

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
CITY COUNCIL CHAMBERS
REGULAR MEETING
FEBRUARY 8, 2010
5:30 P.M.

The Council of the City of Ruidoso Downs met in regular session on February 8, 2010. Mayor Armstrong called the meeting to order at 5:30 p.m. and asked Councilor Olivo 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
Jay Smith, Museum Director
Steve Dunigan, Planning & Zoning Director
Cleatus Richards, Public Works Director
Terri Mosley, Finance Director
A.C. Ortiz, Chief of Police
Justin Shaw, Fire Chief

APPROVAL OF AGENDA

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

Mayor Armstrong entertained a motion to approve the agenda.

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

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.

Mayor Armstrong entertained a motion to approve the Consent Agenda.

Councilor Hood moved to approve the Consent Agenda. Seconded by Councilor Olivo.

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

APPROVAL OF MINUTES OF REGULAR MEETING OF JANUARY 25, 2010.

Motion was made by Councilor Hood to approve the Minutes of Regular Meeting of January 25, 2010. Seconded by Councilor Olivo.

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 Hood and seconded by Councilor Olivo 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 Unfinished Business.

There was no Unfinished Business.

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.

Mayor Armstrong said they had one of our new employees here tonight and asked Gabriel Chavez to come forward. He said he was one of our street laborers.

Gabriel Chavez said he was glad to be here.

There was a round of applause.

NEW BUSINESS

Mayor Armstrong stated next item on the agenda was New Business-Consider Accepting Warranty Deed from Dearl Wayne Joyce to the City of Ruidoso Downs.

Steve Dunigan, Planning and Zoning Director said the City of Ruidoso Downs has recognized a particular narrow section of road on Hill Drive. There are two points on Hill Drive that narrow down because of some power poles. They did work with the property owner Mr. Coleman Joyce and his son Dearl and asked them if they would have a way to work with the City on granting a little wider right-of-way through there. What they came up with was a dedication on their part to the City, two small pieces of property that would allow us to move those power poles back, widen those pitch points, and it will be a lot safer. He said they had all the signatures from the property owner and the City on the replat and what they were finalizing was the warranty deed. That is what they would be asking the City to accept.

Mayor Armstrong entertained a motion to approve Warranty Deed from Dearl Wayne Joyce to the City of Ruidoso Downs.

Councilor Olivo moved to accept Warranty Deed from Dearl Wayne Joyce to the City of Ruidoso Downs. 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 Possible Consideration to Approve Agreement for Professional Legal Services Related to the Regional Wastewater Treatment Facility and Joint Use Board.

Mayor Armstrong entertained a motion to approve agreement for Profession Legal Services related to the Regional Wastewater Treatment Facility and Joint Use Board.

Councilor Williams moved to postpone indefinitely this possible consideration and action. Seconded by Councilor Hood.

Councilor Williams said there were a couple of issues brought up by staff concerning issues they had with the agreement. He said what he saw was this was an agreement concerning the JUB and new attorney services. He asked if that was correct? Carol Virden, City Clerk/Treasurer said that was correct. The Joint Use Board function concerning the Wastewater Plant and the operation of it and the determination of issues involved with it is their responsibility. He asked if that was correct? Carol Virden, City Clerk/Treasurer said that was correct. Councilor Williams said we have representatives from the Village and the City as well as the County. Carol Virden, City Clerk/Treasurer said that was correct. Councilor Williams said his question was why we were having to approve an agreement for attorney services for the Joint Use Board when it was more or less their responsibility because the attorney would be working for the Joint Use Board?

Carol Virden, City Clerk/Treasurer said the Village of Ruidoso had approved the agreement for Professional Legal Services related to the Regional Wastewater Treatment Plant and Joint Use Board at their meeting of January 26, 2010. Two members of the JUB from the Village feel that anything legal or issues come before the Village first and they approve those. They also want the City of Ruidoso Downs to approve those issues or agreements. She said she distinctly remembers the JUB making a motion that the matters that come before the JUB and to be taken back to both municipalities. She said she was requested to put this item on the agenda by the Village of Ruidoso. It is before the city council and they do have staff recommendation.

Councilor Williams asked if there was any conversation with staff before the Village took their vote on this including our staff and their staff? Was there any discussion beforehand?

Carol Virden, City Clerk/Treasurer said no.

Councilor Williams said the Village followed through on this and just expected us to follow through and do the same thing.

Carol Virden, City Clerk/Treasurer said she certainly was not willing to speak for the Village.

Councilor Williams said his concern was that he didn't like the fact that the Village is more or less dictating to us what we should do. He said this Joint Use Board was an authority dealing with the Wastewater Treatment Plant and they have the authority to hire this attorney. He said we should not have to take a back seat to what's going on over there because they think it's important for them to make a decision on this and then we follow through on it. The reason he wanted to postpone this he said was because there was language in there that needed to be addressed and so he would rather not concern themselves with this tonight.

Mayor Armstrong said Councilor Williams was right and the JUB was the authority for that.

Councilor Hood said he felt the same way.

Councilor Holman said Councilor Williams was on the right track and Councilor Hood had also expressed that. He said he wondered rather than postponing it if they shouldn't just vote no on it. He asked if this was the issue where they directed Ned Kendricks to pursue? Was this the same topic that he was supposed to look into to improve the

authority of the Joint Use Board? He said Ned Kendricks actually either misunderstood or had taken the directive from the Village and went the other direction and looked into additional studies.

Mayor Armstrong said he was right and they did direct Ned Kendricks and that was a vote from the JUB.

Councilor Williams said staff recommendation was to change the agreement between the Joint Use Board and the legal services that would have to pass the Village and the City. The second one was the organizational issues that had been deleted. The third one was that they were opposed to the Executive Department issuing task works. He said also in reference to "Scope of Work" it states right there that the Joint Use Board desires to enter into a non-exclusive contractual relationship with a practicing attorney to provide legal counsel to the board. Right there it tells you who is responsible and who determines this contract. The Joint Use Board needs to go back and decide if this is our decision and do they need the approval of the other two entities before the City determines whether to say no or yes on this.

Carol Virden, City Clerk/Treasurer said it may behoove the governing body to amend their motion or substitute the words "postpone indefinitely" to tabling it until the next regular meeting on February 22nd.

Councilor Williams asked if that would give staff sufficient time?

Carol Virden, City Clerk/Treasurer said they were going to have a JUB meeting on February 17th at 10:00. She said she was certain this agreement would be on the agenda and they will see how the members of the Joint Use Board vote on it.

Councilor Williams said he would amend that motion to postpone until the meeting of February 22nd hinging on the results of the Joint Use Board meeting of February 17th.
Seconded by Councilor Hood.

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 Personnel Recommendation-LCT-Position-Lincoln County Transit Manager.

Mayor Armstrong entertained a motion to approve Personnel Recommendation-LCT-Position-Lincoln County Transit Manager.

Councilor Olivo moved to approve Personnel Recommendation-LCT-Position-Lincoln County Transit Manager. 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 Presentation on Economic and Cultural Impact of Hubbard Museum of the American West for Ruidoso Downs and Lincoln County.

Jay Smith, Director of the Hubbard Museum of the American West presented Economic and Cultural Impact of Hubbard Museum of the American West for Ruidoso Downs and Lincoln County. He said the facility has a value of approximately \$8 million dollars. He described other local entities that the museum accommodated for education programs, hosting meetings, how they got their funding, and an internship program with ENMU. Jay said the museum staff was probably one of the most experienced and professional in the State of New Mexico. He said they were also an affiliate of the Smithsonian Institution.

Jay Smith said he wanted to also talk about the economic impact of the museum. In 2009 66% of the visitors to the museum came from out of state. The economic impact of the tourists is felt by local retailers. He said in 2009 they have spent roughly \$710,000 in Lincoln County and that was in staffing and over 75 local vendors.

There was a round of applause.

Mayor Armstrong said he had the opportunity to be over there with "Ancient New Mexico" and saw things he didn't even know existed. He said it was well worth the trip to visit the museum.

Councilor Hood said Jay and his staff has done an excellent job.

Mayor Armstrong stated next item on the agenda was Consider Approving Wastewater Treatment Plant Operating Invoice for December 2009.

Terri Mosley, Finance Director said there was a correction that needed to be made on that billing. She said they included a capital outlay expenditure that should not have been included in the monthly billing. It should have been Operations only. She said she corrected that so now this billing was fine.

Mayor Armstrong entertained a motion to approve Wastewater Treatment Plant Operating Invoice for December 2009.

Councilor Williams moved to approve Wastewater Treatment Plant Operating Invoice for December 2009. 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 Waiving Fee for Use of Hubbard Museum of the American West for use by Citizens Committee of Ruidoso Downs to hold Municipal Candidate Forum (Public Service).

Mayor Armstrong entertained a motion to waive fee for use of Hubbard Museum of the American West for use by Citizens Committee of Ruidoso Downs to hold Municipal Candidate Forum (Public Service).

Councilor Olivo moved to approve waiving fee for use of Hubbard Museum of the American West for use by Citizens Committee of Ruidoso Downs to hold Municipal Candidate Forum (Public Service). Seconded by Councilor Holman.

Councilor Williams asked what the City policy was for this type of fee waiving?

Jay Smith, Museum Director said there were basically two policies and they were actually working on a third because of the changes and improvements at the museum. The policy has developed since the City took over. Since the meeting room moved up to the Cope Center and in December 2008 council adopted a policy of rentals that were for private purposes only for use of the whole room or part of the room. That was primarily for private groups. The precedent that was set when the City took over was that all City functions and those related to state and federal government that had an impact on the City of Ruidoso Downs would be waived.

Councilor Williams asked Jay Smith how many times they have waived the fees for groups?

Jay Smith, Museum Director said the fee had never been waived before because there were four or five rentals that were applied to the Hubbard contract with the museum and they were given six rentals per year that were to be free to them.

Councilor Williams asked what the fees cover?

Jay Smith, Museum Director said they have realized that there are inherent expenses in any rental. They prefer to have three people on staff and the lights and then setup and cleanup.

Councilor Williams asked Mayor Armstrong what this was considered? Was the City involved with this?

Mayor Armstrong said the City was sponsoring a place for our residents to have their Candidate Forum. They looked at other ones and would be charged there.

Councilor Williams said when he hears about City sponsored events he thinks of a couple they are part of such as the Easter and Christmas programs sponsored by Parks & Rec of the City. The events for the Litter Campaign for Clean & Beautiful and the City has their own Safety Award Banquet. He said he just wanted to ensure of the ramifications and legalities by us sponsoring a private group by utilizing a facility of ours with the waiving of the fees. He asked where we were standing with the legal issues?

Mayor Armstrong said we were not directly involved and that we were sponsoring a place for our residents to come and meet the candidates. He said he asked the attorney and was told this is the way to do that.

Councilor Williams asked Carol Virden, City Clerk/Treasurer if the fee policy was worked out between the museum staff and her staff?

Carol Virden, City Clerk/Treasurer said it is documented and was approved by the previous administration.

Councilor Williams said he wanted to mention an opinion by the Attorney General and has to do with the Anti-Donation Clause. He quoted, "the New Mexico Supreme Court has interpreted the Anti-Donation Clause and use of the term 'donation' as an allocation or appropriation for something of value without consideration to a person, association, or private or public corporation. This office has considered whether a state agency can allow a private non-profit organization to rent its facilities at substantially reduced cost from its usual rental rate. We have concluded that the Department of Public Safety could not rent its facility to a local Boy Scout Troop for a \$3.00 fee rather than its normal \$25.00 fee normally charged to others because such a reduced fee for a donation or gift in violation of the Anti-Donation Clause."

Councilor Williams asked if we were near that violation?

Mayor Armstrong said the attorney was addressed on this matter and he said this is legal.

Councilor Williams said he was taking his word for it that this is legitimate and that we were not violating any law of the Anti-Donation or other policy we have set forth.

Councilor Williams asked if another group from another locale came in and were to ask to do the same thing would it be allowed?

Mayor Armstrong said if it was voted on by the council.

Roll call votes: Councilor Hood, Nay; 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)

Mayor Armstrong stated next item on the agenda was Public Input.

Wayne Williams said he represents the Citizens Committee of Ruidoso Downs and they bring with them tonight a list from the last meeting in November of suggestions and concerns that they want the City to address in the near future. He said they would appreciate a response at the April 12, 2010 council meeting. The items were as follows:

1. Our mayor and all city councilors come to our meetings fully prepared.
2. Request that gravel be put around all cluster mailboxes.
3. Problems caused by cinder block wall on 712 Highland Lane.
4. Contract with the oldest elevator company at the Hubbard Museum.
5. Better solutions at the corner of Highland Lane and Joe Welch Lane.
6. Planning & Zoning-lack of specifications for outdoor building.
7. Code Enforcement laws need to apply to everyone in the City.
8. Maintenance barn and employees-must have tools and supplies.
9. Potholes need to be correctly filled.
10. Proper supervision of employees by the supervisor or director.

Wayne Williams said he would like to draw attention to a couple of them for safety issues and one is the mailbox clusters. The cinder block wall, they would like the city engineer check that because with the weather conditions the ground is so saturated. With so much snow on the mountain if we get a heavy rain we are going to be in trouble.

Joyce Gustafson said she was a member of the Citizens Committee of Ruidoso Downs because she wanted to thank them for voting for what they were elected to do and that is

to serve the citizens of Ruidoso Downs. We, the committee, appreciate your confidence you are bestowing on us by allowing all of the citizens of Ruidoso Downs to have a place to hold the 2010 Candidates Forum. We would like to say to the entire governing body that this forum is being held by a committee of Ruidoso Downs citizens not one individual as has been said by one councilman. He is the one that has taken it upon himself to run up legal fees with our city attorney trying to stop our committee from doing a public service for our City and this individual may have caused a different legal fee for the City. We, the Citizens Committee of Ruidoso Downs highly recommend the Underwood Law Firm bill the individual that made these phone calls just because he acted under the pretense of a city councilor does not make it right for our citizens to have to pay for these individuals legal services.

ADJOURNMENT

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

Councilor Holman moved to adjourn at 6:24 p.m. Seconded by Councilor Olivo.

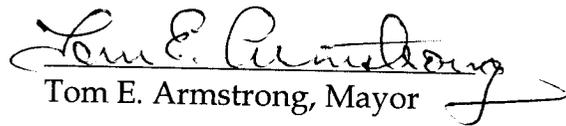
All were in favor and motion passed.



ATTEST:



Carol Virden, City Clerk/Treasurer



Tom E. Armstrong, Mayor