

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
JANUARY 8, 2007

The Council of the City of Ruidoso Downs met in regular session on January 8, 2007. Mayor Miller called the meeting to order at 5:30 p.m. and asked Joe Blaney to lead the Pledge of Allegiance. Mayor Miller asked City Manager, John P. Waters to take roll call. The following were present:

Councilor Hood (via phone conference)	Councilor Miller
Councilor Holman	Councilor Garrett

City Manager, John Waters informed Mayor Miller there was a quorum.

Also present:

John P. Waters, City Manager
Carol Virden, City Clerk/Treasurer
Dan Bryant, City Attorney
Jay Smith, Museum Director
Steve Dunigan, Planning & Personnel Services Director
Alfred Ortiz, DPS Chief
Mark Lewis, Interim Public Works Supervisor

APPROVAL OF AGENDA

Mayor Miller entertained a motion to approve the Agenda with the removal of Item 11 (D). Councilor Miller moved to approve the Agenda with the removal of Item 11 (D). Seconded by Councilor Garrett. 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 Hood 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 REGULAR MEETING OF DECEMBER 11, 2006

Motion was made by Councilor Hood and seconded by Councilor Miller to approve the Minutes of Regular Meeting of December 11, 2006. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

UNFINISHED BUSINESS

Mayor Miller stated next item on the Agenda was Consider Approving Wastewater Treatment Plant Operating Billing of 15% for months of September and October 2006.

Mayor Miller invited John Waters, City Manager to comment on this item. Mr. Waters reminded the mayor and council members that action on this item was tabled during the last council meeting of December 11, 2006 pending further information from the Village of Ruidoso. He stated that after the recent JUAB meeting, which was refreshingly progressive, it was clear the Village of Ruidoso would be providing that information. He stated it had been received and that it was above budget.

One of the larger items was an administration fee that had been a point of contention between the village and the city for approximately three years. There were administrative fees from October for approximately \$13,000.00 along with other administration fees. This paid for administration of the plant operation that included being the fiscal agent for payroll duties. Mr. Waters stated some of the duties were now being shared it was his hope that later this year or beginning of next year the city would not have to pay the fee because we are now pulling our weight. He expressed that this could be a topic for future discussion between the two councils as well as the JUAB as it exists now.

There were several other purchases relating to the Livingston & Associates contract. They were still doing quite a bit of the work trying to determine the levels of pollutants in the stream. Mr. Waters said they had been working vigorously trying to get all of the sampling stations on line due to the loss of many of those during the August floods. It was his understanding they were all back in place at our sites along the river and back in the sampling mode. He stated there would be some months lost during the flood period particularly downstream past east of Ruidoso Downs and into the Williams properties where the station is located. Other items include lab analysis, a fee associated with the Livingston work and maintenance including parts. Administration fees were budgeted at \$50,000.00 last year to pay for the management/fiscal agent and payroll aspects of the plant. Mr. Waters stated that with the approval of the council he would have Carol Virden, City Clerk/Treasurer submit payment for the outstanding invoices. Mr. Waters invited Mark Lewis, Interim Public Works Supervisor to comment on each photo provided of the condition of the manholes as requested by the council.

Mark Lewis stated the photos were taken from the plant moving westward down the interceptor line. The first picture was of the third manhole and was found in that position when he came upon it. Mr. Waters stated the white stuff around the lid was not flocking from a Christmas tree. Mr. Lewis stated it was out-filtration from the plant. Mr. Waters explained the term as a blow out or bypass. Mr. Lewis referred the councilors to picture one, two, and three of the third manhole. He then referred to picture four as the manhole directly behind Carl Draper's property and

was a matter of concern due to the "greenness" in the area. Mr. Lewis then referred to picture eleven and fourteen showing a root system growing from a ladder underneath a lateral line. He stated he was most concerned about that manhole because there were root systems growing in between the reams of the manhole itself. He pointed out in picture fifteen his concern that there was riff-raff on top of the manhole and that had to be uncovered prior to opening it.

Mr. Waters made note of the proximity of the manhole in picture eighteen to the river of approximately six to eight feet. In addition he stated Mr. Lewis indicated it looked as though the river had at some point hopped its course during the flooding and had moved closer to or covered the manhole. Mr. Waters stated this could have been the condition of movement that created the riff-raff that covered the manhole that is approximately twenty-four inches across.

The picture showed a fairly large log over the manhole indicating a fair amount of flooding due to high water levels to have moved that size log over the manhole. He reminded the mayor and council that during the August floods the water level jumped to four million gallons per day at the waste water treatment plant during the flooding. He stated these areas could be possible reasons that when the manholes were blown open there obviously did not have to be cracks in the line to have water get into the system.

John Waters and Dan Bryant discussed today how they had talked to the public about the amount of water that can be wasted with one steadily dripping water faucet. Mr. Waters asked the councilors to imagine how much water could be wasted with a twenty-four inch manhole open three quarters of the way or even a quarter of the way especially if it was located right in the middle of a drainage arroyo or close to the river.

Mr. Waters stated that a lot of the manholes show where the rings and the concrete come together were exposed and in some cases open allowing water to enter. In picture eleven and fourteen showing root systems coming in there were also calcium nodules alongside the roots indicating standing water and flow. Mr. Waters referenced the corrosion on the ladders in some of the manholes indicating it had spent a lot of time under water. He stated that the good thing was that Mark Lewis reported the picture of manhole eleven and fourteen were not very deep, approximately two to three feet deep. This meant it would not cost as much to get in and fix them and estimated less than \$10,000.00 apiece for repair and possibly as little as \$5,000.00 depending on how cheap the pumps could be acquired. The city would need two rather large sewage pumps to pump around the site. His concern as reported by Mark Lewis were the manholes with the lids off and the sewage that had dried around them indicating the overflow of water had surcharged with water having gone back into the system. This should also be a concern for citizens who live close to the plant and the substantial damage it could cause.

Mark Lewis explained there was some damage done to the lateral lines as referenced in picture eleven and fourteen. He stated the line comes from Suds n Duds. His understanding was the line was put in approximately two years ago and originated at Circle B Campground east on the highway and then crossed the highway to Suds n Duds.

Mr. Waters asked Mr. Lewis to explain the "disappearing employee" in picture number five. Mr. Lewis stated the employee was standing in a fore way off the highway caused by watershed and that the employee was actually standing on an exposed line. He stated a dig was scheduled for next week or as soon as approved to uncover the line and had a feeling the line may also be broken although not completely because there was still flow in the manholes. Mr. Waters stated the trench could have been caused by core compaction or a break in the line and that when originally constructed this line had experienced just such a problem but had been repaired by Mr. Kelly.

Mr. Waters stated there were other issues to be investigated along the interceptor line at the points where the water drops a flight. When it was installed it wasn't done straight downhill, in fact some of the manholes were as deep as fifteen feet. Mark Lewis referred to picture nine, one of the manholes that was approximately 15 feet deep and below river level. Mr. Waters stated these were the ones that concern him and if pictures were to be taken it would require someone being lowered down with a harness and camera along with a bright light. The upper elevations of number nine looked fine but the corrosion would be discovered below water level. Those manholes would be the ones that would cost \$30,000.00 to \$35,000.00 to repair. These would need to be examined during low flow times in order to look at the walls. He reiterated the problems arise during high flow times and this is only a first report. The problems with the manholes and interceptor lines would be looked into further during the night times. He thanked Mr. Lewis for his investigations and report.

Dan Bryant asked how much one of those manholes weighs. Mr. Lewis stated they were two feet in diameter piece of steel and that it takes more than one person to lift it off. His estimate was between 180 and 210 pounds. Mr. Bryant stated he had always been told they were a couple of hundred pounds and the reason he asked the question was to provide definition as to how much force needed to be applied by water underneath to dislodge it. Mr. Lewis referred to picture number three and picture number nineteen and twenty showing the manholes covers lifted up.

Mayor Miller entertained a motion to approve Wastewater Treatment Plant Operating Billing of 15% for months of September and October 2006.

Councilor Miller moved to approve Wastewater Treatment Plant Operating Billing of 15% for months of September and October 2006 with the provision that a monthly billing and expense report were provided. She suggested the billing be paid on a monthly basis after the report has been reviewed. Councilor Garrett asked that the

city also pursue the infiltration problem because the 15% figure was still skewed. Dan Bryant, City Attorney asked the mayor and council members for clarification as to whether they want this item on the agenda every month. It was agreed the report should appear along with the other monthly departmental reports prior to paying.

Councilor Garrett seconded the motion. Roll call votes: Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. As a point of order John Waters, City Manager stated a vote was on the floor during which time Councilor Hood was disconnected from the phone line. He stated the motion on the floor was to approve Wastewater Treatment Plant Operating Billing of 15% for months of September and October 2006 with the caveat that number one: it had to come back to the council on a monthly basis and that a monthly report would be received prior to paying the bill and number two: the infiltration studies and correction remediation of lines and manholes continue to occur.

Mr. Waters then asked Councilor Hood if he would like to vote on that motion. Councilor Hood replied with Aye. Motion carried.

OTHER BUSINESS

Mayor Miller stated next item on the agenda for discussion was Official Canvass Return General Obligation Bond Election December 12, 2006. Carol Virden, City Clerk/Treasurer stated she had provided the canvass of returns for the elections of December 12, 2006. There were a total of sixteen under the absentee ballots and fifty-four votes under the official paper ballots voting for the question for a total of seventy absentee ballots for: one absentee paper ballot and thirty-one official ballots against for a total of thirty two. There were one hundred two total voters out of one thousand one hundred sixty registered qualified elections in Ruidoso Downs not counting the two non-residents that did vote on that election. Mrs. Virden stated the bond election passed.

NEW BUSINESS

Mayor Miller stated next item on the agenda was Consider Easing Water Restriction Phase 2 to Voluntary Water Conservation Stage.

Mr. Waters stated he was excited to report that the city spring had decided to shoot back up again and asked the mayor and councilors to refer to the graph located after the agenda-briefing item. He stated there were two graphs and wanted them to look at the second graph which had the red line and dire blue line on it. He noted the dire blue line was coming closer to or exceeding the red line and represented supply and demand. The red line showed what the spring was producing and the blue line was the demand at that time of the month in average gallons per minute. He made note that until the month of September the readings were low and right at two hundred gallons per minute. The levels had increased to four hundred gallons per minute and had steadily increased to the second highest reading recorded at the spring. The jump occurred within a three-month period. Mr. Waters stated hydrologists were looking into why the jump was so quick and extreme. He noted

there were two other times the levels had exceeded where the blue line jumped above the red line causing a serious situation.

John Waters stated the need to continue working on getting the well hooked into the system and getting additional storage. Mr. Waters asked Mr. Lewis what the current rate was. Mr. Lewis replied as of this evening the rate was four hundred thirty six gallons per minute. Mr. Waters stated that was a record since its' been monitored beginning in 1999. His concern was where the water was going because it certainly was not being stored and that was unfortunate. Even with a million gallons storage additional storage is needed and that is why representatives and senator have been asked for funding for an additional million-gallon storage for firefighting reserve if nothing else. He referred to the yellow line on the graph indicating it took the city out of the water conservation ordinance essentially to stage one water conservation level. Mr. Waters stated with the high levels we no longer need the water conservation restrictions barring the voluntary restrictions. However, should the situation change and the levels drop he would come back to the council to reinstate it.

Mayor Miller entertained a motion to approve Consider Easing Water Restriction Phase 2 to Voluntary Water Conservation Stage.

Dan Bryant addressed the mayor and council that he had done some calculations and shared those with them. One hundred gallons per minutes equals six thousand gallons per hour is one hundred forty four thousand gallons per day is four million three hundred twenty thousand gallons per month and is fifty one million eight hundred forty thousand gallons per year. Just to give an order of magnitude what now has increased in the spring flow it also reflects the magnitude of decrease. Because it was an eye-opener for him he felt it would also be for the mayor and council.

Councilor Holman suggested at some point in the future there be a structure for voluntary restriction, especially for the elderly residential users who tend their gardens before imposing the same fees for those who exceed water usage. Those who exceed the normal levels should be charged at a very high rate. Councilor Miller stated the users going over are usually the commercial.

John Waters stated there was currently out for bid a program through the Governor's Water Innovation Fund. It costs approximately \$200,000.00 and puts a radio read on each meter throughout the town and stops the employee from manually opening each meter to read. What used to take all the utility employees two or three days to read meters would then take one or two employees a half-day to read the meters. The program includes the capability to track each meter's hourly and minute usage. It would be able to report the time of day people are watering and monitor if they are violating water restriction guidelines. It would be useful in tracking water leaks as well. The program includes giving each water user an electronic refrigerator magnet to monitor the owner's usage on a daily basis. The

program is unique to New Mexico at this time. Mr. Waters stated there were four bids received and the bid award would be made on January 19, 2006. Councilor Garrett stated the deadline is January 16, 2006. Councilor Holman agreed this would be of great help in monitoring water usage.

Mr. Waters stated that conservation measures were calculated on average use. Usage was measured by watering the grass versus indoor use.

Councilor Garrett made a motion to Consider Easing Water Restriction Phase 2 to Voluntary Water Conservation Stage. Motion seconded by Councilor Miller to approve. 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 was Consider Granting a Special Burn Permit-Ruidoso Downs Race Track & Casino (RDRTC) for late January or early February 2007.

Chief Ortiz stated his department had no problem in granting the special permit and was intended to destroy the detrimental salt cedar foliage that had been removed during the torrential rains and flooding that occurred last year. The recommended method of eradication of salt cedar is to totally burn it during the dormant stage. The controlled burn would be conducted during favorable weather conditions under the supervision of Ruidoso Downs Fire Personnel. It would take approximately six hours to complete and require signage posted throughout. The materials to be burned and destroyed were currently being stored in the burmes of the Ruidoso Downs racetrack property. Chief Ortiz stated he saw no problem in granting the permit if done under appropriate conditions.

Mayor Miller entertained a motion to Consider Granting a Special Burn Permit-Ruidoso Downs Race Track & Casino (RDRTC) for late January or early February 2007.

Councilor Miller asked if this material had been cleaned out of the river. Chief Ortiz stated it was and had been stored in the burmes. Councilor Garrett requested that the piles be inspected and that no other material except salt cedar would be burned.

Councilor Garrett made a motion to Grant a Special Burn Permit-Ruidoso Downs Race Track & Casino (RDRTC) for late January or early February 2007 with the provision it was inspected and that only salt cedar would be burned. Motion seconded by Councilor Miller to approve. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated that next item on the agenda was Update on Codification of City of Ruidoso Downs Ordinances.

Mr. John Waters stated he was asked by one of the councilors to add this item to the agenda, as the subject had not been addressed since last October. There were items being worked on by himself, Dan Bryant, and Carol Virden since the last update. He had been working on the Wastewater and new Sewer Ordinances. He stated those were complete and would need to be brought before the council in the form of an ordinance. Councilor Garrett stated she had asked for the update because it seemed to be carried forward from year to year without anything happening. Mr. Dan Bryant expressed the process is more complex than seemed and involved using the correct language in all cases and had discovered a lack of cohesion in the code. He stated after being advised today that Mr. Waters, Mrs. Virden, and he had completed their portions and the code should be ready to deliver to American Legal. Mrs. Virden stated the P & Z Articles had been sent to American Legal as well as ordinances the administration had amended or enacted. This was current to the point where it stopped several months ago when they spoke with Mr. Kelly Dimas. He instructed them at that point to stop sending ordinances until this was straightened out.

Mayor Miller stated that next item on the agenda was an Update on South Hale Ditch.

Councilor Garrett stated she had attended a meeting of the South Hale ditch on behalf of the mayor. During that meeting it caught her attention they were approving bylaws. She questioned whether they had contacted the city and if Mr. Bryant, City Attorney had been given the opportunity to review the bylaws. Neither had been done. Councilor Garrett stated the ditch ran through the property located on city property where the well is located and therefore the city should be involved. The city should have been given at least a 30-day notice. She stated as they voted she filed a complaint of notice that the city had not been given a thirty-day notice. She wanted the council to know she had voted no on the issue and until the opportunity was given to review the bylaws she felt the city was not being treated fairly.

Mr. Waters stated since then he had not received anything from them for review. Councilor Miller and Councilor Garrett asked that Mr. Waters request a copy of the bylaws from Mr. McCutcheon.

Mayor Miller stated that next item on the agenda was Discussion and Consider Approving Creation of a Museum Internship Program.

Jay Smith, Museum Director, stated he had taken a number of internships in order to gain knowledge for his position over the past thirteen years. He proposed three internships primarily through ENMU-Ruidoso to provide an educational opportunity for students in the spring, summer, and fall. The cost to the city would be a total of \$5,000.00. It gives the opportunity to provide training to local students. It also provides to the city the opportunity to have students work on exhibitions and fund raising programs. He stated this was not set up in the 2007 Budget but

suggests the vacancies in former positions that were now filled would more than adequately pay for the potential of putting together an internship as soon as this semester. He stated this could be very difficult but certainly could go back into the budgeting process for fiscal 2008 to make it an ongoing permanent program. He suggested as part of the fund raising duties and responsibilities he would be looking to add to the endowment and in which case would draw from the endowment to pay for the program. He stated there were probably donors who would assist with this program. Mr. Smith stated it took ENMU-Ruidoso longer to establish a program wherein the student received credit. He asked Dr. Cynthia Orosco to attend the council meeting but she was unable to attend but the next step in the process would be to have her draw up the paperwork to have the internship be a four-hour credit course.

Councilor Holman asked if the interns would be strictly screened regarding their responsibility and seriousness to the program. Mr. Smith stated he would stress that if the right candidate had not applied there would be no internship during that particular semester. With ENMU-Ruidoso offering a four-hour credit it would create a check and balance to provide a good candidate.

Mayor Miller entertained a motion to Approve Creation of a Museum Internship Program.

Councilor Miller made a motion to Approve Creation of a Museum Internship Program. Motion seconded by Councilor Garrett to approve. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

PUBLIC INPUT

Mayor Miller stated next item on the agenda was Public Input. None.

EXECUTIVE SESSION

Mayor Miller stated next item on the agenda was Discussion of all threatening and/or pending Litigation pursuant to Open Meetings Act; Section 10-15-1 Subparagraph (H) 7 JUAB Administrative Proceedings; Kinnick vs. City of Ruidoso Downs.

Mayor Miller entertained a motion to go into executive session.

Councilor Garrett made a motion to go into executive session to Consider possible action in regards to Threatening and/or pending Litigation pursuant to Open Meetings Act; Section 10-15-1 Subparagraph (H) 7. JUAB administrative Proceedings; Kinnick vs. City of Ruidoso Downs. 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 6:32 p.m. Mayor Miller invited John Waters, City Manager, Carol Virden, City Clerk/Treasurer, Steve Dunigan, Planning & Personnel Services Director and Dan Bryant, City Attorney into the council chambers after a five-minute recess.

Mayor Miller entertained a motion to go back into open session.

Councilor Garrett made a motion to go back into open session at 7:37 p.m. Seconded by Councilor Holman. Roll Call Votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Councilor Garrett attested to the fact that the only item discussed in executive session was pending and threatening litigation pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H) 7. JUAB Administrative Proceedings; Kinnick vs. City of Ruidoso Downs and that no action was taken.

Mayor Miller entertained a motion to act on Kinnick vs. City of Ruidoso Downs.

Councilor Holman made a motion to authorize council to settle the Jason Kinnick case consistent with requirements of the correspondence received between the parties. Seconded by Councilor Hood. Roll Call Votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

ADJOURNMENT

Mayor Miller entertained a motion to adjourn. Councilor Miller moved to adjourn at 7:38 p.m. Seconded by Councilor Hood. Motion passed unanimously.

Bob A. Miller, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer