

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
SEPTEMBER 11, 2006

The Council of the City of Ruidoso Downs met in regular session on August 14, 2006. Mayor Miller called the meeting to order at 5:30 p.m. and asked Alfred Ortiz to lead the Pledge of Allegiance. Upon roll call, the following were present:

Councilor Hood	Councilor Miller
Councilor Holman	Councilor Garrett

City Clerk Virden informed Mayor Miller there was a quorum.

Also present:

Dan Bryant, City Attorney
Carol Virden, City Clerk/Treasurer
Tom Stewart, Public Works Director
Jay Smith, Museum Director
Steve Dunigan, Planning & Personnel Services Director
Richard Schwalm, DPS Acting Lieutenant

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES OF JULY 25, 2006 SPECIAL JOINT MEETING

APPROVAL OF MINUTES OF AUGUST 14, 2006 REGULAR MEETING

Motion was made by Councilor Garrett and seconded by Councilor Miller to approve the Minutes of the July 25, 2006 special joint meeting and Minutes of the August 14 2006 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 Garrett and seconded by Councilor Miller to approve the Accounts Payable. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

UNFINISHED BUSINESS None

OTHER BUSINESS

Mayor Miller stated next item under Other Business, Recognition of Municipal Official Certification Status for Mayor Bob A. Miller. Councilor Garrett stated that Mayor Miller has worked very very hard to complete this class and presented Mayor Miller with plaque from the New Mexico Municipal League as a certified municipal official.

Mayor Miller stated next item under Other Business, Recognition of August 2006 Employee of the Month-Administration-Emma Herrera. City Clerk Virden stated that Emma Herrera has been a Utility Clerk for almost a year and will complete her full year in November. Emma is a really hard worker and has been training in a new position, and has done very well. It gives me great pleasure to have her be employee of the month as part of the administration staff.

Mayor Miller stated next item under Other Business, Proclaiming September 17 through September 23, 2006 as Constitution Week. City Clerk Virden introduced Nina Stratton, a member of the Daughters of the American Revolution and has asked Mayor Miller to proclaim September 17 through September 23, 2006 as Constitution Week.

Ms. Stratton stated that she is a resident of Ruidoso Downs and is a Regent of the Sierra Blanca Chapter of the Daughters of the American Revolution, and we try to help recognize all the patriotic holidays.

Proclamation
Constitution Week 2006

Whereas, September 17, 2006 marks the two hundred and nineteenth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

Whereas, it is fitting and proper to officially recognize this magnificent document and the anniversary of its creation; and

Whereas, it is fitting and proper to officially recognize the patriotic celebrations which will commemorate the occasion; and

Whereas, public law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through September 23 as constitution week.

Now, Therefore, I, Bob Miller, Mayor of the City of Ruidoso Downs, do hereby proclaim September 17 through September 23, 2006 to be

Constitution Week

In the City of Ruidoso Downs, and ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787.

NEW BUSINESS

Mayor Miller stated next under New Business, Consider Approving Promotion for City Administrator to City Manager.

Councilor Garrett moved to approve for discussion purposes only. Seconded by Councilor Hood.

Roll Call Votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Councilor Miller asked Dan Bryant is City Manager and Village Administrator, is that the same ordinance?

Dan Bryant stated perhaps. The letter that he had provided councilors copies of, he wrote this afternoon in response to a request for copies of an ordinance and a job description that Judge Mansell sent to the Mayor. Somebody from his staff faxed the request to him, so he called the judge to try and find out what he needed and we had some telephone conversations and what he did, was wrote him a letter answered the questions that came up in the telephone conversation. We have in our code of ordinances, a section of the ordinance that consists of several different ordinances and amendments that had been accomplished over the years that deals with administration. And in that administrative ordinance we have created the position of city manager and we've defined certain duties and those kinds of things.

Until now, we have not had a city manger in Ruidoso Downs. What we have had is a city administrator and here is the historical perspective on that. That position was created and is guessing that it was in the late 1990's and the first person we hired in that position was Mr. Bob Durratt. At that time, the 1990's census for Ruidoso Downs said that our population was either just over or just under 900 people and the statute that allows for creation of a city manager required a minimum population of 1000. We didn't meet the threshold for the city manager. So the question that we posed to him by the then mayor and council was, Dan, we need a chief executive officer in our town, we can't do a city manager because of the statute,

and what can we do? Mr. Bryant stated that he had done some research and discovered that a number of cities and towns who were too small for the city manager threshold had hired city administrators. Mr. Bryant had checked out their processes and what we did was narrowed those processes that had been used in other cities and towns.

Mr. Bryant stated that it is important for Council to know that an earlier version of this statute that now says and in late 1990 said, that we had to have at least a 1000. An earlier version of the statute has a threshold at 3000, but somewhere in the legislature had amended the law and reduced it down to a town with a population of 1000, based on the last census. We did this city administrator thing, we did at that time some tinkering with our administration ordinance, so we recognized the position, set up some of the reporting requirements and who were his bosses and made it an appointment position, which means it's not classified, it's a person who is employed on a contract at the will of the city council and mayor. We did those things back in the late 1990's and we created that position. Since that time, we have tinkered with the administration ordinance a number of times and at some point within the last 2 or 3 years, we have added the designation in there that allows us to hire a city manager. We have never hired them, because we had a city administrator and really nobody discussed it, nobody said lets do x, y, or z, until this item has come up on our agenda. So, what you are looking at is, we're looking at, as a matter of fact by the way we really do things on the ground, stepping into the ordinance that we have in place, having a real city manager as opposed to a city administrator. There are some differences, not a lot, some people want to think that there's this huge gap between a city administrator and a city manager. It's his view that is not the case. One of the misconception that happens all the time, is that if you have a city manager, you really don't need a mayor, because New Mexico has two distinct different statutory forms for cities and towns to organize themselves, one is the Mayor-Council form of government and the other is the Council-Manager form of government. But one has nothing to do with the other in terms can a Mayor and City Council hire a city manager.

Mr. Bryant stated that in the letter he had provided to Judge Mansell and gave you all copies of also provided a copy of an attorney general's opinion. The question came up in the town of Socorro in 1987; opinion no. 87-69; and the whole issue was being addressed by the attorney general. There are a number of questions he answered in that opinion. Part of which was, can a mayor-council municipality hire a manager, and he says yes, and then he goes through several pages of statutory construction to say that when you do that, this is how it works. Another one of the concerns that was expressed in his telephone conversation with the Judge today was, isn't true that if in a mayor-council form of government you hire a manger, doesn't the mayor then automatically as a matter of law surrender all of his right to hire and fire appointed employees and other employees at municipalities. The attorney general's opinion that he has cited to council directly answers that question and the answer is no.

Mr. Bryant stated to Council that it really depends on what you set up in your ordinance, how you want it to function. Mr. Bryant stated that his idea is that now that this topic has surfaced, we're going to talk about, the people are going to have opinions about, do we still want the mayor and council to hire everybody or do we want to have an administrative staff and a set of classified employees, a merit system employee if you will, (you will hear that term a lot in the discussions that occur) that are hired administratively by our administrative staff, which would stop at the managers level and then who are the appointed positions going to be.

Mr. Bryant then stated, that he has never had this conversation with this council, specifically. I have had it with your predecessors. Your predecessors over time have instructed him, the appointed officials those folks who serve at the will of the city council and mayor, as he understands it are; himself, Mr. Waters your city administrator or your city manager if you move to a city manager in this process, your city clerk, your public works director, your police chief, our museum director and Steve as the planning director are the appointed positions that we now have at the City of Ruidoso Downs. And so while you engage this discussion under item 11A, is there adjustments to that that you want to make, if there are fewer people that you want in appointed positions, this is the point where you say, lawyer go revise the ordinance and change it this way, that way or the other way.

Mr. Bryant stated that he believes each council member has a copy of that administrative ordinance and he would counsel them to take a close look at it, think about their visions; how city government is structured and how they want it to be structured and if we need to enter a change with some of those elements, we can do that, as we work the process forward. Mr. Bryant stated that is basically where we're at on the law part of it, there are as he presumes a host of financial and revenue and expenditure questions and discussions that the council want to have about the topic and of course we need to engage that discussion as well.

Councilor Miller stated that she was looking at the manager's duties and they are somewhat different from the administrator duties. Mr. Bryant stated his answer is that they can be. When you say you are looking here, what are you looking at?

Councilor Miller stated that she is looking in the papers he had given them, on the managers, on the conclusions of the questions from the attorney generals opinion.

Mr. Bryant stated that what the attorney general did because in 1987, when this came up, there weren't any of these in New Mexico. There were no mayor-council forms of government that also had a manager and what he was doing, and you'll find this when you read the opinion with some care later on, but he looked at 3-13-3 of the NMSA, 3-14-13 and 3-14-15, and what he did was he engaged in what we lawyers call statutory construction, he read all of those as a complete whole, and he says as far as the law is concerned; the manager has the power to do all these things;

later on in the opinion he goes to the mayor-council form of government statutes and says the mayor has the power to do those same things. Mr. Bryant stated how you parcel that out, how much you say the manager is going to do and how much the mayor is going to do is all dependent upon on how you define your administrative ordinance and differentiate in those authorities.

Mr. Bryant stated that is why his telling the council tonight; this is an excellent time for this council to say, this is the way we want to see it function.

Councilor Miller asked; should all that be looked at before we go ahead and vote on it. Mr. Bryant stated, that he is actually recommending to the council that although he thinks council needs to have a real healthy discussion tonight, but his actual recommendation is that we need some additional work and information done, council needs to look at the administrative ordinance, you need to make sure council is comfortable with it, and thinks his phone will ring off the hook and we'll have lots of discussions over the phone. Mr. Bryant also stated, that Council needs to have a pretty good understanding on the financial end. Mr. Bryant stated that he recalls this board told the employees when we did the budget that after we got down the road and saw what was happening with our revenue stream, we would reexamine the budget and look at; can we do some things to help employees out in terms of what their salary levels are. Mr. Bryant stated, as councils lawyer is it his observation, we seem to be hiring, and hiring and hiring and hiring and whenever you see too much of that happening, it tells you that your salary structure may be a little less than competitive, because people are coming in, they are working for you, they are getting a little bit of reputation and standing under their belt and their moving on, so, we need to look at all those issues. Mr. Bryant stated that his recommendation was going to be, that we have a healthy discussion about all of it tonight and then if you schedule it on our next agenda and go to work and you tell us, we work for you guys, you tell us get us this information, get us these answers, we want to know what the deal is and when we know then we'll take action.

Councilor Miller stated, that she knows we need to be competitive, but our town is quite small compared to our neighbors' town and does not think that we can compete. Our budget is so much less than theirs, not even a tenth of theirs, and does not see anyway that we can compete with what they do. A raise right now, until we can do it across the board for everybody. Councilor Garrett stated; that is why she only approved this as a discussion item: because both Councilor Holman and her had promised the employees that when we discuss this item tonight, that she wanted and wants it done before the next meeting. Councilor Miller stated; that we sat down right here and about 3 ½ months ago and told them no raises this year.

Mr. Bryant stated; to Councilor Miller and Councilor Garrett; on the topic of comparison, he keeps telling the council that he has been in the business for a long time, 30 years and has spent his career stopping people from inappropriately comparing our town to another town. When you start looking at things, you need to

look at, what is the size of your infrastructure, what is your size of the budget, what is your population. The census says our population is between 2000 and 2500, and thinks there is an under count, just his personal opinion, thinks we are pretty close to 3000, so you go and take a look at a town like Tatum or another town around New Mexico that has a population of 3000. We don't compare with them either; and this is why; on the weekends, on the big holidays we're not a town of 3000, we're a town of 15,000, every home, every hotel room, every camp site is full of people and so we don't get to behave just like a little 3000 person town, but, by the same token we're not a 16,000 population town, we shouldn't behave like them. Mr. Bryant stated; and so this is a great time for us to engage that discussion, look at what's appropriate, how do we really compare, what are the real stressors in terms of our employees and how they work and how do we put together a realistic (for the ladies and gentlemen in the audience) an economical budgetary process that adequately compensates our employees for the work that they do, but, protects our citizens and our tax base. Mr. Bryant stated: that's the heart and sole of what we do.

Councilor Miller stated: that population increase you are talking about is the whole community that is Ruidoso as well as Ruidoso Downs. You know it's just not us down here. Mr. Bryant agreed, absolutely agrees and has said that our end of it might be 10 or 15,000 but throughout the whole community the figure is tens of thousands of additional people here. We certainly see that in the flows that we get at the wastewater treatment plant. Councilor Miller said that you could see the way the cars go when they leave the racetrack, the all go uptown, their homes are that way.

Councilor Hood stated: we need to take care of our employees. Councilor Miller agreed with that. Councilor Hood informed that we have quite a bit of turnovers.

Councilor Miller stated: that she did not want to give one raise without giving all of them a raise. Councilor Hood said that is what we're discussing, that's what we want to look at is give everybody something.

Councilor Holman agreed with Councilors and would like to add to statement made by Councilor Miller that after the budget committee studies, you stated that we told the employees that they would not be getting a raise, that in fact she is correct. But that too, what we did say, if the gross receipts and it is his understanding that the State of New Mexico has made some errors, that in that case that certainly by the first of the year or as soon as possible that we would we give every one a raise and is hoping that we don't have to wait until the first of the year.

Councilor Garrett asked that council get some kind of information from city hall on raises by the next meeting. It is her understanding the gross receipts are much better, we need to know where we stand, we need to know if we can afford and we need it to come back before council, so that council knows exactly what we can

afford. Councilor Hood agreed. Councilor Garrett stated: she did not want to wait until January; she wants it on the council meeting for action.

Councilor Miller said the raises should start at the bottom, because those people on the bottom are very valuable. Councilor Garrett stated: well those people on the top are too.

Councilor Hood thought that is what they were looking at giving everybody a raise and we need that information so we can move forward.

Councilor Holman stated: and we do have talented people, and very pleasant people, when you go into that business office, Emma, Carol, Terri and Annette. They didn't get raises, and they all are still in there doing their very best, they're very positive and in order to keep talented people, really mean something.

Councilor Holman stated: he looks for kind of a neutral opinion on this because in our village, we people who are very divided sometimes and have their own agendas and opinions.

Councilor Holman stated: according to the Ruidoso News and something that he had read sometime ago, it has been months, they were explaining their goals and philosophy about things they said and one thing he did note was one of their goals is to make the comfortable uncomfortable and uncomfortable comfortable. And as far as their agenda they said it was simple, they don't have an agenda, so in looking for a neutral party, he looks at the last edition of the Ruidoso News and would like to read you one. Paragraph is right under a controversial thing that we have going right now and was in the last issue, Fridays issue, a paragraph that he certainly believes and is quote "Highway 70 expansion and aggressive recruitment that positioned the Downs as an emerging corporate hub of the mountain region, and we're going there and anybody that's not seeing it that is not watching. Under the leadership of Mayor Bob Miller we're in a transition period and just like Planning and Zoning, and the ETZ, those are important because we're either going to guide that or its going to drag us, because it's going to go and we're going to go with it one way or the other. Councilors Holman point on the quote from the paper is, this be true from a neutral party, we have to keep talented people, we have them and in order to keep them we have to be competitive with the pay scale and its just a requirement or they're going home.

Mr. Bryant informed Mayor and Council that is on your agenda tonight for an action item and knows all Council members would like a report and probably that should be in a form of a motion and second.

Councilor Garrett removed her original motion. Motion was made by Councilor Garrett that item be placed back on agenda as an action item for the next meeting and at that time we instruct the city to bring us the information that we need in order to make a solid decision and we need to know the financial background and

financial status of what we can and can't afford for all employees across the board. 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 under new business, Kevin Powers-Presentation and Discussion of G. O. Bonds.

Kevin Powers with RBC Capital Market out of Albuquerque, NM introduced himself to the Council and provided handouts for each member of the Council.

Mr. Powers addressing the Mayor and Council with a presentation he made back in March for the Joint Use Board and believes Mayor Miller was present at that meeting, Dan Bryant and a few councilors that were at that meeting.

Mr. Powers stated: that he also made a little update to the some of the tax base information that has evidently a new tax year or is moving into a new tax year, we're not quite there yet, but kind of to you update you on the tax situation for you.

Mr. Powers informed Council that he was in town on Thursday of last week and did a similar presentation for the Village of Ruidoso Council and thinks this would be helpful just to kind of go back through this presentation with this Council this evening to lay the ground work and talk a little bit about where you might go in terms of bond issue or bond election to fund this project.

Mr. Powers asked council members to turn to page 2 of the handout and informed that back in March looked at the combined systems for the Village of Ruidoso and the City of Ruidoso Downs to get an idea of the size of the system, how many customers total and what the breakdown was. And as it turns out, the Village of Ruidoso has about 92 % of the residential customers and the City of Ruidoso Downs has 8% of the residential customers of the Wastewater Treatment Plant. On the commercial size the City of Ruidoso Downs has about 15% to Village of Ruidoso's 85% and these are not on flows, but just simply on numbers of accounts. The residential accounts are pretty similar; on commercial accounts that number could be misleading, depending on what the characteristic future count is, you could have a very large account or where one account may amount to a larger percentage of the flow relevant to the rest of the accounts. That was one way we could look at it: the information was readily available.

Mr. Powers asked Council members to look at the single handout (History of Assessed Valuation and Capacity) keeping in mind those percentages 92%, 8%, 85% and 15%; we've also looked at the breakdown of the two communities with respect to the tax base. Mr. Powers stated: that they have updated this; there is a page similar to this in this presentation; at the time they did that, on the 2005 numbers where we now have the 2006 numbers. The breakdown there is about 90%-10%; the Village of Ruidoso has about 90% of the tax base and City of Ruidoso Downs has

about 10% of the tax base. The property value is about 90-10 if you kind of look at averages on the commercial residential, it's about 90-10, if you add up the averages is 91%-9%.

Mr. Powers stated that one of the reasons they looked at that; was to figure how you allocate this total project and we think that would be some of the bases for that. Working on the assumption is about 35 million project on total and we wanted to try to figure out a way the project could be financed in whole or in part and done in a very efficient way. Mr. Powers had talked to John Waters and talked to Lori McKnight; and is familiar with both the City of Ruidoso Downs and the Village of Ruidoso's finances and their outstanding debts, water and wastewater rates in general. Mr. Powers stated: that he had suggested that the communities consider looking at using their General Obligation Bonding capacity for a couple of reasons; first of all the general obligation bonding capacity in both cases are unused, the Village of Ruidoso did have some general obligation bonds outstanding a number of years ago, but have paid them off, the City of Ruidoso Downs has no G. O. debt outstanding. The G. O. debt capability is constitutionally created and when you sell general obligation bonds into the financial markets, you will typically receive better interest rates or interest rates to use as lower borrowing costs to the issuer. So the combination of the fact that you have no general bond debt outstanding, have the ability to issue general obligation debt and general obligation debt is relevantly cost effective, budgeting to that as a potential solution to the financing situation. A couple of things about the General Obligation Debt capability of any community, there's a constitutional amendment on how much you can have outstanding at any given time for cities and towns. It is 4 percent of your assessed valuation, for counties it's 4 percent of assessed valuation and for school districts it's 6 percent of assessed valuation, and for a community college it's 3 percent, so those are the ways those are carved out.

Mr. Powers continued to say that, there is also an additional provision in that water and wastewater projects have a bit of an exemption in that you can actually exceed the 4 percent limit, the 4 percent is for what they call general purpose projects, that would be like if you want to build a new city hall or library or some kind of public project, you can do streets and highways with general obligation bonds. Technically, with the water and wastewater projects you could exceed the 4 percent. What they did for purposes of just kind of drawing the line someplace, they said enough is enough, lets look at the 4 percent number as the bonding capacity of the joint use area and calculated it and that would be about 14 million dollars and that is where the 14 million dollars came from. Mr. Powers stated, that they felt politically if you were to pass a general obligation bond in both communities and went to the legislature and said look we have bonded ourselves to capacity or we have gotten the authorization to do so and we will do so when we need the funds for the project. They also felt that it would be a very strong position to go to the legislature with in order to get matching funds from the legislature.

Mr. Powers stated that on page 4 and 5 they had outlined the current tax rates situation for both the Village of Ruidoso and City of Ruidoso Downs, Village of Ruidoso is on page 4 and the City of Ruidoso Downs is on page 5 and if you notice the bottom line on both; the first column the residential taxes, that's the left hand column, the second and last number. The Village of Ruidoso has a tax rate of 22.8 mils and the City of Ruidoso Downs has a tax rate of 22.6 mils, very similar tax rates. The idea on the bonding is that you would have, first of all we had some legal research done as to whether you could combine the two tax bases into one and do one bond issue on both. The answer to that were no statutory or constitutional grounds to do that. So, the next best way to do it would be to have elections in both communities on the same question and it would have to carry in both communities to get the entire amount. So, that can be done, it can be calculated in such a way the burden is share on prorata base and the tax rate would be roughly the same in both communities for the bond.

Mr. Powers informed that his firm had done some very quick calculations as shown on page 6 of the handout and for a 14 million dollar, 20 year retainment; the assumption of collections of 95 percent, and the fact that properties are on the rolls of about 85 percent market valued. It would take about a 2.61 mil tax rate on a \$100,000 dollar house, it's a \$100,000 full market value house that would be about \$73 a year and it goes up from there. On a \$250,000 house about \$184 a year. On a monthly basis it would be \$6 a month on the \$100,000 house and about \$15 a month on the \$250,000 house.

Mr. Powers did state there are a lot of issues involved in how we spread the burden of borrowing the \$14 million over the two communities and further more how you spread it over the various values of properties. In a rate base scenario where you are charging rates for water and sewer services, there is typically a minimum monthly bill and some sort of a commodity charge on top of that, so technically you could have a very expensive house where people weren't in it very often and using the service very often and they might pay virtually the same fee per month as in a least expensive house in the area. With a general obligation bond you tend to spread the burden differently and you do so on the bases of value, so a very expensive house regardless of their use of system is going to pay a disproportionately higher amount to repay the debt over the life of the bond than somebody in less expensive small home. There maybe some value to that in your eyes, there maybe some virtue in there and does not know, those are things that need to be discussed.

Mr. Powers stated that the council also has the situation where you might have some commercial users that put a burden on the treatment plant and that may not be late in raising the value and you may need to adjust for that. There may be a need to do some adjustments in terms of usage and you can do that, in that, when the tax rates are set to repay the bonds, you can actually contribute money from other sources and thereby pay down the amount that you're actually going to need to collect from the property tax. Mr. Powers has seen that done in whole or in part.

Mr. Powers informed Council that in short, in order to issue general obligation bonds it is necessary to obtain the authorization from the voters of the community and that can be done at a regular, general or special election, it couldn't be done in conjunction with a school election. So, if you wanted to get voter approval you would have to have more than likely a special election since your next municipal election isn't until March 2008 and the general election isn't until November and the time to piggy back on that election has passed, so that's not an option, you are kind of basically looking at for some time mid December is one option. Mr. Powers informed Council that he knows that Carol has done some work on looking at the calendar and trying to figure out when to squeeze an election in or you would have to wait more than likely after the February school election date, which would probably be some time in March or April to do it. If you're considering using this as a tool in obtaining state funding through the legislature it's probably wise to consider a date prior to the legislation session, so that you can go to the legislature and say yes, we have approval to issue bonds from the local taxpayers and this is all we can generate locally and we need help. Mr. Powers would also strongly recommend that Council obtain the services of a bond attorney, a municipal bond attorney, these are guys who specialize in bond law to help write the resolution calling for the election and also to more importantly write the question, because you have to put the question before the voter. We want to make sure the question is broad enough to allow the city to do the project that you need to do, yet narrow enough to give the taxpayers some comfort that the monies are going to be spent on the project and also it has to pass the constitutional mustard and has to be understandable to the populace. There are people out there who are very good at that, that is all they do for a living and he can supply some names of those folks.

Mr. Powers stated; assuming the election is successful that municipal bond attorney would then take the legal steps necessary to help issue those bonds and make sure the bonds are issued according to law and that they have a valid binding opinion with the bonds factor of the election and the sale of bonds.

Councilor Garrett stated, that understand the general obligation bonding capacity on page 1 it shows \$14 million and on page 2 by 2007 its show \$27 million and asked how did we get in between \$27 million and \$14 million, are we planning on having that much bonding capacity? Mr. Powers said that was one potential way to get the \$35 million was a \$27 million bond issue.

Councilor Miller asked if both villages would put up for the \$14 million general obligation bond, even though we just use 10 percent of it, do we have to ask our residents to bond that much. Mr. Powers said that would be up to the City, they have looked at some of these allocations on the front end; 8 percent, 92 percent, 91 percent, 9 percent, 90 percent, 10 percent, but how you distribute this, is really up to the governing bodies and the Joint Use Board. But, it seems you would allocate something close to that 90-10: 92-8.

Dan Bryant informed Councilor Miller that the governing body is not asking Ruidoso Downs to bond \$14 million and Ruidoso to bond \$14 million, the combined total between the two communities would be the \$14 million the exact breakdown will depend on what formula we use to say Ruidoso Downs you're going to do x and Ruidoso you're going to do y, that's part of why we need gifted bond counsel to work with us on this project. Mr. Bryant informed that we're already working on some names that Mr. Powers has supplied in order to get somebody to look at how we do this that is fair and equitable and appropriate.

Mr. Bryant stated to Council that if they look at the agenda, there is an action item that ask the Council to make a motion tonight to call for a general obligation election on one of 2 days, December the 12th or December 21st. Mr. Bryant said that to make a long story short, the way the election code works, books are closed and the statutes prohibit other entities from conducting elections within a certain period of time before a statewide general election and within a certain period of time after a statewide general election. The election code has similar prohibitions for school elections and the school election is set in early February. So when you start looking at all those dates, we are in a situation where we either do this in December or it doesn't happen till late next year. The problem with that is the two communities have sent him and Mr. Underwood, the managers and Councilor Garrett as Mayor ProTem to Washington D. C. a couple of times and have been to Santa Fe more times than he can remember talking about funding. What you have to keep in mind is the project is estimated at about \$35 million dollars, that numbers is a couple years old and the cost of fuel has not gone down, which is the best way for him to tell Council that he feels is a conservative number. So even with \$14 million, we still miss the \$35 million mark by \$21 million dollars, we have to come up with that funding somewhere. We are looking at lots of other options and potentials for how to generate that revenue, some from federal grants, some from state grants and loans, some from New Mexico Environment Department grants and loans, some from EPA grants and loans, we are working with the Department of Interior because we are now serving portions of the Mescalero nations and we may qualify for some Department of Interior grants and funding.

Mr. Bryant stated: this is the heart and soul message tonight; we need to get the bond election done, ladies and gentlemen in the audience, it is absolutely crucial to the future of these communities that these bond issues pass, when they come before you in December. And we are whole heartily asking you the community to get behind the bond issues and support that.

Mr. Bryant informed that we are looking for action by this board tonight to approve holding the election on one of those two dates.

City Clerk Virden stated; that she had provided the members of the council with two draft election calendars; calling for the election to be held on December 12, 2006

for the October 10, council meeting which is 3 weeks away and the other for December 21st. And after speaking with Mr. Waters and Mr. Powers last week, we feel that it would behoove the City of Ruidoso Downs Councilors to hold the election on the December 12th instead of December 21st, because of the holidays.

Mr. Powers stated: he would like to clarify something as not to get anyone confused. There would be no cross collateral evasion between the two communities on their bonds, if for some reason the Village of Ruidoso had problems repaying theirs, the City of Ruidoso Downs would not have any responsibility for that and vice-versa. The City of Ruidoso Downs would only be responsible for the amount of bonds only that voters approved and the Village of Ruidoso would only be responsible for the amount of bonds their voters approved and they would continue to stay separate.

Mayor Miller stated next item under new business, consider calling for Special Election (G. O. Bond) to be held December 12, 2006 or December 21, 2006. City Clerk Virden informed Council that they could direct staff to start the process for that and also to get in touch with bonding attorneys to draft the election resolution as well as the question. Clerk Virden wanted the council to know that not only do the bond attorneys need to draft the question that would be understandable to the voters but also we are now under the executive order by Governor Richardson on paper ballots to be tallied by the Model 100 tabulating public counter.

Councilor Garrett moved to approve calling for a special election on G.O. Bonds for December 12, 2006 in that we do contact a bond attorney to help write the question. Seconded by Councilor Hood. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Councilor Garrett stated; that she would like the draft be reviewed before approving resolution calling for the election.

Mayor Miller stated next item on the agenda, consider approving Resolution No. 2006-11 Infrastructure Capital Improvement Plan (ICIP). Mayor Miller entertained a motion to approve.

Councilor Miller moved to approve Resolution No. 2006-11 Infrastructure Capital Improvement Plan (ICIP). Seconded by Councilor Garrett. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next on the agenda, consider approving personnel recommendation Public Works Department-Demotion.

Mayor Miller entertained a motion to approve personnel recommendation.

Councilor Garrett moved to approve personnel recommendation Public Works Department-Demotion. 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 on the agenda, consider approving personnel recommendation HMAW-Position Gift Shop Manager-Donna Franklin.

Mayor Miller entertained a motion to approve personnel recommendation.

Councilor Hood moved to approve the hiring of Donna Franklin for the position of Gift Shop Manager HMAW. 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 on the agenda, consider approving personnel recommendation-HMAW-Position-Gift Store Attendant-Christine Cory.

Mayor Miller entertained a motion to approve personnel recommendation for the position of gift store attendant-Christine Cory.

Councilor Garrett moved to approve the hiring of Christine Cory for the position of Gift Store Attendant. Seconded by Councilor Hood. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next on the agenda, consider approving personnel recommendation HMAW-Position- Curator of Collections- Gwen Peterson.

Mayor Miller entertained a motion to approve the hiring of Gwen Peterson.

Councilor Miller moved to approve the hiring of Gwen Peterson for the position of Curator of Collections. Seconded by Councilor Hood. Roll call votes: Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next on the agenda, consider approving budget adjustment Municipal Court Position Assistant Court Clerk-Honorable Judge Mansell.

Judge Mansell stated to Council that most are aware of the position he is in right now, by not having Brown in there working. He has a part-time clerk that is going \$10.00 an hour and is asking to make her a full time, full benefits part-time clerk. She's been assistant clerk and she will work the hours that are needed and right now with the situation as it is; it would probably be even if Mrs. Brown wants to come back, there's enough work for both of them. Because the monies that, the last couple of months in the court and does not see it going down any and you going the other

way. You are looking at a situation to where you have the daily work that comes in from the citations issued the night before and then you have the monies coming in, all those things must be entered and the monies must go in the day they receive it by state statute.

Judge Mansell stated: he is hoping Mrs. Brown will come back and does know they have enough work for two clerks. Now, she would stay, the only difference being is she's staying at \$10.00 an hour, she'd be an assistant full time, the only thing she would receive is health benefit and she would receive the Public Employees Retirement Act based on what the City has right now. And she, probably every day she turns down a situation to go to her other job. Judge Mansell said if he was to lose her today, and not have Mrs. Brown come back, then we're looking at probably anywhere from 3500 to 5000 thousand dollars in sending a total new employee to the court, to the Utah area where the courts software comes from, and that's Spanish Fork which is south of Salt Lake City. This year we only have a budget of about \$5000.00 that the State is going to give us, because it use to be more or less wide open- for instance, like over at Artesia they spent \$40,000.00 on their courts and does not think he has asked for anything much over \$7,500.00 if he remembers. But, that is the predicament he is in right now and that is what he wants to do, is to create this new job from a part time to a full time assistant clerk at \$10.00 an hour and if at the end of 90 days if Mrs. Brown does not return she would go to the number one clerk and she would receive Mrs. Browns' salary that she's receiving and just.

Judge Mansell stated to Council that he didn't know that he could pass out things that are as he was instructed, but as for instance, her and Sgt. Terlecky in July of 05, they took in 6918, this year they took in 7740 and then in August of 05-06 the courts took in 6122 and this year with the help of Sgt. Terlecky, they took in 11,224.00 dollars and his position as a Judge is never suppose to be money. But, that is the statistic and he can tell you that they have worked on this past weekend and brought it up. They have from anywhere pie charts to all kinds of graphs a bunch of things like that, that he will make available to Council if they want to know what the courts is doing.

Councilor Miller stated: that it is her understanding the she is working full time now. Judge Mansell said she is working full time now, but she doesn't have any benefits and also knows that she has had two interviews and has talked to Alice. Ruidoso needs a court clerk right now, they are advertising, unless they've hired one today, and he has talked her out of going up there until he could meet with you'll.

Councilor Miller said she feels that it is only fair if she is working full time instead of part time to make her full time. It's only fair to the employee.

Councilor Garrett said the only problem she has with it is we're getting two full time jobs. Now if we were just getting one full time job and going to take that one back to part time, it probably wouldn't bother her. We're looking at not just that, we're

looking at actually for a salary for a full time, because if Peggy hadn't gotten sick, we would still be with the part timer instead of full time.

Councilor Garrett said that is her only thing. She guesses she would like to have more information. She would just like to know whether our case loads are that much higher, she knows the money is and knows we are doing backlogs and once that backlog is done, where are we going to be. She knows we have \$11,224 but once that the backlog is gone, where are we going to be.

Judge Mansell said he personally doesn't feel that the backlog and the time for a second clerk would ever be zero hours in a day, even the 6 hours a day, it would be a full 8 hour day, because you have 2 elements involved, you got vacation and sick time of one the clerk's, you've got vacation and sick time of the second clerk and the same way with Sgt. Terlecky. I mean, he was ill this morning, but, she was just in there by herself. There is no ands, ifs and buts about it, he means, we are up in everything, he means, he has charts of all kinds as far as citations are concerned, he is not talking about animal control, we still work with them and have those and also it is his understanding that Council has instructed Mr. or Officer Dunlap, Code Enforcement Dunlap to start issuing tickets. Judge Mansell said he has received 3 criminal complaints today that he signed off on and will issue a criminal summons to those 3 people and that's the reason why, that not only citations, but feels like not knowing the new chief on what his philosophy is, but can't see that they won't be because of the influx of people up and down Hwy 70 we have going on right now.

Councilor Garrett said that she is still trying to figure out how many more citations and didn't see a lot and has been trying to divide citations by number of days and sometimes, a lot of times there were 80 citations in a month and that is only 4 citations a day and Judge that is probably unfair because she does not know what they do. She was just looking at figures and that's not always a fair way to do it.

Judge Mansell said, that he could not see where it would not pay for itself, probably the fiscal year of 05 and 06 for the 19 consecutive years since he has been judge here, thinks that probably the first year that they broke into the black as far as the court is concerned.

Judge Mansell said part time clerk has done it on her own, she's done it over the telephone with the people in Spanish Fork, Utah and has worked very hard and very many hours and there's days she doesn't even take a lunch break, but she to his knowledge believes he hasn't signed a pay sheet when she turns an hour overtime. But she's a good person and needs to keep her desperately. Does not need to train a totally newcomer, if the worst-case scenario comes to pass.

Councilor Garrett said he would be creating another full time position, they have benefits for two full time positions, plus the bailiff, and so he will have 3 full time positions in courts.

Councilor Hood said that she is still an employee, accumulating annual leave and without the other staff members here in the city, they have donated sick leave to her and so she is still an active employee.

Judge Mansell said that she is under this law that the attorney and him have talked about on two separate occasions, the federal law.

Dan Bryant informed all that they really cannot have that discussion in public, but you do need to know where we are in those issues. There is an executive session on the agenda and informed the judge if he did not object to hanging around, they could include that in the discussion, bring him in and talk about those issues, so we don't improperly discuss private things in a public meeting.

Judge Mansell said at the same time, due to the fact that he is not to talk about her issue, he would listen to attorney's opinion in that executive session and if he would be allowed to talk to attorney as the legislative branch about the statistics he has to show what the court is doing, preferably what it has done today.

Mr. Bryant informed Judge Mansell that part is okay, public forum discussion, the only part that is not, is the private medical condition of this employee.

Councilor Holman stated that he feels a little bit more qualified than some people, as far as the municipal court because he was fortunate enough to be an alternate judge under Judge Harrold Mansell for a period of time. In his opinion, we really are lucky in Lincoln County to have 2 judges. Particularly for smaller communities, they are the best in the state, and thinks Ruidoso has one and Ruidoso Downs has the other. Councilor Holman feels that Judge Mansell is the best municipal judge in the state. Just as we've addressed keeping good talent taking care of the people in our other departments, same way with the Judicial. We certainly don't want to add to Judge Mansell frustration, stress, workload or whatever and is just making that as a general comment, that he does a tremendous job for the City of Ruidoso Downs and has done so for years, and years and years. And is sure Council is going to really consider and try to help him out the best the Council can.

Mr. Bryant informed Judge Mansell that the real issue is to find a way to get Virginia qualified for the benefit package, so she can start getting health insurance and the other benefits that are attendant to the job. Judge Mansell stated: that's true.

Mr. Bryant said there may be some other options under our personnel program that we can use, what he has to wrestle with is the court has its personnel program, doesn't really know what it says, we have ours, so it may be with some communication between you and him looking at his policy and our policy.

Judge Mansell said he had their policy, and thought Dan was his attorney too, when it comes to things like this. Mr. Bryant informed Judge Mansell that he has never been given a copy of their policy to review or look at.

Mr. Bryant said, let me ask this questions, which is kind of general of everybody, is this something they can include in the instructions to the city staff, that says look at the income and expenses, the impact, the budget, the revenues and bring a report to our next meeting and lets end this. Because if that were, it would give him more time to look at his policy compare it to the city's. Mr. Bryant informed Judge Mansell that his policy did not have to go through an ordinance process; you're the judge, so, if he needs to amend it to make this work, he can do that pretty handily with him, because he would not have to go through a public meeting to make that happen, so he maybe able to fix his in a way to allow him to do this.

Judge Mansell said that he could not say, but would like for the council to give him authority, that if both agree on the situation, go ahead and put her on full time.

Mr. Bryant said that what he is actually suggesting is that there may be a way to fix the problem without creating two full time positions. He is not saying that the judge shouldn't ask for two full time positions, but if the real issue is how do you get Mrs. Armstrong into a better program in the mean time, he may be able to accomplish that without having to go creating a full time position.

Councilor Garrett said she looks at this side the same way she looked at item A, and needs more information on the impact on what it is going to cost in order to do this. If the judge can come up with an agreement or some type of way to do this without creating that, then that doesn't even affect the budget at this time. But, if we are going to look at raises, then we have to do all at one time.

Councilor Hood said he would like to see more stats on what Judge and his staffs are doing.

Mr. Bryant said that he is looking for a motion that does two things; it says (1) we would look at creation of a new full time position in the court at the same time as we do this other tinkering at our meeting (2) the city attorney ought to get the Judge's personnel program, to see whether it has the kind of provisions in it that ours has that may solve this problem immediately without backup, and then it still allows you to go ahead and look at, do I need two full time clerks and a full time bailiff in the courts in week or two weeks when you have your meeting and discuss all the issues anyway. It allows him the opportunity to solve the issue very quickly if he can, and should be able to by giving the Judge to change some of the language in his personnel program to ducktail some of the ability that we have so that we can get the benefit package attached for what Virginia is doing now.

Mr. Bryant went on to say that the city has an employee who is on the payroll who is ill and who is not coming to work. This employee is entitled to benefits under state and federal law, sick time, and vacation time those kinds of things. We have a policy in our personnel program that allows employees to donate time to other employees. We have been using that time, and employees have been donating it so that employee is shown on the records as being on sick time. In addition to that, in order to preserve her job we have been asked about Family Medical Leave Act and we have put that in place. That time is running. The basic rule there is while someone is on family medical leave you can't take their job away from them and if they recover and report back in accordance with the rules they have to have a job. That is not pure double of the cost and this is why. Every sick hour that is carried on your books is an obligation of the municipality, your auditor keeps track of that every year and looks at it and makes sure those numbers are really at norm. If they get out of whack the auditor will write you up. So if employee A donates time to employee B you pay it here, but liability drops here, so you're not doubling your exposure. And then down the road you have to look at if you create two full time positions, if this one's a \$30,000 position and this one's a \$30,000 position and this one has a \$15,000 better package than this one does, you've just added \$45,000 to this whole cost of operating the city. Where is the money for that going to come from? Judge says parts of that are coming from increase revenues in the courts. Just instruct staff in your motion bring us all those numbers so that we can see the impact and if council tells him as their lawyer to get with the Judge and analyze this policy, fix it if necessary so that we can have an appropriately defined position in the court that will allow for, what we really got here is a temporary full time position, so we define in his personnel policy a temporary full time position, provide that the position receives benefits like they do under our other program and do we make that happen, and then we go from there.

Mr. Bryant said he just needs to get a look at his personnel rules and make sure the right language is there, we are the statutory creature in city government, we don't get to do what's right, we get to do what the law says.

Councilor Garrett moved to instruct staff to bring back information about this position along with item A. that we did earlier at the next meeting as to the feasibility of having two full time people and in the interim would include giving Mr. Bryant and Judge Mansell the right to look at those documents and see if there is some way we can work out the policy and go through the personnel policy to see if we can get them to match in the meantime. Seconded by Councilor Holman. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

PUBLIC INPUT

Judge Mansell said since we are looking at the pay situation, that the pay you're going to look at, to give everybody a raise. As it is right now, every hourly

employee that works for the City of Ruidoso Downs has not only taken a zero cut in their annual raise, but they are taking cuts as to live within the corporate limits of Ruidoso Downs, they are a cut more, cause their water and their sanitation has raised and he admires the way the general manager for the sanitation department in seeking monies from you to give their employees raises but thinks at the same time that was brought out because those of you that carry, and means that he would like to see these people get raises before the end of the year because both his people are hourly people and thinks the Chief's people are all hourly.

Warren Beaver said he lives on Parker Road and would like to compliment the Mayor and the Council they have made great strides. Mr. Beaver said it appears that most have opened their eyes and looked into the future, you've hired good people and you need to pay them better. When Ruidoso Downs had the flood, they came to his house and knocked on the door, he didn't hear anything, so he received a call on the phone to evacuate, because they were afraid the bridge would wash out. We got good people, and need to do whatever it takes to keep those good people.

Marlene Bell said she knows that this might not be the time, the situation coming up down the street, the topless bar, since she has been a bar and restaurant owner for 30 years, and her first bar was 3 doors down from a topless bar, it's trouble. It is absolutely trouble from the word go. And does not see how; even if it's strictly a men's club, it's not going to go, it's just trouble. We are actually growing and we don't need any more trouble. We have a nice little city now and just can't see it working.

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 and Real Property and Water Rights pursuant to Section 10-15-1 Subparagraph (H) 8.

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 and Real Property and Water Rights pursuant to Section 10-15-1 Subparagraph (H) 8. Seconded by Councilor Miller. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller closed the regular meeting at 7:27 p.m. and invited City Attorney Bryant, and City Clerk Virden to attend the Executive Session and called for a five-minute recess to clear the Council chambers.

Councilor Miller made a motion to go back into regular session. Seconded by Councilor Hood. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller called the regular meeting back to order at 8:31 pm and asked that a member of the Council to attest to the fact that the only item discussed in executive session was that of Threatening and or Pending Litigation.

Councilor Garrett certified that nothing was discussed besides Threatening and or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H) 7 and Real Property and Water Rights pursuant to Section 10-15-1 Subparagraph (H) 8 and no decisions were made.

Mayor Miller entertained a motion to consider possible action in regards to Threatening and or Pending Litigation pursuant to Section 10-15-1 Subparagraph (H) 7.

Councilor Miller moved to authorize John Waters to pay the JUAB sewer bill to Ruidoso. Seconded by Councilor Hood. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller entertained a motion to adjourn. Motion was made by Councilor Hood and seconded by Councilor Miller to adjourn at 8:32 p.m. Motion passed unanimously.

Bob A. Miller, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer