

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
CITY COUNCIL CHAMBERS
REGULAR MEETING
FEBRUARY 9, 2009

The Council of the City of Ruidoso Downs met in regular session on February 9, 2009. Mayor Armstrong called the meeting to order at 5:30 p.m. and asked Steve Dunigan 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
Cleatus Richards, Public Works Director
W.T. Martin Jr., City Attorney

APPROVAL OF AGENDA

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

Councilor Williams moved to approve the agenda. Seconded by Councilor Olivo.

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

APPROVAL OF CONSENT AGENDA

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

Councilor Olivo moved to approve consent agenda. Seconded by Councilor Holman.

Councilor Olivo asked to pull from Accounts Payables on page 4 General Fund-Street Department and on page 10 Joint Water & Sewage. He said there was an item where we bought 200 tons of base course and asked if that was to be used on streets?

Cleatus Richards, Public Works Director said some of it is used on the streets but some is for the Water Department and used to repair a lot of water line breaks. Councilor Olivo said also for the Water Department that is a lot of base course. Cleatus said they had two loads come in last week and were having two more coming in this week and were using every bit of it. They were going to use some of that on Highlands for the street restoration project there.

Councilor Holman said he noticed there were two different vendors and that one was a lot less expensive than the other and asked what the reason was and why we went ahead and bought the more expensive which was almost twice as much?

Cleatus Richards, Public Works Director said earlier they had been purchasing from Bonnell when the gas prices were higher and now that the gas prices have leveled off they were going to Mesa Verde. When they considered the cost of transporting it was cheaper now to go to Mesa Verde than Bonnell. He said when you consider the mileage on the trucks and the fuel they were burning it was at one point cheaper to buy from Bonnell and they do that comparison each time they go out for material.

Councilor Olivo said the other one was to replace a fence on the Spring Well and asked if that was due to a car accident?

Cleatus Richards, Public Works Director said yes, it was from one of the residents coming out of the complex who slid on the ice, went through the fence and tore out about 30 feet of it. He said that was an insurance claim the City was compensated for.

Councilor Olivo asked why we had to buy a tent?

Cleatus Richards, Public Works Director said that was going over the Spring house and they were in the process of taking the roof off and open up the floor of the spring and see a little more fully of what the exposure was. In order to protect the spring from dust and weather they had to put a tent over it. He said that would be there for four to six months before they have completed repairs on it. The well cannot be left exposed. Cleatus Richards said it was cheaper to buy it than rent it for that length of time.

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

APPROVAL OF MINUTES OF SPECIAL JOINT MEETING OF THE CITY OF RUIDOSO DOWNS AND VILLAGE OF RUIDOSO JANUARY 16, 2009 AND APPROVAL OF MINUTES OF REGULAR MEETING OF JANUARY 26, 2009.

Motion was made by Councilor Olivo and seconded by Councilor Holman to approve the Minutes of the Special Joint Meeting of the City of Ruidoso Downs and the Village of Ruidoso January 16, 2009 and approval of minutes of Regular Meeting of January 26, 2009.

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 Holman 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 to Consider Approving Memorandum of Understanding Between the Village of Ruidoso and the City of Ruidoso Downs as the Administrative Authority for the Ruidoso Downs Department of Public Safety for DWI enforcement Activities and Reimbursement of Costs.

W.T. Martin Jr., City Attorney said this is the MOU that was talked about at two different meetings. When originally submitted to the City the Council voted to amend a portion of Paragraph 8 to allow for reciprocal indemnification. That was not in the original document and originally only Ruidoso Downs would be indemnifying the Village of Ruidoso. They made it reciprocal and voted to make that change and submitted it to the Village of Ruidoso. It was brought back before the Council at the last meeting and the Village asked us to reconsider our position and we did not reconsider our position. The document is now in front of us with the language voted on. It does reflect what this Council has voted with the approved change in Paragraph 8.

Councilor Williams said there were a couple of what he thought were typos. On 8 in the second sentence, "elected officials, employees, and agent" and asked if it should say "agents?" W.T. Martin Jr. said it really should be plural in both and that ours is correct and theirs is incorrect. Councilor Williams said also on ours on line 5 it should be "elected officials" not just "its officials." W. T. Martin Jr. said he would plug in "elected" there and the plural typo.

Mayor Armstrong entertained a motion to approve Memorandum of Understanding Between the Village of Ruidoso and the City of Ruidoso Downs as the Administrative Authority for the Ruidoso Downs Department of Public Safety for DWI enforcement Activities and Reimbursement of Costs.

Councilor Williams moved to approve Memorandum of Understanding Between the Village of Ruidoso and the City of Ruidoso Downs as the Administrative Authority for the Ruidoso Downs Department of Public Safety for DWI enforcement Activities and Reimbursement of Costs with the typo changes identified. Seconded by Councilor Olivo

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 no action would be taken.

Jay Smith, Museum Director said he had a couple of things. He reported that they had a very important visitor to the museum on Friday by the name of Diane Collins. She is President of the Anne Stradling Equine Association and she is the person who donated much of the artifacts and materials to the museum in the early 1990's to get the museum going. Diane Collins was here on an official visit to talk to them about the loan program that they agreed to in the Memorandum of Agreement for operations that was agreed to by the Council in December 2007. The Stradling Foundation now has a room at the fairgrounds in Sedona, Arizona that they are going to display materials from Anne's collection and that they are going to borrow from us. Jay said that would be a good reciprocal relationship because they are also now sending us some information and materials we did not have before. He said that is a very important relationship dating back to the very beginning of the museum. Jay said she was very impressed with the facility and very impressed with what they've done with the Stradling Gallery.

Jay Smith, Museum Director said the second thing was that there was a very special guest in the audience who has made a tremendous contribution to Lincoln County. He and his wife produced a film about Fort Stanton, which made its national debut at the exhibit opening at the museum at the Fort Stanton Exhibit on January 9th. He asked Mr. Joe Arcure to say a few words.

Mr. Joe Arcure said he is a volunteer at Fort Stanton at the museum what they have done is take the last 1000-2000 years and brought it up to the present. He thanked Jay Smith for the presentation he did out at Fort Stanton and allowing the items to be shown. It was just taken this week to Santa Fe and shown to the legislators up there and rave reviews. He said they are trying to put the State of New Mexico on the map and Lincoln County. He gave the mayor and councilors a copy of the DVD and said it was on sale at the museum for \$10.00. Joe Arcure said this is a totally volunteer effort and all of the proceeds go to Fort Stanton. They are also available at Josie's Framery and the Lincoln State Monument, and will be available at many other locations.

Mayor Armstrong said he has seen this CD in Carrizozo and was amazed at what he saw.

Cleatus Richards, Public Works Director said he had two things to report on. The Parker Road Bridge was opened to traffic this morning and were now in the process of removing the old bridge. That is scheduled to be completed this week and then the bridge contractor Hasse will come back to do the remaining work on the west bank on the approaches to the bridge and hopefully will have the bridge ready to open by the end of the month.

Mayor Armstrong said we were going to have a grand opening once all the fine touches are done and would welcome the media to be a part of this.

Cleatus Richards, Public Works Director said another item is All American Park and the playground equipment is to be delivered he believed tomorrow and they would start installation. It would take approximately 3 to 4 days to complete that installation. He said they will have people on standby as they pour the concrete for the bases to make sure it is not used until the concrete sets up. He said hopefully by the end of the week that playground equipment should be ready to use.

Mayor Armstrong said last week the City of Ruidoso Downs had their chance to go to Santa Fe. He said they set up their advertisement for Ruidoso Downs, talked to all of our representatives that they could find. Carol Virden was very instrumental in directing them in the right direction in talking to the people they needed to talk to. They spent two days and each night but the capital was very enlightening and met a lot of people. They talked to them about our problems and he felt it was a good meeting. He said we seem to be at the top of everyone's list. He said they did everything they could although some of the news was very disturbing but it seemed that we fared well.

Councilor Williams said they met with two of the primary representatives in this area and that was Representatives Cook and Kintigh. It is very enlightening in that they put you in a room with five or six representatives and one secretary, not like say Senator Jennings with an office twice the size of this room and has one secretary and pages and representatives to help. They were very receptive to us and he said our main goal was the Wastewater Treatment Plant. He said he thinks they understand our dilemma and the situation we're in and the burden it is on us as well as the Village. He said he thinks their response is that they are going to work really hard to get money for us. They also had an opportunity to talk to Senator Udall and he was going to pass the word around too. The City should be very pleased by their efforts and said they worked very hard to find some of the congressman up there but they don't compare to what we have in the south. He thanked the mayor and Carol Virden for allowing him to be there with them for the sessions in the Senate and a couple in the House.

NEW BUSINESS

Mayor Armstrong stated next item on the agenda was Presentation and Consider Approving City of Ruidoso Downs Audit 2007-2008 – Dan Austin CPA.

Dan Austin CPA said he would like to thank all of the staff for completing this process. He said they had an Exit Conference on the audit on December 1st that was the due date of that audit and it was delivered to the State Auditor. He said he was surprised to be here tonight because he didn't think they would be having this discussion until April or May. He said they approved the audit about ten days ago and so they were happy to get this far along with the process. He said the audit is about a 70 to 80-page document and wanted to go over a few items and offered to answer any questions as they go through it or if they have questions later to call his office. In looking at the reports on page 6 & 7 it is his opinion on the Financial Statements included with this document. This is what is called an Unqualified Opinion and is the best opinion he can render on the Financial Statements as disclosed. It is based on all of the Financial Statements that are fairly presented and all material specs. He said pages 8, 9, 10, and 11 are what they call Matching Discussion & Analysis where they go over financial information and this is a document that is supposed to prepare for findings. He said as they go over the findings there is a finding where the City does not have staff that is qualified to prepare these Financial Statements. He said if there was a CPA on staff they would be preparing these documents and he would be auditing the document and there really isn't that situation in any small municipalities within the State of New Mexico. Dan Austin said he has therefore assisted in preparing this document and it has some comparative information between 2007 and 2008. On page 9 of the report they have current assets and called their attention to the far right hand column of the report and said it shows the past position increase from \$4,561,000.00 to \$6,483,000.00. He said the big number there is the bond issue that was issued for the Wastewater Treatment Plant and that was \$1.4 million and it was all sitting in the bank account at that time. He said there was a net increase in net assets during the year of \$1,464,000.00 and there was also one correction to prior Financial Statements. While going through the audit there were some accruals being made for Workman's Comp Insurance and was actually Medical Insurance and they found that those accruals were non-legitimate accruals so they made a prior period adjustment of \$84,678.00 and it decreased the liability and increased the equity. Dan Austin said it ended the year with net assets of \$18,917,000.00 and that included the General Fund and Wastewater and Utility type Funds. He said on page 12 the total assets for the year are \$22,032,000.00 and that was composed of \$5,609,000.00 Cash and Receivables of \$745,000.00 and \$124,000.00 in Inventory. He said it looks unusual to have a City with \$124,000.00 in Inventory but then you have the museum sitting over there with a large amount of stuff to sell. Other Current Assets are shown current as \$3,600.00. Fixed Assets and Net of Depreciation of \$15,549,000.00. Current Liabilities were \$1,345,000.00 and of that number \$1,050,000.00 were Deferred Revenues related to the sale of the museum when that occurred and they are recording that income over a period of time. There is still \$1,050,000.00 to be taken into

income over the next few years. Non-Current Liabilities are \$1,769,000.00 and that is a large increase due to \$1,400,000.00 in bonds. He said on page 13 there is a Statement of Activities and when you go in and have about twenty-five sets of books and you bring them into one set of Financial Statements you will see a total of Governmental Activity Expenses of \$4,248,000.00 with business type expenses of \$891,000.00 and non-operating expenses or revenues of \$735,000.00. He said under General Government expenses were \$1,172,000.00 and Public Safety was \$1,174,000.00 and Public Works was \$515,000.00 and Culture & Recreation was \$1,309,000.00 and various Interest on Long-Term Debt was \$38,000.00. Dan Austin said you could see what a process it was to promulgate all of those Financial Statement into these classifications. He said also generated this year was \$2,123,000.00. In Taxes/License/Permits were \$37,000.00. Fines & Forfeitures were \$61,000.00. Interest Income was \$106,000.00. Miscellaneous Revenues were \$48,000.00. A contribution were \$150,000.00 and is revenue from the Hubbard that was taken in and said they are adding in \$150,000.00 year end revenue at the end of each year. The total change in net assets was \$1,464,000.00 and again they did that restatement of \$84,000.00 resulting in the net assets of \$18,972,000.00. Dan Austin CPA said he thought the City was in very good financial condition, has very good current ratios, don't have too much debt, but the unknown out there is the Wastewater Treatment Plant and we don't know how much that is going to cost in the future.

Dan Austin CPA said on page 69 was the findings for this year. The prior year there were no findings. This year they had an auditor prepare the Financial Statements and in an ideal situation it would be the City preparing that document and the State Auditor requires that this audit finding be in there if there is this situation. Another finding relating to Lodgers' Tax audits. The statutes require that every year if you assess Lodgers' Tax to do Lodgers' Tax audits only through auditors. He said he does that for the County and said they sent an Engagement Letter to the State Auditor to get approved so they can start doing those audits during this current year.

Dan Austin CPA said they did find one problem with the Deposit Collateral Security this year. He said we changed the way we were pledging our deposits. In the past the Village has always had a large number of securities to pledge to those deposits and when Compass Bank came in they changed that process where they were buying a one-day repo for the balance of the account. What they didn't take into account was that we had other accounts and they were more than the FDIC Insurance required to be pledged and they weren't, they were basically uninsured, uncollateralized. He said during the audit process they met with Compass Bank and they agreed to issue a Letter of Credit. Carol Virden, City Clerk/Treasurer said we have the letter in hand. He said he sees this a lot in other institutions where the depository will issue a large Letter of Credit, which is in excess of what the deposits normally are, and they collateralize deposits that way which is in compliance with statute.

Dan Austin CPA said another problem they had was in looking through personnel files. He said they found the files to be in not very good order. There is new staff there and they and they are hoping to get all of that corrected and when they go through that process he was hoping it would be improved. He said they saw a bunch of missing items and when you get into your personnel situation you need to make sure that all your files are documented adequately so that there is no disputes and we didn't find that this time around.

Dan Austin CPA said that was all of the findings and this document has a lot of information. He said if there were any questions he could be reached at anytime and to not hesitate to call him. He said he hoped to have a good relationship with the Village and would offer his experience. Mayor Armstrong said "the City." Dan Austin said a lot of things have changed since Wal-Mart came to town.

Mayor Armstrong entertained a motion to approve City of Ruidoso Downs Audit 2007-2008.

Councilor Williams moved to approve City of Ruidoso Downs Audit 2007-2008. Seconded by Councilor Hood.

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

Mayor Armstrong thanked the staff for getting the audit done very promptly and correctly.

Mayor Armstrong stated next item on the agenda was Update on Progress With Negotiating Modifications to the Joint Use Board.

W.T. Martin Jr., City Attorney said we have started a process relating to the Joint Use Board and how it functions. He said we have obtained a series of issues and possible resolution of those issues by various council members and administration. Those were consolidated into a report that was transmitted to the Village of Ruidoso city councilors. This is a negotiation situation of council to council and in turn we did receive a list of issues from the Village of Ruidoso. In some instances proposed resolutions and in other instances points of discussion. In some areas he said we were not far apart however other areas there are clearly a difference of opinion. He said we were in the process of reviewing the issues and resolutions and the next process is to sit down and work on the issues. There is not a specific date set for these negotiations or issues. He said he thought we proposed Monday, February 23rd for that meeting for negotiations between the two councils but at this point we have not heard back as to whether this time will work or not.

W.T. Martin Jr. said he hopes we will come out of this process with a much-improved JUB and how it functions.

Councilor Holman said one of the things he's expressed before and thought was still going to be an issue is the number of representatives from each entity and was going to be the hardest thing to get passed. He said he didn't think he could agree with where they are going to go. We're going to have to stand real firm on that regardless of population and we will have to stick with what is going to protect us. The Village is of the mindset of the councilors that they have some very fine representation of the people that were elected in and said he thinks they will work with us. As expressed previously, without going to an authority they also seem to want the Joint Use Board. An Authority would hurt the City and also the Village and he said hopefully we can strengthen the Joint Use Board.

Mayor Armstrong stated next item on the agenda was to Consider Approving Personnel Recommendation-DPS-Position-Certified Police Officer.

Chief Ortiz said it was his privilege to recommend Mr. Martinez for the certified position for police officer. This is a vacant position and not a created position. He comes to us as a police officer in the State of New Mexico and is still employed with the City of Artesia. He was unable to attend tonight but would be at the next council meeting to introduce himself.

Mayor Armstrong entertained a motion to approve Personnel Recommendation-DPS Position-Certified Police Officer.

Councilor Hood moved to approve Personnel Recommendation-DPS-Position-Certified Police Officer. 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 to Consider Approving Personnel Recommendation-DPS Position-Cadet Police Officer.

Chief Ortiz said along with the recommendation to hire a police officer they sought the Cadet position and they have selected Christian Hurst. He said he is from our community and has no experience with law enforcement. This is the second cadet we have put through the program and was confident Mr. Hurst will be an asset to the department and the City. Chief Ortiz said he comes to us through the New Mexico Work Force Commission, which will fund a good portion of his salary for the first six months. He said this was not a newly created position. Christian Hurst introduced himself and said he

would very much appreciate their approval and that he was motivated and would be an asset to the City.

Councilor Hood moved to approve Personnel Recommendation-DPS Position-Cadet Police Officer. Seconded by Councilor Williams.

Councilor Holman said it is no secret to some of the councilors that he has had a philosophy since he was elected that sometimes locally there is some very fine personnel. The closer you stay the more you know about them and he does in fact know this person and thinks very highly of him and he would do a good job for us.

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

PUBLIC INPUT (All concerns to be addressed only to the Governing Body as a whole with a 3-minute time limit)

Warren Beaver said he did not know the bridge was open today and wanted to tell them they did a fantastic job.

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: Real Property and Water Rights Pursuant to Open Meetings Act Section 10-15-1 (H) 8.

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: Real Property and Water rights Pursuant to Open Meetings Act Section 10-15-1 (H) 8.

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: Real Property and Water rights Pursuant to Open Meetings Act Section 10-15-1 (H) 8. Seconded by Councilor Williams.

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

Mayor Armstrong closed the regular meeting at 6:22 p.m. and invited W.T. Martin Jr., City Attorney, Carol Virden, City Clerk/Treasurer, and Cleatus Richards, Public Works Director and called for a five minute recess.

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

Councilor Hood moved to go back into open 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 meeting back to order at 7:30 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 Discussion of threatened and/or Pending Litigation Section 10-15-1 Subparagraph (H) 7 Wastewater Treatment Plant: Water Rights Pursuant to Open Meetings Act Section 10-15-1 (H) 8 and no action was taken.

Councilor Williams attested to the fact that the only items discussed in Executive Session were that of Discussion of threatened and/or Pending Litigation Section 10-15-1 Subparagraph (H) 7 Wastewater Treatment Plant: Water Rights Pursuant to Open Meetings Act Section 10-15-1 (H) 8 and no action was taken.

ADJOURNMENT

There being no further business to attend to Mayor Armstrong entertained a motion to adjourn.

Councilor Hood moved to adjourn at 7:31 p.m. Seconded by Councilor Williams.

All were in favor and motion passed.

Tom E. Armstrong, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer