button. I was state policeman through two floods, about six forest fires and snowstorms where they closed the road and I was the only one out there to unplug that road. I have taken care of these people for years and years and I will continue to do that. If the Mayor in New Orleans had asked for help I would have done all I could to get down there to help him but it wasn't requested. Why would it be requested from a little village like this when all of the big cities had done what they needed to do. We could have accepted the spill off. I have done more for this city than you know or ever will know long before you had even gotten here.

Mya said I did not say anything about your life here in New Mexico. This was a criticism in regards to one crisis in our country called Katrina. That is all I am referring to, Mayor, and I am just very disappointed that our community did not unite behind some project to help these victims.

Councilor Garrett said Mayor, may I clarify something. The Ruidoso Downs Auxiliary has absolutely nothing to do with the City of Ruidoso Downs in conjunction with it. That is a group of people that are totally separate from the City. The Auxiliary does a lot for the City and is willing to do that all of the time but they need to be contacted separately. It isn't something the City can do in conjunction with them; they have to be a separate entity and they are a separate entity.

Councilor Miller said there were collections going on at Municipal League for this. We all donated money even if in Roswell but it went to the Red Cross and we were people from Ruidoso Downs. You have no idea who donated what and that is a private thing.

Councilor Garrett said I am seeking ways to donate over 500 shirts that I have that are brand new to the relief organizations. I haven't been able to find the area to take those because most of them will not accept anything with a design on it. But, I will find a place and I will donate those 500 shirts.

Mya said with all due respect I am sure many of our citizens have contributed in their own way but that is a private matter. I was simply referring to this evening that as a community there was nothing publicized to unite us.

Warren Beavers said as a citizen of Ruidoso Downs I think it is great. I may not agree with some things that happen but this group of people here, the Council, the Mayor, the Administrator have all bitten off a big chew because we are not a pumpkin grove any more, we have become a City. It takes headaches, it takes problems and we are growing and I can remember what we were. We have come a long ways with good leadership.

Sharon Paul said I had some information for you that would have been pertinent before the vote on Escondido Hills but because of the agenda and the public input comes after you vote you didn't get it before you voted. I would like to request that is changed so public input comes before you vote on items. There has been research done on the Warranty Deed that was assigned to Mr. Rowe when he acquired this property from Sue Davis. There are six pages of documentation about Assignment of Rents. I heard in this meeting that these were going to be individually owned. Why are there six pages of Assignment of Rents attached to this Deed. Did you just approve another La Dera in my backyard? I would also like to address some of the process. I picked this up this morning; this is the Ruidoso Downs City Code and it is for Planned Unit Development approval 9-10-39 and it says: "final development plan approval shall occur only when, which means this is mandatory, the design and construction specifications for all utilities and street improvements have been approved by the Village engineer." I know we don't have a Village engineer. Was this subcontracted out to an engineer that represented the City to take a look at this on this plat.

Councilor Miller said our Planning and Zoning chairman is an engineer. Ms. Paul said so you are saying that satisfies this requirement. Councilor Miller said he looked it all over.

Ms. Paul said then "the final development plan is certified by the planning officer to be in conformance with preliminary development plan approvals". Are you the planning officer, Tom. Mr. Armstrong answered yes. Ms. Paul asked have you signed on that it was in compliance and Mr. Armstrong answered not at this time. A Performance Bond was cash escrow agreement or other acceptable instrument has been deposited with the Village in an amount set by the Council to guarantee that public and private streets, utilities, drainage, landscaping, grading and re-vegetation and all of that happens and happens up to your code. Have you obtained that from Mr. Rowe? Administrator Waters said that is part of the administrative process that we are referring to. They can't proceed unless they meet those. Ms. Paul said so did you not just approve the final plan today because this all was supposed to done before that plan was approved. Mr. Waters said it is approved contingent upon that. Ms. Paul said they all left here. It would have been nice to ask them if these are rentals or are these individually owned. It would have been nice to know that they have to come up with these things. Are they going to be informed that they have to come up with a bond and all of these things before there can do any development out there.

Councilor Garrett said might I request that you submit those things before we come to this meeting. You had them with you tonight. You could have given those out before the meeting as a Council. If you were concerned about that it would be really nice if those things were brought to City Hall and distributed to us so we have the ability to also look at them. Ms. Paul said this is your own code. Councilor Garrett said no, I am talking about the document you were talking about for Mr. Rowe. Ms. Paul said that is why I am requesting that you get public input before you vote. Councilor Garrett said I am going to request that you hand it to us in writing previously to the meeting.

Ms. Paul said so you don't need to hear any of this unless I make some kind of special arrangement to give it to you before you vote. I wanted to give you information tonight so that would affect this vote. We have heard in past meetings and request that you put public input before you vote. That tells the public that you care about what they have to say.

Cathy Campbell asked has there been any talk about this being rental property or is there a guarantee that they are going to be sold to individual owners. Attorney Bryant said townhomes are sold to owners. That is what the statutory townhome regiment does. That is why it is not an apartment complex. Apartments are rented. Townhomes and condominiums are owned by the owners. Can an owner if I own a condominium rent my condominium to someone, yes I can. That doesn't make it an apartment complex. Assignments of Rents as part of a financing tool for the purchase and sale of a project like this are very routine. A lawyer will know what they mean. Get with your lawyer and have him explain to you how that financing mechanism works.

EXECUTIVE SESSION

Mayor Miller entertained a motion to go into Executive Session, discussion of all threatening and/or pending litigation pursuant to Open Meetings Act, Section 10-15-1

Subparagraph (H)7, EPA Wastewater Permit Issues and Hearings scheduled regarding CIV 04-1121 BBDJS.

Motion was made by Councilor Morales to go into Executive Session, discussion of all threatening and/or pending litigation pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H) 7, EPA Wastewater Permit Issues and Hearings scheduled regarding CIV 04-1121 BBDJS. Seconded by Councilor Garrett. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller closed the regular meeting at 6:56 p.m. I would like to invite City Attorney Bryant, City Administrator Waters and City Clerk Virden to attend the Executive Session and called for a five-minute recess to clear the Council chambers.

Mayor Miller called the regular meeting back in session at 7:31 p.m.

Motion was made by Councilor Morales to go back into open session. Seconded by Councilor Garrett. 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 Threatening or Pending Litigation pursuant to the Open Meetings Act, EPA Wastewater Permit issues and Hearing scheduled regarding CIV 04-1121 BBDJS and no action was taken.

Mayor Miller entertained a motion to adjourn.

Motion was made by Councilor Garrett and seconded by Councilor Miller to adjourn at 7:31 p.m. Motion passed unanimously.

Bob A. Miller, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer