

MINUTES OF THE CITY COUNCIL
ORGANIZATIONAL AND REGULAR MEETING
OF THE CITY OF RUIDOSO DOWNS
APRIL 10, 2006

The Council of the City of Ruidoso Downs met in a regular session on April 10, 2006. Mayor Miller called the meeting to order at 5:30 p.m. and asked Jim Burrow to lead the Pledge of Allegiance. Upon roll call, the following were present:

Councilor Miller	Councilor Garrett
Councilor Hood	Councilor Holman

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
Dan Gens, Public Works Director
Robert Denny, Department of Public Safety Director
Tom Armstrong, Licensing, Planning & Permitting Supervisor
Jay Smith, Museum Director

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES OF MARCH 29, 2006 RESCHEDULED REGULAR MEETING

Motion was made by Councilor Miller and seconded by Councilor Holman to approve the Minutes of the March 29, 2006 rescheduled regular meeting. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

ACCOUNTS PAYABLE

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

UNFINISHED BUSINESS

Councilor Miller said I would like to remark about the lady that talked about our fence last week. There are screening trees that grow fifty to sixty feet in three to five years and I am thinking that is the way we should look at that. You can get forty trees for \$89.00 and they take over 100 feet. Something like that would be much better for them to look at than a fence that has to be repaired constantly.

Councilor Garrett asked how much water do they take. Councilor Miller said I don't think they take that much water once you get them started; they are hybrid poplars. Once you get these started you have a screen. They do this in a lot of places to keep the snow from drifting. I see them all over going to Colorado. She said she was used to looking at trees before we put that plant down there and now all she sees is a fence. It is not high enough; you see all of the equipment and shop over that fence because she sits up higher than the fence. You can tell that by the pictures. I think this is something we could look at and satisfy the people that live around that area. Maybe that is something we could look at in the budget.

OTHER BUSINESS

Mayor Miller stated next item on the agenda, recognition of March 2006 Employee of the Month, DPS clerical staff, Municipal Court clerical staff and all administrative employees of the city do recognize Peggy Brown and asked Judge Mansell to accept it on her behalf. Judge Mansell said for those of you who don't know, Peggy Brown has lung cancer. She has been in and out for over two months working sometimes. Today, she had exterior fluid drained from her lungs. I really appreciate those that wrote the letters about her. Mayor Miller said thank you, Judge, for accepting that for Peggy.

Administrator Waters said, as you know, last year we had planned to go to Washington to seek funding with the congressional delegation regarding the wastewater treatment plant facility. Right now we are looking at a substantial expense that appears to be over \$35 million between the two communities. We are now going to Washington. We were advised by our congressional delegation that because of the primary season coming up the budgets needed to be taken care of and the items need to be introduced a little earlier. I applied for the Army Corp of Engineering funding that was available about a month ago. Debra Ingle, who is our representative on the Rural Water Association, delivered the letters from the Mayor to each of our congressional delegation about two weeks ago. We have seen some interest by at least three members of our congressional delegation for some significant funding for the wastewater plant. In the letter the Mayor wrote to each of the senators and congressmen, he also let them know that we would be following

the application and the letters up with a visit. The visit came a little sooner than we expected; we were anticipating June. We were told we had to be there before the third week in May. We scheduled it for May 10th and 11th. We will be visiting the congressional delegation and congress to push for the funding we need. Hopefully we will come back with some type of commitment from our congressional delegation to fund a significant portion if not the remainder of the wastewater plant that we need.

NEW BUSINESS

Mayor Miller stated next item on the agenda is New Business. I am going to move Planning and Zoning report from Item C to Item A, consider approving Planning and Zoning recommendation of denial of conditional use permit for Mac's Auto Sales, Inc. for truck and auto sales at 553 West Highway 70.

Paul van Gulick said at the last Planning and Zoning Commission meeting we considered this item on the agenda. We received one letter of protest and the authors of that letter, Dusty and Deanie Beavers, were also there. We have some concerns about this particular use at what used to be the post office. Namely the site plan didn't allow us to understand how cars would get in and out on the property. There were some concerns in the letter about whether there would be enough parking. They are going to be moving their curb to the property line so that may cause a problem. We heard from the protesters but the applicant was not there. Based on the information we had, we are recommending denial of the request.

Dale McLaughlin of Mac's Auto Sales, Inc. said I am at 280 Highway 70 right now. I am wanting to move it up here if you would zone it. The zoning deal, the plan didn't have the square footage in there and we got that. There is 2,000 in the front part, 5,000 on the side and 3,000 in the rear, which we will probably not use the rear very much. In the letter on the handicapped parking, there is a sign there that has been there for years. Mr. McLaughlin passed around a picture of the handicapped parking. On the parking, this building was the old post office, built with state and federal regulations on parking. It has twelve parking spaces on the front and the side, it has one parking space for a loading truck. It has five to seven spaces in the rear for employees. The building meets all of the regulations through the state. There is plenty of parking and you are not going to be on anybody's property line. The property line out to the side is between that and the car wash. I talked to Mr. Roberts today, the curb was put there when the building was built. In the back they put one in. They have knocked the curb down because there is not enough parking between the car wash and his vacuum cleaners. They have backed over this curb and knocked it down from 17 to 40 inches. Mr. McLaughlin showed pictures. It is on our property; it is not on his property so his people have been backing over the curb on our side and tearing it up. They were talking about trucks unloading. I have very few of those. I have been here two and a half years and I have never blocked the street one time. I am not like Western Motors that moves cars around every week. I can pull a car in between the cars parked and the curb easy and

unload in a slot. We have nearly 47 feet there. The parking is plenty efficient for what it is and where it is going. We have the unloading zone which we will never use that because we won't be unloading into the building. In Mr. Beavers report of us turning around on his property, we have plenty of room on our own property. Most of the time I stock anywhere from 8 to 10 or 12 cars at the very most. You have been by the lot down there and you know I have plenty of room. This is a nicer lot, it is black topped and I have a lot nicer building and that is the reason I want to move.

Councilor Miller said the letter says the Beavers are going to move their curb to the property line, which will prevent cars from crossing property lines. Mr. McLaughlin said their curb is already on the property line. I had the property surveyed. Their light pole is four inches inside our property.

Mr. van Gulick said it may well be that this is a perfectly good place for this lot, but the real difficulty is we were unable to hear the matter properly. I think this plot plan is sufficient in many ways so if it is your wish you can send this back to Planning and Zoning.

Councilor Hood asked Mr. McLaughlin if we send it back to Planning and Zoning would he attend the meeting. Mr. McLaughlin asked when is it and he was told May 2nd. Mr. McLaughlin said I have been out \$3,500 already and I have to pay another month's rent. I don't want to be out any more money. I have been working on this quite some time.

After discussion, the Planning and Zoning Commission is to call a Special Meeting before the next Council meeting on April 24th to reconsider Mr. McLaughlin's request.

Councilor Garrett moved to table and send this request back to Planning and Zoning. Seconded by Councilor Miller. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda, questions and answers to proposed Ordinance 2006-01 and proposed Ordinance 2006-02 and public comments will be taken.

ORDINANCE 2006-01

STORMWATER POLLUTION PREVENTION PROGRAM- PHOSPHORUS
ESTABLISHING REGULATIONS FOR LAWN FERTILIZER APPLICATION &
SALE

**ENACTING AN ORDINANCE UNDER CHAPTER 4 TITLED
“DEPARTMENTS” ENACTING NEW ARTICLE 8 TITLED “STORMWATER
POLLUTION PREVENTION PROGRAM- PHOSPHORUS ESTABLISHING
REGULATIONS FOR LAWN FERTILIZER APPLICATION & SALE” SECTIONS
1 THROUGH 11 OF THE CITY OF RUIDOSO DOWNS CODE OF
ORDINANCES**

WHEREAS, this ordinance is intended to promote the general health, safety and welfare of the people of Ruidoso Downs; and

NOW THEREFORE, be it ordained by the Governing Body of the City of Ruidoso Downs, County of Lincoln, State of New Mexico, that:

Chapter 4 of the City of Ruidoso Downs Code of Ordinances is hereby amended to include the following provisions as the new Article 8 Sections 1 through 11 of Chapter 4:

- Section 1. Authority.
- Section 2. Purpose And Intent.
- Section 3. Applicability.
- Section 4. Definitions.
- Section 5. Regulation Of The Use And Application Of Lawn Fertilizer.
- Section 6. Exemptions.
- Section 7. Sale of Fertilizer Containing Phosphorus.
- Section 8. Enforcement.
- Section 9. Penalty
- Section 10. Severability Clause.
- Section 11. Effective Date

Section 1. AUTHORITY. **Do we need an authority clause?**

Section 2. PURPOSE AND INTENT. The City of Ruidoso Downs City Council finds that the Rio Ruidoso is a natural asset, which enhances the environmental, recreational, cultural and economic resources of the area and contributes to the general health and welfare of the public. The City Council further finds that regulating the amount of nutrients and contaminants, including phosphorus contained in fertilizer, entering the river will improve and maintain lake water quality.

Section 3. APPLICABILITY. This ordinance applies in all areas within the corporate limits of the City of Ruidoso Downs.

Section 4. DEFINITIONS.
(A.) “Agricultural use” has the meaning set forth in sec. 47-9-5A NMSA 1978 for “agricultural facility.”

(B.) Fertilizer has the meaning set forth in sec. 76-11-3 D. & E. NMSA 1978.

(C.) Lawn fertilizer means any fertilizer, whether distributed by property owner, renter or commercial entity, distributed for nonagricultural use, such as for lawns, golf courses, parks and cemeteries. Lawn fertilizer does not include fertilizer products intended primarily for garden and indoor plant application.

Section 5. REGULATION OF THE USE AND APPLICATION OF LAWN FERTILIZER.

(A.) Effective September 1, 2006, no person shall apply any lawn fertilizer within City of Ruidoso Downs that is labeled as containing more than 0% phosphorus or other compound containing phosphorus, such as phosphate, except as provided in section 6.

(B.) No lawn fertilizer shall be applied when the ground is frozen or covered with snow.

(C.) No person shall apply fertilizer to any impervious surface including parking lots, roadways, and sidewalks. If such application occurs, the fertilizer must be immediately contained and either legally applied to turf or placed in an appropriate container.

Section 6. EXEMPTIONS. The prohibition against the use of fertilizer under section 5. shall not apply to:

(A.) Newly established turf or lawn areas during their first growing season.

(B.) Turf or lawn areas that soil tests, performed within the past three years by a state approved (NMED or NMDA) soil testing laboratory, confirm are below required phosphorus levels for lawns as established by the NMSU Extension Service. The lawn fertilizer application shall not contain an amount of phosphorus exceeding the amount and rate of application recommended in the soil test evaluation.

(C.) Agricultural uses, vegetable and flower gardens, or application to trees or shrubs.

(D.) Yard waste compost, biosolids (if treated to meet "class A" under 40 CFR 503) or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil.

Section 7. SALE OF FERTILIZER CONTAINING PHOSPHORUS.

(A.) Effective September 1, 2006, no person shall sell or offer for sale any lawn fertilizer within City of Ruidoso Downs that is labeled as containing more than 0% phosphorus, or other compound containing phosphorus, such as phosphate, except such fertilizer may be sold for use as provided in section 6.

(B.) Effective September 1, 2006, no person shall display lawn fertilizer containing phosphorus. Signs may be posted advising customers that

lawn fertilizer containing phosphorus is available upon request only for uses permitted by sec. 6.

(C.) Effective May 1, 2006, a sign containing the regulations set forth in this ordinance and the effects of phosphorus on the Rio Ruidoso's water must be prominently displayed where lawn fertilizers are sold.

Section 8. ENFORCEMENT. Violations of this ordinance will be enforced by the Environmental Health Section of the Public Health Division, Department of Human Services.

Section 9. PENALTY. Any person who violates section 5. in the application of fertilizer at his or her residence shall be subject to a forfeiture of up to \$50 per violation. Any commercial fertilizer applicator, residential or commercial developer, industrial or commercial owner, or other person who violates section 5, and any person who violates section 7, shall be subject to a forfeiture of up to \$250 for the first violation within a twelve month period, up to \$350 for the second violation within a twelve month period, and up to \$500 for the third and each subsequent violation within a twelve month period.

Section 10. SEVERABILITY CLAUSE. **If any section, provision or portion of this ordinance is ruled invalid by a court, the remainder of the ordinance shall not for that reason be rendered ineffective or invalid. (Dan, I know you have a**

Section 11. EFFECTIVE DATE. The Stormwater Pollution Prevention-Phosphorus Establishing Regulations For Lawn Fertilizer Application & Sale Ordinance of the City of Ruidoso Downs shall become effective five days after publication as provided by law.

ORDINANCE 2006-02
CITY OF RUIDOSO DOWNS

**AN ORDINANCE ENACTING A NEW CHAPTER 11 TITLED
"ENVIRONMENTAL PROTECTION" ARTICLE 1 TITLED " PHOSPHORUS
DETERGENT RESTRICTION" SECTIONS 11-1-1 THROUGH 11-1-4 OF THE
CITY OF RUIDOSO DOWNS CODE OF ORDINANCES**

WHEREAS, this ordinance is intended to promote the general health, safety and welfare of the people of Ruidoso Downs; and

NOW THEREFORE, be it ordained by the Governing Body of the City of Ruidoso Downs, County of Lincoln, State of New Mexico, that:

CHAPTER 11
ENVIRONMENTAL PROTECTION
ARTICLE 1
PHOSPHORUS DETERGENT RESTRICTION

- 11-1-1 Definitions
- 11-1-2 Labeling of phosphate content of detergents.
- 11-1-3 Limitation on sale
- 11-1-4 Penalty.

11-1-1 DEFINITIONS.

- (a) "Synthetic detergent" or "detergent" means any cleaning compound which is available for household use, laundry use, other personal uses or industrial use which is composed of organic and inorganic compounds including soaps, water softeners, surface active agents, dispersing agents, foaming agents, buffering agents, builders, fillers, dyes, enzymes and fabric softeners, whether in the form of crystals, powders, flakes, bars, liquids, sprays or any other form.
- (b) "Polyphosphate builder" or "phosphorus" means a water softening and soil suspending agent made from condensed phosphates, including pyrophosphates, triphosphates, tripolyphosphates, metaphosphates and glassy phosphates, used as a detergent ingredient, but shall not include "polyphosphate builders" or "phosphorus" which is essential for medical, scientific or special engineering use under such conditions and regulations as may be prescribed, after hearing, by the City Administrator.
- (c) "Recommended use level" means the amount of synthetic detergent or detergent which the manufacturer thereof recommends for use per wash load, at which level such synthetic detergent or detergent will effectively perform its intended function.
- (d) "Machine dishwasher" means equipment manufactured for the purpose of cleaning dishes, glassware and other utensils involved in food preparation, consumption or use, using a combination of water agitation and high temperatures.
- (e) "Dairy equipment", "beverage equipment" and "food processing equipment" means that equipment used in the production of milk and dairy products, foods and beverages, including the processing, preparation or packaging thereof for consumption.
- (f) "Industrial cleaning equipment" means machinery and other tools used in cleaning processes during the course of industrial manufacturing, production and assembly.

11-1-2. LABELING OF PHOSPHATE CONTENT.

No person, firm or corporation shall sell, offer or expose for sale, give or furnish any synthetic detergent or detergent, whether in the form of crystals, powders, flakes, bars, liquids, sprays or any other form in the City after September 1, 2006 unless the container, wrapper or other packaging thereof shall be clearly labeled with respect to its polyphosphate builder or phosphorus ingredient content clearly and legibly set forth thereon in terms of percentage of phosphorus by weight, expressed as elemental

phosphorus per container, wrapper or other packaging thereof, as well as grams of phosphorus, expressed as elemental phosphorus per recommended use level.

11-1-3. LIMITATION ON SALE OF DETERGENTS.

- (a) No person, firm or corporation shall sell, offer or expose for sale, give or furnish any synthetic detergent or detergent containing more than two and one half (2.5) percent of phosphorus by weight, expressed as elemental phosphorus, within the City after September 1, 2006. No person, firm or corporation shall sell, offer or expose for sale, give or furnish any synthetic detergent or detergent which requires a recommended use level of such synthetic detergent or detergent which contains more than seven grams of phosphorus by weight expressed as elemental phosphorus, within the City after September 1, 2006. Notwithstanding the foregoing provisions herein, synthetic detergents or detergents manufactured for use in machine dishwashers, dairy equipment, beverage equipment, food processing equipment and industrial cleaning equipment shall not be subject to the limitations herein set forth but are hereby made expressly to the provisions of subsection (b) hereof.
- (b) No person, firm or corporation shall sell, offer or expose for sale, give or furnish any synthetic detergent or detergent containing any phosphorus, expressed as elemental phosphorus, including synthetic detergents or detergents manufactured for machine dishwashers, dairy equipment, beverage equipment, food processing equipment and industrial cleaning equipment within the City after September 1, 2006.
- (c) The concentration of phosphorus by weight, expressed as elemental phosphorus in any synthetic detergent or detergents shall be determined by the current applicable method prescribed by the American Society for Testing and Materials (A.S.T.M.).

11-1-4. PENALTY.

Any person or business found guilty of violating, disobeying, omitting, neglecting or refusing to comply with, or resisting or opposing the enforcement of any provision of this chapter, except when otherwise specifically provided, shall be fined not more than two hundred and fifty dollars (\$250.00) for the first offense, and not more than five hundred dollars (\$500.00) for the second and each subsequent offense, in any one year period. A separate and distinct offense shall be regarded as committed each day on which such person shall continue or permit any such violation or failure to comply is permitted to exist after notification thereof.

Ordinance No. 2006-02 shall become effective five days after publication as provided by law.

Dennis Griesing said I am with the Soap and Detergent Association. We are a national trade association that represents manufacturers of cleaning products. We are here today to answer any questions you might have and to raise some issues with the Ordinance 2006-02. You have in your packets some material I forwarded to Mr. Waters. I put that in a question and answer format based on my experience over the years with the questions that usually surround this issue. In addition, you have copies of studies and tables and letters all related to this. Basically, we would hope that you didn't have to go forward with this ordinance. I understand from conversations the situation that you are faced with and the forces that are coming to

bear on the community. Let me address the ordinance itself. The ordinance, as it happens, is the opposite of what most phosphate control ordinances are. This would allow for phosphorus in laundry, prohibit it in some other applications like food and beverage processing. Traditionally the automatic dish washing, the food and beverage processing are exempted, as are the commercial uses, which I think are very important for this community. As I told Mr. Waters I have a brother in Silver. The last time I was through here was ten years ago and I can see the difference. You have enjoyed some economic development in the last ten years. Some of that has to do with hotels and restaurants and commercial use of phosphorus in those cleaning uses in those areas are very important. The exemptions I know, for example, of no products made for machine dishwashing in commercial situations in restaurants and hotels that could be used. There is no product out there. That kind of washing is very special. It uses special equipment. The dishes go through very rapidly. The quality of the washing solution is very important so you are facing a dilemma there. In addition, with respect to the household automatic dishwashing detergents, I just visited the Super Wal-Mart down the road and while there are some no phosphate detergents that are out there in the market I saw none on the shelves there. So, if this went into effect on September 1st, the owners of automatic dishwashing detergents would be left in the lurch and you would have to answer those phone calls, not me, fortunately in that case. Phosphates are used in dishwashing because they soften water and you have very high water hardness around here. It is one of their principal functions. Unlike with laundry, the phosphates also contribute to the cleaning properties. They grab the water hardness and hold it in suspension in the water so that it doesn't interfere with the other cleaning properties. Phosphorus also does the same with respect to the food particles on the plates. It also provides the necessary alkalinity for effective washing. The most recent study on contributions of phosphorus from dishwashing detergents to the environment was done in Minnesota. It was commissioned in 2003, delivered in 2004 and it was commissioned by the Minnesota Pollution Control Agency. There calculations, now this is the amount of phosphorus that goes into the environment after it has been through septic tanks and water treatment, the table from that study is attached. 1.9 percent would be for household detergents and .9 percent for commercial. That is minimus. We recently had a very extensive debate in Spokane, Washington, which is facing a similar situation as you are and everybody agreed by the time all our experts talked to all their experts there was very little disagreement on the numbers that everybody agreed to because you couldn't tell the difference coming out of the plant if you took out the automatic dishwashing detergent phosphorus. It wouldn't be detectable at that end. With respect to the no phosphate detergents, probably the best known brand is Seventh Generation. For the record, they are a member of our association and very active. But, the whole issue comes down to consumer acceptability. If the consumer won't accept the performance that they get, they walk away from the product. Proctor & Gamble Company, the leading manufacturer of these products in this country, attempted a test market in Arizona in 1994. I hope to have someone with me from Proctor & Gamble on the 24th. They attempted to market a no P product. They went to Arizona because it has a variety of water

hardness. In the end, they had to pull the product. They also marketed a product in Europe as did the manufacturers of Electrosol. Between the two of them they probably have about 75 percent of the market. They went to Europe in the mid-nineties and introduced these products and pulled them four or five years later because even the European consumer, who is viewed as the greenest of green, walked away from it because of performance issues. What the no P products couldn't get to was common stains like tea and coffee, lipstick, cheeses, anything with calcium base. As seen in a Consumer's Report article last March touted the benefits of enzymes and that is correct. That is our basic story. I think we can demonstrate that we are a minimal contributor to the environmental load of phosphorus. We have reduced the use of phosphorus over the years. Even while the number of dishwashing machines in the United States has almost doubled, we have reduced the phosphorus by 50 percent and that is because we added enzymes to make up for them. We are doing our best. Are there any questions?

Attorney Bryant asked can you express the phosphate content in automatic dishwasher products from the major marketers in terms of pounds or loading so we can somehow compare that to what we are wrestling with in the stream system.

Mr. Griesing said I could have some people look at doing that. That would be tough. We would have to know the market. We would have to know which brands are sold here and with information like that we might be able to protract that out. Attorney Bryant said some of your paperwork express it in percent but percent of what and compared to what. Mr. Griesing said I can tell you that. That is a matter of law from the very beginning. As a matter of fact, we have been required to report the percentage of phosphorus and we do it this way. We do it by total weight of everything else in the box or the plastic jar against the weight of phosphorus because that is what people wanted to target. That is just a simple chemical way. We could try to get that poundage information. I will get a message out tonight to see if somebody can get started on that. That would have to go to the manufacturers.

Attorney Bryant said we are being told that an ordinance like this can remove as much as 30 or 40 percent of the phosphate load in the stream system. If I go through the ordinance and I say dishwashing detergent is just a small part of that I don't need to worry about it. What am I going to take out, 28%, 20%, 15%, 6%? What is that going to do because we can't make an intelligent decision about dishwashing detergents until I know what the impact is going to be on the whole formula.

Mr. Griesing said we can look into that. The numbers that you see in the table from the Minnesota study are pretty representative of what we find around the country. To begin with, 70 percent of the loads of the river is going to come from non-point sources; 30 percent are going to be from point sources, wastewater treatment plants, etc.

Attorney Bryant said my nose was thoroughly bloodied when I went to the county commissioners meeting and tried to make that point.

Administrator Waters said one of things that I have requested is one of the studies that was done by David Jenkins who is a member of the graduate school of U.T. Berkley. This one is titled, "The Effect of Eliminating Phosphorus from Automatic Dishwashing Detergents on Wastewater Treatment in Minnesota". It does have a lot of interesting tables in it. One of the things the tables do not list is what is actually being required of wastewater plants in Minnesota. From conversations with both our public works director here and with the state of Minnesota, it seems that those who actually do have phosphorus limits up there, and it is very stringent around the Great Lakes states, ten seems to be the magic number to put into the stream. As you know ours is significantly lower than that; it is a .1 on a factor of 100 or less. The problem that we have, and I am going to look into this Spokane counting if they are as stringent because it is certainly something to look at but .1 is an awfully low standard. The lady from Minnesota that I talked with, the equivalent of their environment department, point blank told me, "wow", and then she looked through her list and said there may be some lower than that but the only one she could remember who actually had those limits were 10. Dan, do you know any of the plants that have a lower limit or anything in that range? Public Works Directors Gens said it definitely wouldn't be anybody below 1.

Administrator Waters said remember Mr. Gens actually ran pretreatment programs and sampling around the Midwest so he would have a knowledge of that. He sampled folks' wastewater to make sure it complied with this type of stuff. It is very unusual. We haven't found anything like this in the rest of the nation. It is a tough one. It is a tough choice that the council has to make not only making ordinances like this but at a \$35,000,000 price tag we certainly want to do the right thing and we are working really hard to do that. It is not going to be an easy decision.

Councilor Garrett said my true concern is that I don't want to spend \$35,000,000 and then find out when we actually run it through this treatment plant that we have decided to leave things in there that won't allow us to get to .1.

Mr. Griesing said I understand that. Councilor Garrett said unless we can have some assurance somewhere. At this point I don't think we even have an assurance that the plant is going to take it to .1 so I really am concerned. Mr. Griesing said this is exactly what has tortured the Spokane River Valley for a couple of years. They have come to the brink of threatening to take each other to court, the city, the county, the environmentalist and they are still trying to work it out. You are facing a very difficult situation. Councilor Garrett asked were they placed at .1. Mr. Griesing said it was extraordinarily low; I will have to go back. I am going to provide Mr. Waters with some contacts up there.

Attorney Bryant said my concern is this. If legitimately and genuinely 70 percent of the phosphorus load in the stream system is not, i.e., your treatment plant, and you are going to spend \$35,000,000 on a plant, \$7,000,000 of which is direct capital cost to install the phosphorus treatment facilities and then you are going to spend three-quarters of a million dollars a year in phosphorus treatment operational costs over and above the operational cost of getting what we think the treatment plant is supposed to get out of the water. If we do all of that and 70 percent of the phosphorus that is in the stream system is still there, my concern is we will not have improved the stream condition one iota. And, if we don't improve the stream conditions one iota, the people who live up and down the valley are still going to be in here talking to you, they are still going to be in front of the county commission talking to them and I am not criticizing them for that. Rightfully so, they don't want their river to look that way and to smell that way. But, my concern is the communities, the two municipalities, their treatment plant, upstream users, downstream users, incorporated citizens, unincorporated citizens have got to get together and we have got to find the solution that really addresses stream condition and what is happening. We have to focus our effort there because what will happen is the two communities, Ruidoso and Ruidoso Downs, the incorporated citizens, will be exhausted financially and we won't have anything left to contribute to stream remediation if we still have the same problem. Perhaps I've not artfully sent that message but that is the message I have been trying to send for three years that we had really better understand what is happening, really address the problem and make sure that we are not just needlessly wasting money on capital and operations. If the engineers are correct, councilor, we can get the treatment plant to produce .1. The more phosphorus that is in when it comes in the plant, the more chemical you have to put in to get it to .1, the more chemical you put in to get it to .1, the higher your operational costs are going to be. Then, perhaps the three-quarters of a million dollars a year in operational cost becomes a low number if there is too much phosphorus to begin with. My concern is we do all of that, we get it .1, we are putting out essentially clean water, it is only 30 or 40 percent of the problem, the river nutrient people need to tell us how do you fix the stream. We need to understand that before we precipitously jump off of this cliff and we need that answer.

Councilor Miller asked haven't they tested the stream above the Village and it has phosphorus in it also. Attorney Bryant said we have eighteen monitoring sites above and below and we have phosphorus all up and down. When we tried to do a trading program with non-point sources, we went to the experts out of Idaho and Washington, it could have been the Spokane River program, I don't know, but they came down, analyzed it and then said that we can't make the trading program work. We can't identify enough of the non-point sources to be able to do meaningful trading. There are stream nutrient experts who can inform the discussion in terms of what do you do to a stream that actually remediates alga growth, which is what the problem is. You get algae, the algae dies and when it dies it stinks. When it dies it releases phosphorus and it makes more algae, the algae grows, it dies and the

algae stinks. When you smell that in the river and there is a wastewater treatment plant above you, you are not thinking of that stinky algae, you are thinking of that stinky something else which is the discussion I ran into in front of the county commissioners a couple of months ago. We need to understand that we are working on that diligently as we march forward.

Mr. Griesing said if I may, to Mr. Bryant's point, this is the critically important part. Our system is based on numbers. It is translated to get into the water quality that is the tough part. For example, we were involved with the Chesapeake Bay years ago. It was before my time with the group. We have studies that show you have to take out more than 20 percent of the phosphorus from a water body to get a measurable water quality improvement. Your P number is going to be less but to start remediating algae blooms and such you have to remove 20 plus percent. We have been able in the past to help municipalities and local governments with some of these issues. We are going to be working with Mr. Waters. Somewhere in the two tons of paper we have at the office on all of this, we will see if we can find something that will be of help. Thank you.

Mayor Miller thanked him for coming.

Mayor Miller stated next item on the agenda, consider approving reclassification Public Works Department, Equipment Operator, Ronnie Randolph.

Public Works Director Gens said Mr. Waters presented us with an opportunity to help out one of our long-term employees. Ronnie Randolph has been in public works for about fifteen years. We want to move him to the position of equipment operator, which will give him a small jump in salary. Ronnie is more than capable. We have done some extra training with him on the motor grader and the like. He is a very good backhoe operator and proficient on all of the equipment that we have. I would like to recommend we make this move for him so he has the opportunity for advancement as he is a long-term, loyal employee. Mayor Miller said I agree with that and entertained a motion to approve.

Councilor Miller moved to reclassify Ronnie Randolph to Equipment Operator. Seconded by Councilor Garrett.

Administrator Waters said we have a condition on this that is a condition of employment for all of our equipment operators. Public Works Director Gens said Ronnie Randolph was given six months to obtain a CDL license as our two other equipment operators have. He needs to get a CDL with an endorsement. We will work with him to make sure he has everything he needs to be successful.

Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Administrator Waters said I am sad to say that after a year and a half our Public Works Director, Mr. Dan Gens who has done a fantastic job in public works, will be leaving us. He is going back to the Midwest where his heart is. He came from the Midwest and is going back. He did leave us with a four-week notice so that we would have adequate time to make sure that he got a lot of his projects started and certainly to let us know where things stood. He knew he had a lot to do. I publicly want to thank Dan Gens for the hard work he has done for the public works and the City of Ruidoso Downs. He has definitely been a shining example of what a public works director in a small community should be in this state and I would like to thank him for his hard work here at the city. Mr. Gens said thank you very much. I would like to thank you all for the opportunity to work with the city. I would also like to put in a good word for my crew. They are a very good crew. They have come a long ways. They will work for you and do anything that you ask. I really hope you continue to support them.

PUBLIC INPUT

Warren Beaver said I live in the Downs. First of all, I would like to object to Mr. Dan's proposal of leaving. My idea tonight is to gripe. If you don't do anything, you don't get to gripe and you don't get to praise. I had a little incident the other day in my area. I called the City police at 4 p.m. Nothing. I called again at 4:21 p.m. and they finally showed up at 4:52 p.m. This was Friday afternoon, April 7th. In the meantime, one police car, and I left my house and drove up and parked on the highway so I could see them when they turned down Parker road. One police car went by going east and if I could have written a ticket they needed a ticket. My questions are how many officers do we have, how many are on duty at one time and why does it take so stinking long to get a response.

DPS Director Denny said we have ten officers. The number we have on any given day varies from one to two per shift. On that particular day, we did have one officer. Prior to you calling we had what we call a rolling domestic where if someone gets spotted driving down the road hitting a passenger about the face. We finally tracked down the vehicle on North Central. We got the guy that was suspected of punching this woman when the officer pulled him over and that was probably when you saw him trying to catch up to the vehicle. It did turn out that he hadn't hit her but they were arguing and the driver had a suspended license. The officer brought him back here, processed him, gave him a citation and then he left. We only had one officer on duty at that time and that is why it took the time to get to you. Not that you weren't a high priority, every citizen is but sometimes calls go in a particular order depending on what the circumstances are. I think on that particular day you called at the same time. I apologize for the time that it took to get there. Normally on Fridays and Saturdays we try to have at least two officers on every shift so if something does come up we can address it quicker. I was in the office that day and they didn't tell me about it. Otherwise I could have jumped in the car and checked on it myself. I am not too good to do something like that but they hadn't even mentioned it to me. We try to adjust our schedule for the

weekends. However, if we do have emergency calls and we can't handle them all, we will call Ruidoso, Lincoln County or State Police. They are always there to help us out and we try to do the same for them. I hope there is never a time when you don't have a good response in an emergency situation. Mr. Beaver said this is the only time. Make a note of that too and you all have responded quickly when I needed you to. Chief Denny thanked him.

Jim Burrow said I would just like to respond to Judy on her trees. I think that may be a fine idea but you have to watch when you plant trees as to how close to a sewer line, a water line and all lines that have moisture in it because the roots of those trees will go to find moisture. When they get to a sewer line or a water line they will go right through and bust them right out.

EXECUTIVE SESSION

Mayor Miller entertained a motion to go into Executive Session for the discussion of Threatening and or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H)7, Wastewater Treatment Plant - EPA Permitting; Forest Guardian vs. City of Ruidoso Downs and Village of Ruidoso; Terlecky vs. City of Ruidoso Downs.

Motion was made by Councilor Hood to go into Executive Session for the discussion of Threatening and or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H)7. Seconded by Councilor Garrett. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller closed the regular meeting at 6:30 p.m. and invited City Attorney Dan Bryant, City Administrator John Waters and City Clerk Carol Virden to attend the Executive Session. Also our self-insurance people are here, Mr. Ed Zendel and our attorney, Mr. Jim Hudson and called for a five minute recess to clear the Council chambers.

Motion was made by Councilor Miller and seconded by Councilor Hood to go back into regular session. Mayor Miller called the regular meeting back to order at 8:32 p.m. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Councilor Garrett attested that the only item discussed in Executive Session was Threatening and or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H)7 and no action was taken.

Mayor Miller entertained a motion to adjourn.
Motion was made by Councilor Hood and seconded by Councilor Garrett to adjourn
at 8:33 p.m. Motion passed unanimously.

Bob A. Miller, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer