

MINUTES OF THE CITY COUNCIL  
OF THE CITY OF RUIDOSO DOWNS  
CITY COUNCIL CHAMBERS  
SEPTEMBER 8, 2008

The Council of the City of Ruidoso Downs met in regular session on September 8, 2008. Mayor Armstrong called the meeting to order at 5:32 p.m. and asked Jay Smith, Museum Director to lead the Pledge of Allegiance. Mayor Armstrong asked Carol Virden, City Clerk/Treasurer to take roll call. The following were present:

Councilor Hood  
Councilor Holman

Councilor Williams  
Councilor Olivo

Carol Virden, City Clerk/Treasurer informed Mayor Armstrong there was a quorum.

Also present:

Carol Virden, City Clerk/Treasurer  
Steve Dunigan, Planning & Zoning Director  
Jay Smith, Museum Director  
Alfred Ortiz, DPS Director  
Terri Mosley, Finance Director  
W.T. Martin Jr., City Attorney  
Randy Reynolds, Payroll/Personnel

APPROVAL OF AGENDA

Mayor Armstrong stated next item on the agenda was approval of the agenda.

Councilor Williams moved to approve agenda with the removal of Item D under New Business. Seconded by Councilor Hood.

Councilor Williams asked why this was on the agenda? Mayor Armstrong said to get it done one way or another. Councilor Williams said as of the August 11, 2008 meeting the city council approved this agreement with the NMDOT. Mayor Armstrong said yes it was the memorandum that was approved on August 11, 2008. Mayor Armstrong said this was to reconsider it in case someone has another opinion of it. He said it would be on the signed agreement. Councilor Williams said it was a signed agreement with NMDOT and said it was a viable agreement. He asked what the reason was for going back into discussion and reconsidering it? Mayor Armstrong said he would like to speak on it himself. Councilor Williams said he had the agenda from August 11, 2008 plus he had Unfinished Business where the memorandum was moved to approved and seconded and we had discussion on it. He said when it came down to a vote it was a majority vote to carry the motion with the agreement. The agreement has been signed with NMDOT and asked why we needed to revisit it because the council approved the motion; the agreement has been

signed with NMDOT so why do we have to reconsider it? Mayor Armstrong said that's why we had the workshop last week because there were some questions that maybe didn't get answered. Councilor Williams said that workshop was involving the Lincoln County Transit System and this is a totally separate agreement that was passed by the council by a majority and as far as he was concerned this did not need to be revisited or reconsidered because the council has made that decision. Mayor Armstrong asked W.T. Martin Jr., City Attorney to speak about what can or cannot be done on this agreement.

W.T. Martin Jr., City Attorney said obviously there was a resolution passed on August 11, 2008, which was the contract of Memorandum of Agreement between the NMDOT and the City of Ruidoso Downs. The agreement was signed by the City of Ruidoso Downs on August 11, 2008 and signed by the NMDOT on August 20, 2008. He said the contract as of today is in effect. The thrust of the conversation about reconsideration would be if there is a change of mind as to whether we want to stay in this contract and where are we with that decision. The term of this agreement is one year and runs through September 9, 2009. When you look at the provision for termination of the agreement, nowhere in this agreement is there a provision that allows the parties to voluntarily withdraw from the agreement. He said termination is labeled "Termination for Cause" under Section 23. It puts the NMDOT in the position in that it has the option to terminate the agreement if the City fails to comply with provisions of the agreement. There is not a reciprocal provision that allows the City to say, "we withdraw." If there was a decision to now withdraw from this agreement the City would have to say "we've chosen to withdraw" and go to the NMDOT and see if the NMDOT would allow the contract to be rescinded. It couldn't be unilaterally rescinded by the City at this point. It would have to be a request to the NMDOT and they would have to agree to that. The only other way to get out of it would be to have the City purposefully breach the agreement. W.T. Martin Jr. said where we are with this is a reconsideration if that's the case and if the reconsideration is centered on not going ahead with this agreement then we are in the position of going to the NMDOT and asking them to let us withdraw from this agreement. He restated there is no provision for a unilateral withdrawal by the City. It would have to be a joint agreement between the parties if this agreement is terminated and if the City withdraws. The City has agreed to be the fiscal agent through September 9, 2009. He asked Mayor Armstrong if this answered the concerns. Mayor Armstrong said yes and he thought this thing needs to be reconsidered.

Councilor Holman said in the workshop and one of the council meetings that Mickie Compton assured him that the City could withdraw at anytime. W.T. Martin Jr., City Attorney said that is not in the contract and that may be the practical side of how this thing works but he could not find that provision in the contract. Councilor Holman said these kinds of statements bother him and W.T. Martin Jr. said he actually heard her make the same comment. Councilor Holman said at this point he is hearing conflicting comments. Councilor Olivo said he remembers her saying there could be thirty days to notify the State. W.T. Martin Jr. said if you look at Section 22 & 23, which is the "Term of Contract" and "Termination of Contract" that he hasn't seen anything that allows thirty days.

Councilor Williams said what we are saying is that we have agreed to this agreement with NMDOT to be the fiscal agent to allow for federal funding to Ruidoso Downs if the transit system

were approved. No we are saying that we don't want to do this. He said it is irresponsible for the City to carelessly and recklessly disregard a council vote that put us in the position with an agreement with a state agency to do what we are responsible to do now. If we had questions about it we shouldn't have voted it in but we did and it is signed by both parties. He said we must go with that in mind unless you can go to NMDOT and convince them that we want to back out of it and go from there. He told the mayor that is not how this is supposed to work. Obviously several council members have a different point of view but he said we went through this, asked questions, it is in the minutes, the vote came up and the vote was a majority vote and we must abide by that agreement. He said if we feel like we can't deal with this or are not able to then we can go to NMDOT and see what we can do about rescinding the motion to have an agreement with NMDOT.

W.T. Martin Jr., City Attorney said this contract is to be fiscal agent and sets up the basic program for obtaining the federal grant money for the operation. He said he has looked through this contract several times and if that 30-day withdrawal is in the contract he cannot find it.

Councilor Holman said what continues to bother him so much is that the NMDOT has a lot of control over this of which we are subject to and such things mentioned are liability, responsible for and so we have a State government entity that can penalize us and we have no recourse. He said he also remembers Mickie Compton assuring us that this would be highly unlikely but he is already hearing a conflict of opinion this evening and that we could file this anytime we were uncomfortable. This council was also guaranteed that we could pull out of this anytime that we were uncomfortable and never did hear that we don't have to pursue it and that is why we went ahead with it. W.T. Martin Jr., City Attorney said as a practical matter at this stage if the City decided it did not want to stay in this contract and at this point in time simply went to the NMDOT and said we have reconsidered this and don't want to stay he would be surprised to see NMDOT hold our feet to the fire because NMDOT would not want to deal with an entity that didn't want to perform under this. If there is a decision at this point we would go to the NMDOT and tell them we do not want to go ahead with this project and he was sure NMDOT wouldn't want to deal with us if we don't want to go ahead. The worst thing you could do is get a non-cooperative entity and cram it down their throat.

Councilor Williams said he did not see NMDOT cram this down our throat. We had this agreement, we all read it and asked questions of Mickie Compton about the financial responsibilities and all that. He said he was not sure how the NMDOT is with other agencies and contracts but in this instance he sees an opportunity for Ruidoso Downs to step up and become a viable community and respected community with a needed transit system. This agreement is the first step. Everybody is saying we're going to get hurt by it and we're going to get slammed by the contract. This contract is like any other with obligations to do certain things and the NMDOT would not deliberately put us in the position to harm us physically and monetarily. He asked why we wouldn't continue to pursue something that is beneficial to the community. We are the fiscal agent and responsible for the paperwork and money is allocated to the other entities and Mickie Compton as the program manager. He said this is a great opportunity and there would be no reason for the State to come down on us if we do what we're supposed to do. There would be no reason to discuss this and we could come back to it later on if we need to. He said we should go

forth and try it; we don't even want to try it. We are a responsible enough council with the needs of our citizens always on our mind and if it was something bad and that we couldn't handle then we wouldn't do it, we wouldn't put them in jeopardy.

Mayor Armstrong said he had concerns about us being the fiscal agent because of the money it could cost us and he wanted to hear from other people on this and it's not to take it off but to discuss it. He said his fear is that we have other projects going and we have other priorities and that he too has had lots of calls and lost sleep over this. His idea of transit is vague because we've never had one here and he wished we had other means to get this done. Mayor Armstrong said has heard that this contract is good for one year he agrees that as a council we need to stick to our vote. He said he has doubts that this will work for the City of Ruidoso Downs and that it would work for other places in the county. If we want to spend that money out there for other people then he said he didn't have a choice and he didn't vote on this before. He said he agrees as a council that we need to stick to our guns. Mayor Armstrong asked if they wanted to take this off the agenda?

Carol Virden, City Clerk/Treasurer said Councilor Williams is requesting to remove the item from the agenda.

Councilor Hood said by right if we were going to vote on it and reconsider it we should have brought it back during the following two weeks. The way the statutes of New Mexico reads is that if you want to reconsider something you bring it back in a couple of weeks and put it on the next agenda and we've already let that pass.

Councilor Williams asked that we just give it a try for a year. If we don't feel comfortable with it then we have the option to get out of it.

Mayor Armstrong said his fear with one year is what happens to our other projects? We've had a flood, we've had other issues going on, we're going to have to pay 7%, 25%, and we have other obligations like sewer and water for Agua Fria. He said he hoped we stay on track with these obligations.

Councilor Holman asked that now that we're in this discussion can't we go ahead and do this now without going into this motion and this type thing. What he is hearing from Councilor Williams he agrees with. This concept is excellent and said to look at what the Rail Runner has done for the Rio Grande Valley, but of course they have the population. He said if that didn't work they have the State behind them, Governor Richardson is behind it and we don't. He said he keeps coming back to what if it doesn't work? We are gambling with the citizens and taxpayers of Ruidoso Downs with their money. We are held responsible as fiscal and what is termed as operational manager. Since we've gone this far he said he would like to make a counter-proposal and suggest that we rescind our agreement as the operational manager and fiscal agent but agree that if one of the other entities wants to be the operational manager we would stay in as a partner and that would take the risk away from us. He said he has talked to some of them and they think it's a great idea for Ruidoso Downs to be the fiscal agent but when asking if they want to be it they don't

want to talk about it. He said that makes him suspicious that they don't think it's a good idea and the others aren't going to suffer like we are so let's let them take the lead.

Carol Virden, City Clerk/Treasurer said there is a motion from Councilor Williams to approve the agenda with the removal of Item D under New Business and a second by Councilor Hood.

Roll Call Votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Nay; Councilor Olivo, Nay.

Carol Virden, City Clerk/Treasurer informed Mayor Armstrong there was a tie vote.

Mayor Armstrong voted aye to take it off the agenda and therefore broke the tie.

#### APPROVAL OF CONSENT AGENDA

Mayor Armstrong stated next item on the agenda was approval of the Consent Agenda.

Mayor Armstrong entertained a motion to approve the Consent Agenda.

Councilor Olivo moved to approve the Consent Agenda with the removal of Item K. Councilor Williams asked Councilor Olivo if he could also remove Item I for discussion. Seconded by Councilor Williams.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

#### APPROVAL OF MINUTES OF REGULAR MEETING OF AUGUST 25, 2008.

Motion was made by Councilor Olivo and seconded by Councilor Williams to approve the Minutes of the Regular Meeting of August 25, 2008.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

#### APPROVAL OF ACCOUNTS PAYABLES

Motion was made by Councilor Olivo and seconded by Councilor Williams to approve Accounts Payables.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye, Councilor Olivo, Aye. Motion carried.

#### UNFINISHED BUSINESS

Mayor Armstrong stated next item on the agenda was Discussion and Consideration of Approving Resolution No. 2008-15 Lincoln County Transit Joint Resolution and Joint Powers Agreement.

W.T. Martin Jr. said this was the Joint Powers agreement with Lincoln County, the Village of Ruidoso, and the City of Ruidoso Downs that relates to the Lincoln County Transit. This document as drawn is incompatible with the Memorandum of Understanding that we've already bound ourselves to. Under the Memorandum Agreement are obligate to carry out certain functions. The Joint Powers Agreement replaces many if not most of these duties with the three entities. Clearly in a variety of places it is incompatible. He said NMDOT has looked at this agreement and would not approve this agreement either. He said if the mass transit was setup as it should be with the City of Ruidoso Downs there really is no need for the Joint Powers Agreement. In this instance he suggested this not be approved or even re-written.

Councilor Williams asked if this would eliminate the transit system? W.T. Martin Jr. said it would just do away with another entity, a Joint Powers board.

Councilor Holman said the fewer authorities we have to answer to the better.

Councilor Olivo moved to remove Discussion and Consideration of Approving Resolution No. 2008-15 Lincoln County Transit Joint Resolution and Joint Powers Agreement from the agenda indefinitely. Seconded by Councilor Hood.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye, Councilor Olivo, Aye. Motion carried.

OTHER BUSINESS (items are for discussion only-no action will be taken)

Mayor Armstrong stated next item on the agenda was Other Business and that items are for discussion only and no action will be taken.

Councilor Hood asked Steven Dunigan, Planning & Zoning Director for an update on Escondido Hills.

Steve Dunigan, Planning & Zoning Director said has had some brief modification and continuation of things that we've already asked for. For example they did put in a culvert to eliminate drainage down Parkway. It has been muddy and rainy since they agreed to do this but it was in on Friday as well as the reconstruction of the tension pond area. They dug out some of the silt that built up from all of the rain. We are waiting for weather that will allow them to produce more work. The next step for the City would be the testing of some of those utility, infrastructure lines and to cover up some of the trenches. He said they did have a meeting with the owners and Escondido Hills and did come to an understanding. We don't dictate to a developer but they did reach an understanding that communication be better. They did say that we do not expect to have any drainage problems. He said with the appearance of weeds they will be taken care of as soon as

prudently possible meaning when the green leaf turns to brown from the silt that they will be cut.

Councilor Williams asked for a progress report from the Public Works Director about the water line project on Highway 70. Cleatus Richards, Public Works Director said the contractor is doing the final tie-ins from Wal-Mart down to the tie-in of the six-inch line. That should be completed within a week's time and then they will start working on the ten-inch line on Joe Welch. He said hopefully a majority of that work will be done before the motorcycle rally and will probably have to shut down because they don't want trenches during the motorcycle rally. They are moving on schedule and are actually ahead of schedule he said.

Councilor Holman said since the City has decided to pursue the Lincoln County Transit he would like to see all of us get behind it and make sure it is going to work, we don't criticism or undermining.

Chief Ortiz, DPS Director said they have a new addition to the Fire Department. They received a 1,800-gallon water tender that was granted to us by Governor Richardson last year. We finally made delivery on this apparatus last weekend and they will be making a formal announcement to the news media to thank Governor Richardson for this grant. He said they hope it will provide the services to the community in the event we would have to put it to use. Mayor Armstrong asked if this apparatus was in service right now? Chief Ortiz said no because they are waiting for the final paperwork to come in and that currently it is being garaged until they have all of the registration documentation. Mayor Armstrong asked if people could come by and look at it and have someone explain how it works? Chief Ortiz said absolutely and would welcome the community and its citizens to come by during working hours to view the apparatus. He said it holds 1,800 gallons of water which is a substantial amount that can be utilized should we have a situation that requires that much water and we won't have to rely necessarily on our sister city to bring their apparatus to help us. We now have a unit that will be put to use for our community and if necessary for other communities.

#### NEW BUSINESS

Mayor Armstrong stated next item on the agenda was Consider Approving Changes to Personnel Policy Manual.

Randy Reynolds, Payroll/Personnel said the proposed changes are for the Police Department and Fire Department from 85.5 hours to a total of 80 hours for overtime to be paid. Mayor Armstrong said this would also help with some issues on hiring people and would make it easier for people to understand.

Mayor Armstrong entertained a motion to approve Changes to Personnel Policy Manual.

Councilor Williams moved to approve Changes to Personnel Policy Manual. Seconded by Councilor Hood.

Councilor Williams said they have City Manager identified in here and asked if that was going to be removed? Randy Reynolds said that was not a part of the proposed changes at this time. Chief Ortiz said the verbage on this was the employees were getting paid usually at the end of the month. This proposal would allow the employees to receive their overtime pay during that 80 hour period as opposed to waiting.

Councilor Holman said he is really for going through the proper procedures and channels and just wanted to be sure that our directors and supervisors feel good about this. Carol Virden, City Clerk/Treasurer said they asked for input and suggestions from each of the department heads on the Personnel Policy in order for them to revise. She said the reason the 80 hours came into play and the recommendation is up to 90 is because it is critical to the consistency of the rest of the employees as well. She said she believes we are the only ones in the county paying at the 85.5 or falling under the FLFA Section 201-K and this would make it easier for the officers themselves as well as payroll. Carol Virden, City Clerk/Treasurer said they do take recommendations from each of the directors and would be coming back to the council with the rest of the recommendations. Councilor Holman asked Randy Reynolds, Terri Mosley, and Carol Virden if they agree with this recommendation and they all replied yes.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye, Councilor Olivo, Aye. Motion carried.

Mayor Armstrong stated next item on the agenda was Consider Approving Budget Adjustment Fund 27 Street Improvement Replacement (Parker Bridge).

Terri Mosley, Finance Director said Fund 27 was budgeted a certain amount for Parker Bridge and was based off of last year's budget. The cost of construction has risen and they are asking for an additional \$80,000 to be budgeted for. She said currently our Street Fund, Fund 27, has a cash balance and if you add the additional \$80,000 to the expenditures the projected ending cash balance for the 2009 budget would be \$131,516 which would still leave us to the good for that budget.

Mayor Armstrong entertained a motion to approve Budget Adjustment Fund 27 Street Improvement Replacement (Parker Bridge).

Councilor Olivo moved to approve Budget Adjustment Fund 27 Street Improvement Replacement (Parker Bridge). Seconded by Councilor Williams.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye, Councilor Olivo, Aye. Motion carried.

Mayor Armstrong stated next item on the agenda was Consider Awarding Bid No. 09-001 Parker Road Bridge Construction Project.

Mayor Armstrong entertained a motion to award Bid No. 09-001 to Hasse Construction for Parker Road Bridge Construction Project.

Councilor Hood moved to award Bid No. 09-001 to Hasse Construction for Parker road Bridge Construction Project. Seconded by Councilor Holman.

Councilor Williams said he would just like to inquire on this company and asked what work they have done in the State or if there was anything locally done? Terri Mosley said our engineer has worked with them before and said they were a good company to work with. Councilor Williams said they estimate we have is before GRT right? Terri Mosley, Finance Director said yes. Councilor Hood asked how long after we award this bid would construction start? Cleatus Richards, Public Works Director said it is usually ten days after to get bonds, insurance, and a schedule worked out through a pre-construction conference with the contractor. He said it usually takes another week or so to mobilize and be on site to begin working so you are looking at about three weeks before you see work on site. Councilor Hood asked how long it would be before construction? Cleatus Richards, Public Works Director said it was a 120-day contract and said he hoped to get the concrete abutment done before the weather closes in and then setting and paving should be possible within the 120-day period. He said there may be some bank work that would have to be put off until next spring. Councilor Williams asked if under this contract would it take care of the removal of the old bridge and would that bridge become city property? Cleatus Richards, Public Works Director said under the terms of the contract that not included in the work to be done. He said the City is working to salvage that bridge and place it in another location so that is the City's responsibility.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye, Councilor Olivo, Aye. Motion carried.

Mayor Armstrong stated next item on the agenda was Discussion and consideration of Contract Employee for Lincoln County Transit Program.

W.T. Martin Jr. said assuming we are going ahead with this mass transit plan it is going to be necessary that we enter into a contract with an individual who has knowledge of how to set this mass transit up and knows how to put in place all the reporting required. He said there is a substantial amount of reporting. We will need someone who knows how to handle the grant money, how to obtain buses, setting up the schedules, training the

clerk/dispatcher that will need to be hired. He said that will be a critical key issue in making this work. W.T. Martin Jr. said he did not see in the packets any proposed contract form and that is because what is contemplated this evening would be authorization for us to go ahead and draft a contract with the proposed individual and make them an independent contractor. They would not be an employee of the City of Ruidoso Downs but would function in an independent contractor status providing the guidance, coordination, and setup of this program and essentially running the program for at least the initial year if not beyond that to ensure this is setup properly and that we don't have issues arise. He said fortunately we do have an individual that has done it before and has done it quite successfully. W.T. Martin Jr. said he wasn't sure if they were contemplating discussion of that particular individual or contemplating authorizing him to draw up a contract. The proposed individual would be Mickie Compton and she helped setup the one in Carlsbad and she put it together and ran it for several years. It has been an exceedingly successful program for about thirteen years now. What we are looking at he said was for authorization to put together the appropriate independent contractor with Mrs. Compton who has the skill level to get this off the ground.

Councilor Hood moved to approve Mickie Compton but then asked if he should go ahead and use her name? Carol Virden, City Clerk/Treasurer said the council would probably like to see a draft of the employee contract before making a decision. W.T. Martin Jr. said they did not need to approve a contract before it is written but rather this would be an authorization to draft a contract.

Councilor Hood moved to authorize attorney to draft an employee contract for Lincoln County Transit program. Seconded by Councilor Holman.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye, Councilor Olivo, Aye. Motion carried.

Mayor Armstrong stated next item on the agenda was Discussion and Consideration of Name Change of Lincoln County Transit.

Carol Virden, City Clerk/Treasurer said this was also a discussion at the workshop of September 3, 2008. Councilor Williams said he realizes that we have partners in this but yet we are the top dog and that should be identified. He said it is not to take away from the other communities or the county itself or to make them feel not a part of this but we are going to be responsible for a lot. The City should be recognized by it and if we can do it by a name or a title then we should do it. Councilor Olivo and Councilor Holman said it was a good idea and it was valid. Councilor Williams he didn't know how the other communities would feel if we called it "Ruidoso Downs Transit." Councilor Olivo said the others don't want that name. Councilor Holman asked Councilor Williams if he had a title or name in mind that would not offend the other entities? Councilor Williams said

“Lincoln Communities Transit System.” He said he hoped we could discuss it and come up with something now that we are in that position to identify who we are. Councilor Holman said we should think about it until the next meeting.

Councilor Hood moved to postpone the consideration of name change of Lincoln County Transit until the next meeting. Seconded by Councilor Williams.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye, Councilor Olivo, Aye. Motion carried.

Mayor Armstrong stated next item on the agenda was Review of Infrastructure Capital Improvement Plan (ICIP) 2009-2014.

Carol Virden, City Clerk/Treasurer said the website for creating the ICIP has always been a problem and she apologized for getting the information to the council late. She has said in the past that it would behoove to continue with the Wastewater Treatment Plant Upgrade because we will be going into Phase III, the Emergency Water System Improvement Phase II, the Emergency Water System Improvement Phase for water rights A2, Drainage System Improvement Phase II for the storm surface water, and the new DiPalo Hill Fire Station. Those are the five top-ranking priorities. She said this is where we need the council’s advice and direction of how they would like the ICIP top priorities ranked.

Councilor Williams asked on the All American Park sidewalk in Parking Phase II if we still had funding left over from the original funding for lights? Carol Virden, City Clerk/Treasurer said she reported to the Beautification Committee that they have \$5,600+ dollars for park improvements for All American Park. The original grant was specifically for lighting at All American Park only and it was reported to us that all of the lighting that can be done has been done so this is what we have left over. She said we had to jump through hoops to get the remaining funds reauthorized for park improvement.

Councilor Williams asked on the Emergency Water System Improvement Phase II C2 and A2 what those consist of? Carol Virden, City Clerk/Treasurer said the Emergency Water system Improvement Phase II A2 is for purchase of water rights and that has been a significant project for the City of Ruidoso Downs. She said C2 is for water supplies.

Councilor Williams asked Chief Ortiz about item #5 and asked he wants this thing at? Chief Ortiz said this is a project that was started before he got here a couple of years ago. He said the City of Ruidoso Downs received a grant from the State of New Mexico to provide for a sub-station. The sub-station was picked to be up on DiPalo Drive and are still looking at that same location. He said they have talked to the fire marshal and it is acceptable but they do not have anything in writing so they will have to meet with the

State Fire Marshal's office for a variance to have that site available for us. The City of Ruidoso Downs has property up there and they would like to build that sub-station there. Chief Ortiz said the grant award will be up in 2010. Carol Virden, City Clerk/Treasurer said the City of Ruidoso Downs received \$40,000 for the design and construction of the fire station on Dipalo Hill but it needs to be approved by the State Fire Marshal before it can start. If that is granted we can use the \$40,000 to hire an architect to start the design and that would be Phase I. Councilor Williams asked Chief Ortiz if that would be just a single vehicle and if it would be for the Wood Street area? Chief Ortiz said they were looking at a two-bay structure and would depend on the cost. The service would be provided to that area and also to the future growth of the area and the commercial properties along Highway 70. Councilor Williams asked if it would be a class-A fire truck up there? Chief Ortiz said yes. Councilor Williams asked what the other vehicle would be if it were a two-bay? A support vehicle? Chief Ortiz said it would probably be a work vehicle, a rescue unit.

Carol Virden, City Clerk/Treasurer said the approval of the ICIP will be coming up at the September 22<sup>nd</sup> council meeting and after that it does not prohibit the council from changing the ICIP at any given time. These top five rankings will be used to request money from our legislator session in 2009. Councilor Hood asked on the park if there was any deadline? Carol Virden said the money will be spent this year and that was \$56,000+.

Councilor Holman said he agreed with Councilor Williams in that our streets are in terrible shape and that needs to be moved up on the list.

Mayor Armstrong stated next item on the agenda was Consider Approving Personnel Recommendation-DPS-Position CDO-Tracey Lynn McColley.

Chief Ortiz said they are pleased to announce that they have a certified dispatcher who comes to us from Otero County Sheriff's Office in Alamogordo. He said Tracey was unable to be with us tonight as it was her day off and she is in the transition of moving. She has been on board and would like to introduce here at a future council meeting. Councilor Hood asked when she would get started? Chief Ortiz said she's been on board about a week and a half.

Mayor Armstrong entertained a motion to approve the personnel recommendation-DPS-Position CDO-Tracey Lynn McColley.

Councilor Hood moved to approve the personnel recommendation-DPS-Position CDO-Tracey Lynn McColley. Seconded by Councilor Olivo.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye, Councilor Olivo, Aye. Motion carried.

Mayor Armstrong stated next item on the agenda was Consider Approving Special dispenser Permit Application Ruidoso Downs Racetrack-Event-Golden Aspen Motorcycle Rally-September 18 through September 20, 2008.

Councilor Williams moved to approve Special dispenser Permit Application Ruidoso Downs Racetrack -Event-Golden Aspen Motorcycle Rally-September 18 through September 20, 2008. Seconded by Councilor Hood.

Councilor Williams asked if the security person, Roy George was here? He said he wanted to ask how the security aspect was going to be handled. He asked Chief Ortiz was the part was for our officers during this event? Chief Ortiz said our responsibility was to provide the public safety throughout the event. He said last year there were some 30,000 participants and expect at least that many this year. Our responsibility is to maintain law and order enforce the law of the State of New Mexico. Councilor Williams said he sees other individuals in the security rally association being involved and asked if they would only be in the grounds area and if our responsibility would be from that point out? Chief Ortiz said the racetrack officials are responsible for the grounds and from time to time we would go onto the grounds if there are any problems to assist security. He said we will concentrate on the parking areas where there are 'no parking' places along Joe Welch and the fire zones in particular. Councilor Williams asked if the fire inspectors have over the area yet? Chief Ortiz said they would have fire protection and DPS available. Councilor Williams asked if there have been any issues with the on-call people? Chief Ortiz said in the two-year period he has been here there have been no problems.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye, Councilor Olivo, Aye. Motion carried.

Mayor Armstrong stated next item on the agenda was Consider Approving P & Z Recommendation-P & Z Case 2008-11 Conditional Use: Janeth Santiesteban's Request to Relocate Daycare to 230 East Circle, Lot 6, Blk 3, Heights Subdivision.

Steve Dunigan, Planning & Zoning Director said he would like to take a few minutes to describe the process by which we have a conditional use hearing. Whenever the City of Ruidoso Downs is approached by a citizen or an entity asking to do something with a piece of property the land use articles come into account. The first thing we do is to determine from their request what type of business and where it is located. Our city is broken up into different types of land use zones from R1 to C4 or even Industrial. Once we determine the type of business or use we look it up on the zoning map and from there determine what could be either a permitted use or a conditional use. In this case it is an R1 district. The request was for a daycare center, not to open a new one but to transfer an existing daycare center that has been in our city licensed and registered for the last several

years. They want to move it from 420 Park Avenue and they want to move to a house that they are going to purchase at 230 East Circle Drive. Under R1 under residential you have permitted and conditional use. Daycare falls under conditional use and once you have that you start an application process. We do ask for quite a bit of information on the application and there is a fee to pay. We ask for a Letter of Intent and in this case they have provided a very thoroughly written letter that covered a lot of information. We ask for an actual chart that tells for conditional use the amount of time submitted before the hearing, whether the property needs to be posted or legal publication. In this case there was none. Notification of two hundred feet from the property line, notification seven days before a hearing and type of mailing first class. He said this is the current chart we use and we are in the process of reviewing all of the articles at this time. To the best of our ability we follow this and we do ask them to produce a package that includes the names and addresses of property owners within that radius, a site plan, a development plan and any other relevant information. He said the package was made and delivered in order to meet all the deadlines so they will then be put on the next agenda for the Planning & Zoning Commission in which case they did and the hearing was scheduled for September 2, 2008. During the hearing the applicant does have the opportunity to state their case with or without the support of others. There is also an opportunity for those in opposition to speak. He said we do welcome participation and it is when the commission has the opportunity to speak directly to those being affected by it. Code Enforcement is involved in checking for fire extinguishers and safety issues.

Councilor Olivo said he received several calls from people objecting from the result of the hearing. They said they were given sufficient time. They were sent the letter on August 25<sup>th</sup> and the meeting was held on September 2<sup>nd</sup> and they weren't give sufficient time because of the holiday.

Steve Dunigan, Planning & Zoning Director said on this case there was a holiday on that weekend and perhaps it did not give some people enough time but there is a phone number given on these letters or they could stop by. He said again that they want the input from the public.

Councilor Holman said he was contacted too and they were very vocal and very upset. If it is a done deal he said he didn't know what this was doing before the council. The people feel like it is an R1 area they have been there a long time and now it is being changed. He said he has received complaints and concerns, some within the two hundred feet and some outside of that.

Paul van Gulick, Planning & Zoning chairman said he understands peoples concern about a commercial use in a residential area. What we're talking about is an in-home childcare and is a very different thing than a day care on Highway 70. Across the country it is considered beneficial to the community and is considered appropriate for a residential

district. There are certain presumptions in that it is understood that the person in charge is someone the parents know and trust and typically have their own children or grandchildren. In this type of use there is usually never more than six children at one time. In this case it is a permit for twelve children and that is a total throughout the day and is fundamentally no different than children taking piano lessons throughout the day. This is necessary for our community and we have had communication through the Economic Development Board and citizens. For an example he named Vipal Patel at Pine Springs Inn who said for him to keep employees they need affordable childcare. We are calling this a conditional use but in Albuquerque they call it a permitted use. Paul van Gulick said if we are a growing and vital community it requires having children and we need to take care of them and have the parents know that they are safe.

Adriana Castro said she is representing Janeth Santiesteban as a friend and as a parent. They were here on September 2<sup>nd</sup> and presented information to Planning & Zoning for the council. She said the couple was very excited about purchasing their new home in a beautiful neighborhood. They do have this chance for childcare and are licensed for twelve children. She said the Letter of Intent is for a licensed childcare and the Santiesteban's only have six full-time students and the ages range from 15 months to 2 years old. The other six children are after-schoolers and said she understands the concern of the neighbors and the traffic. She said Mrs. Santiesteban runs a very beautiful daycare. She works for the public school system and her husband works for the juvenile probation office and she said they could not do their jobs without them. She said they pay their fees and would like to see this community embrace this project because it is beneficial to the community.

Councilor Williams said with the ages that were provided it tells him that these kids would not be running all over the neighborhood. Adriana Castro said Mrs. Santiesteban has a schedule and said she doesn't understand why there is the mentality that with daycare there are children running all over the place because it is not like that. There is good supervision and Mrs. Santiesteban has a full-time employee.

Councilor Holman said there were five families and what would prevent them from increasing that number in the future? Adriana Castro said the State set the limit of 12 children and she invited anyone to contact the State. She said they provided a schedule to Planning & Zoning and are open Monday through Friday from 7:30 a.m. to 5:30 p.m. and are closed on national holidays.

Councilor Olivo said he had nothing more to add except that he did check it out and it is very nice.

Renee Haluschak said she has lived on East Circle Drive for thirty years. She is not against daycare but if you look at the map it is a small area and it is starting to come into her area.

She said in the winter it is quiet up there and they are going to be dropping the kids off and picking them up and there are going to be motors running. She said she doesn't sleep good at night and in the morning is when she does sleep good. There's going to be cars running, doors shutting, and traffic going by. She said these kids aren't going to stay two months old; they are going to grow up. She said she needs her peace and quiet and it is a residential area and that she is totally against it.

Marlene Bell said she is not against daycare but is concerned that if you let one in-home business into the area then you're going to have someone wanting a beauty shop and somebody else another kind of in-home business. You let one and it opens up the area for others.

Judy Miller said she lives on East Circle Drive and has been there for 19 years. She said she owns the property and is also speaking for Bob Miller who owns four lots up there. She said she read the letter and that it was short notice because it was mailed on the 25<sup>th</sup> and you can't count that day because she didn't get it that day. She said you can't count four days that week because there was Saturday, Sunday, and Monday a holiday. You can't count a weekend for any kind of notification. She said what she is talking about is traffic. She said East Circle is a horseshoe and there are stop signs as you are coming down the hill. She said you don't know how many times I've had to stop and I have the right-of-way because they do not stop coming out of the lower part of East Circle or side streets and it is a danger. She said last year was a nice winter but there were still two times she could not make it up the hill. She said she spoke to Adriana and said there are going to be times you won't be able to pick up your little girl. She said she's not against daycare but she is looking at the safety issue of a lot of traffic in the area. When she first moved in there were twenty houses on East Circle and twenty houses on West Circle and now there are ninety-two houses in the area. She said she does not welcome businesses or other traffic. She drove around East Circle last night and there were five boys playing basketball in the road. There used to be a daycare on West Circle run by Libby Richardson and she moved into town because she ended up having too many kids. It is dangerous and you can't stop on that hill, you will run down right onto Highway 70. She said if there is not noise then there's something wrong with the kids because she works with kids and the school system for many years. Judy Miller said there is only one-way in and out and that is something the City should also think about. She said the notification period should be changed to a ten-day notice and to take into consideration not to count weekends and/or holidays. She is also a massage therapist and was always told she could not have a business up there and asked what the difference was between caring for people and caring for kids?

Councilor Hood asked Steve Dunigan, Planning & Zoning Director in the future for businesses what would prevent a whole lot of applicants coming in? Steve Dunigan said they have guides in the zoning and land use articles. There is a specific area that talks

about home businesses, which ones are permitted and which ones aren't. He said obviously you can't list everything but we do have a little latitude and if it is permitted the whole process holds true. They are going to review it in the future.

Councilor Holman said he didn't understand why it was coming before the council. He understood that Planning & Zoning had passed this and it was passed. He asked what we were doing?

W. T. Martin Jr., City Attorney said the ordinance gives Planning & Zoning the authority to give determinations and decisions regarding conditional use.

Carol Virden, City Clerk Treasurer said it was to give courtesy to the council of what Planning & Zoning has done. Councilor Holman said if this were to be a vote he would postpone this so that each councilor, the mayor, and Carol Virden could visit with the attorney and see where we are legally if we vote yes or no. Carol Virden said the Planning & Zoning Articles allows the Planning & Zoning Commission to approve a recommendation or conditional use for that home daycare. You have given them that authority by that ordinance. The question here is not even to consider Item J because they have already taken action on that item. W.T. Martin Jr., City Attorney said the Planning & Zoning Commission has made that determination. Carol Virden, City Clerk/Treasurer said maybe it was not structured right on the agenda and should have been a courtesy informational item and apologized for that.

Councilor Holman said he wanted to be sure that we have done what is legally correct. Carol Virden, City Clerk/Treasurer said Planning & Zoning has taken all of the required steps of the land use articles. She said they have discussed the possibility of restructuring the notice that will be going out to the public to give clearer and concise information. Carol Virden said Ruidoso probably has a different structure for newspaper notification.

#### PUBLIC INPUT

Mayor Armstrong stated next item on the agenda was Public Input with a three-minute time limit.

Joyce Gustafson thanked Councilor Holman for standing up for the people. She said that the Mayor and Councilor Williams have not really pushed the legal agreement forward for the Lincoln County Transit when listening to Councilor Williams talk about the City of Ruidoso Downs being the fiscal agent for Lincoln County Transit.

Councilor Williams reminded Mayor Armstrong that personal defamation of a councilman should not allowed during Public Input. Mayor Armstrong asked Mrs. Gustafson to restrain herself.

Joyce Gustafson continued by saying that she hopes and prays that we can now find additional office space for these new employees, garage space for the transit vehicles, and all residents of Ruidoso Downs need to pray that none of these vehicles are involved in an accident where someone is injured or killed. She said as we all know it will be the City of Ruidoso Downs that will be sued and the city fleet insurance that will take an increase in premiums. She said as for the name change, the change that we are asking the council to do a flip-flop, since the City has already signed an agreement with the New Mexico Department of Transportation as the fiscal agent for Lincoln County Transit.

Bonnie Richardson said when this situation first came up about a month ago with this Lincoln County Transit she voiced her opposition to it. She said she would like to commend them for being as good as their word and they signed the contract and that's it, that's good. She also understood that Ruidoso Downs could get out of this agreement and so she said she was disappointed that we cannot however it's worth trying for a year. This is a poor community not as well-off as other communities and so it is worth trying if this isn't a transportation system that will help people with their children and children's activities and older people's activities getting to and from appointments and doctors and other shopping that they need to do. She said we need to get behind this effort and promote it and let the public know that it is here. Maybe people can save money if they really use what is being combined from the taxpayers for a transportation system for their community.

Susan Garrett thanked the mayor and council for trying the transit system. She said she and Chief Ortiz stood on the board for The Warehouse and on of the problems The Warehouse is going to have is getting the children to and from The Warehouse. She thought they could get them there from school but could not get them from there to home. There is going to be tutoring, computers available and she can't see us moving the kids any other way but transit. She said you can probably find people to subsidize that fee and a dollar is nothing to move a child home. The group at The Warehouse cannot by law move those children themselves so if a child is there in the afternoon their only choice is going to be to call child services or the police department. This would solve a lot of problems for them and our kids need that, our residents work two jobs and that's the only way those kids will get home after school.

#### EXECUTIVE SESSION

Mayor Armstrong stated next item on the agenda was Executive Session: Discussion of all threatening and/or pending litigation pursuant to Open Meetings Act; Section 10-15-1 Subparagraph (H) 7: Wastewater Treatment Plant Limited Personnel Matters Pursuant to Section 10-15-1 Subparagraph (H) 2 Consideration of Complaints and Charges.

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

Subparagraph (H) 7: Wastewater Treatment Plant Limited Personnel Matters Pursuant to Section 10-15-1 Subparagraph (H) 2 Consideration of Complaints and Charges.

Councilor Hood moved to go into Executive Session for the discussion of all threatening and/or pending litigation pursuant to Open Meetings Act; Section 10-15-1 Subparagraph (H) 7: Wastewater Treatment Plant Limited Personnel Matters Pursuant to Section 10-15-1 Subparagraph (H) 2 Consideration of Complaints and Charges. Seconded by Councilor Olivo.

Roll call votes: Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

Mayor Armstrong closed the regular meeting at 7:47 p.m. and invited W.T. Martin, Jr., City Attorney, Carol Virden, City Clerk/Treasurer, and Cleatus Richards, Public Works Director into the Council Chambers after a five-minute recess.

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

Councilor Hood moved to go back into regular session. Seconded by Councilor Williams.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

Mayor Armstrong called the regular session back to order at 8:30 p.m. and asked that a member of the City Council attest to the fact that the only items discussed in Executive Session were that of Threatening and/or Pending litigation pursuant to the Open Meetings Act Section 10-15-1 Subparagraph (H) 7 Wastewater Treatment Plant Limited Personnel Matters Pursuant to Section 10-15-1 Subparagraph (H) 2 Consideration of Complaints and Charges.

Councilor Hood attested to the fact that the only items discussed in executive sessions were that of discussion of threatened and/or pending litigation Section 10-15-1 Subparagraph (H) 7 Wastewater Treatment Plant Limited Personnel Matters Pursuant to Section 10-15-1 Subparagraph (H) 2 Consideration of Complaints and Charges and no action was taken.

ADJOURNMENT

Mayor Armstrong entertained a motion to adjourn.

Councilor Hood moved to adjourn at 8:32 p.m. Seconded by Councilor Williams. All were in favor and motion passed.

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Tom E. Armstrong, Mayor

ATTEST:

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Carol Virden, City Clerk/Treasurer