

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
CITY COUNCIL CHAMBERS
REGULAR MEETING
SEPTEMBER 13, 2010
5:30 P.M.

The Council of the City of Ruidoso Downs met in regular session on September 13, 2010. Mayor Armstrong called the meeting to order at 5:30 p.m. and asked Wayne Williams to lead the Pledge of Allegiance. Mayor Armstrong asked Carol Virden, City Clerk/Treasurer to take roll call. The following were present:

Councilor Olivo
Councilor Holman

Councilor Williams
Councilor Hood

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

Also present:

Carol Virden, City Clerk/Treasurer
Terri Mosley, Finance Director
Steve Dunigan, Planning & Zoning Director
Jim Kofakis, Interim Museum Director
A.C. Ortiz, Chief of Police
Zach Cook, City Attorney

APPROVAL OF AGENDA

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

Mayor Armstrong said he had one item to take off and that was the "Closed Session." He said it would be postponed until September 27th.

Mayor Armstrong entertained a motion to approve the Agenda with that change.

Councilor Williams moved to approve the agenda with the change made by Mayor Armstrong. Seconded by Councilor Olivo.

Roll call votes: Councilor Olivo, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Hood, 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 Olivo moved to approve the Consent Agenda. Seconded by Councilor Williams.

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

APPROVAL OF MINUTES OF REGULAR MEETING OF AUGUST 23, 2010

Councilor Olivo moved to approve Minutes of Regular Meeting of August 23, 2010. Seconded by Councilor Williams.

APPROVAL OF ACCOUNTS PAYABLES

Councilor Olivo moved to approve Accounts Payables. Seconded by Councilor Williams.

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

PUBLIC HEARING

Ordinance No. 2010-06

An Ordinance Enacting and Adopting a Supplement to the Code of Ordinances for the City of Ruidoso Downs, New Mexico and Declaring an Emergency.

Mayor Armstrong stated he hereby opened the Public Hearing and would be accepting comments in the following order. Interested persons must approach the podium one at a time, state their name, and begin their testimony. A limit of three minutes will be allowed per person.

Mayor Armstrong asked if there were any persons present to speak in opposition of the action?

Wayne Williams said he can't oppose anything because he didn't know what it is.

Carol Virden, City Clerk/Treasurer said if they would recall on Ordinance 2010-04 the governing body did adopt the City of Ruidoso Downs Code of Ordinances book. This contains all of Ordinances up to Ordinance 2010-04. This was adopted on April 26, 2010. She said she did place a legal notifying the public of the Notice of Intent to adopt and enact the 2010 Supplement on August 24, 2010. Prior to that on June 14, 2010 American

Legal did receive from the City of Ruidoso Downs Ordinance 2006-07 and ending with Ordinance 2010-04. That requires the update to complete the City of Ruidoso Downs Code of Ordinances book. She said this entailed everything that has been amended, enacted, and repealed.

Wayne Williams asked if he could still get that CD copied?

Carol Virden, City Clerk/Treasurer said she had the CD of the first round of Ordinances. The Supplements came on a different CD. She said Public Works had tried to copy it. She said she would try to find a burner if he would bring her a CD she would try to burn it. She said these would be put on our website.

Mayor Armstrong asked again if there were any persons present to speak in opposition of the action?

There were no persons to speak in opposition of the action.

Mayor Armstrong asked there were any persons present to speak in support of the action?

There were no persons to speak in support of the action.

Mayor Armstrong stated he would hereby close the Public Hearing for Ordinance 2010-06.

Mayor Armstrong stated next item on the agenda was Consider Adopting Ordinance 2010-06.

Mayor Armstrong entertained a motion to adopt Ordinance 2010-06.

Councilor Williams moved to adopt Ordinance 2010-06, an Ordinance Enacting and Adopting a Supplement to the Code of Ordinances for the City of Ruidoso Downs, New Mexico and Declaring an Emergency. Seconded by Councilor Olivo.

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

PUBLIC HEARING

Floodplain for the 2010 Awarded Community
Development Block Grant Project (CDBG)

Mayor Armstrong introduced Dora Batista from Southeastern New Mexico Economic Development District with the assistance of Public Works Director Cleatus Richards who will describe the project.

Dora Batista said this was a 2010 Community Development Block Grant from HUD. The City of Ruidoso Downs applied for CDBG funding for storm drainage improvements for North Central and River Lane. She said they received \$473,000. She said when looking at the project and the Floodplain map a portion of River Lane is in a 100-year Floodplain zone. When that happens, by law, they have to hold a Public Hearing to alert the public that funds may be spent in a Floodplain zone in order to allow the public to comment or suggest any alternatives. The repairs are to fix the streets, install storm drainage improvements, and curb and gutter. She said there had been flooding there before and she went and took pictures herself and you can see where it's been patched up and gravel washed off of the road. The alternative would be that they just do improvements on North Central and forget about River Lane.

Wayne Williams said there is an area here that was flooded during the flood. He said he would talk to Cleatus later but it's not even marked and it was under water.

Dora Batista said FEMA updates these maps and they have to go with what they have.

Wayne Williams said it was the area right across the street from the new park.

Mayor Armstrong said they have to stay on track.

Wayne Williams said they can't discuss something if your map is not correct.

Carol Virden, City Clerk/Treasurer said the Floodplain and Wetlands early public notice is specifically for North Central and River Lane only. Those highlighted areas are what you are discussing. That is how the City of Ruidoso Downs was awarded the CDBG grant in May. She said they designed the application and the reasons why they were requesting those funds.

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 stated the next item was Introduction of Newly Hired Employees.

Chief Ortiz said he would like to introduce the newest member to their Dispatch crew, Ms. Judy Kern. He said she came to them after retiring from AT & T. She has been with them since August 2nd and she is doing a wonderful job.

Chief Ortiz said he would like to also give them an update from the Labor Day weekend. They had three private property crashes on the racetrack grounds. There was one arrest warrant, one criminal trespassing, and two medical calls. One individual was arrested for intoxication, and one stolen golf cart. Other than that he said he had nothing serious to report.

Councilor Holman said at the recent New Mexico Municipal League Conference one of the speakers noted that the City of Ruidoso Downs is the only municipality in the entire State of New Mexico that has all of its elected officials certified by the Municipal League.

NEW BUSINESS

Mayor Armstrong stated next item on the agenda was New Business-Consider Approving Mayor's Appointment to Planning and Zoning Commission-Windsor Lacewell.

Mayor Armstrong entertained a motion to approve his appointment to Planning and Zoning Commission-Windsor Lacewell.

Councilor Holman moved to approve Mayor's Appointment to Planning and Zoning Commission-Windsor Lacewell. Seconded by Councilor Olivo.

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

Mayor Armstrong stated next item on the agenda was Consider Approving Personnel Recommendation-Position-Curator of Collections-Hubbard Museum of the American West.

Jim Kofakis, Interim Museum Director said they were extremely fortunate to have a part-time employee working for them when the previous curator resigned and moved to North Dakota. He said Adele Karolik was extremely qualified. He said she was here tonight and asked her to stand up. The transition was seamless and she has the experience and qualifications so they wouldn't skip a beat if they approved of her.

Mayor Armstrong entertained a motion to approve Personnel Recommendation-Position-Curator of Collections-Hubbard Museum of the American West.

Councilor Hood moved to approve Personnel Recommendation-Position-Curator of Collections-Hubbard Museum of the American West. Seconded by Councilor Holman.

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

Mayor Armstrong stated next item on the agenda was Consider Approving Planning and Zoning Commission Recommendations:

1. That Council recognize that due to the expiration and subsequent cancellation of the Zoning Permit for Escondido Hills Subdivision that the parent tract of land, being the Country Club Tract, reverts as a matter of Law from PUD to R-1.

Mayor Armstrong entertained a motion to approve that Council recognize that due to the expiration and subsequent cancellation of the Zoning Permit for Escondido Hills Subdivision that the parent tract of land, being the Country Club Tract, reverts as a matter Law from PUD to R-1.

Councilor Olivo moved to approve that Council recognize that due to the expiration and subsequent cancellation of the Zoning Permit for Escondido Hills Subdivision that the parent tract of land, being the Country Club Tract, reverts as a matter Law from PUD to R-1. Seconded by Councilor Williams.

Councilor Williams said he was a property owner in Agua Fria and he did receive a letter from Planning services concerning the changing of PUD to R-1. He said he made a comment or two at the P & Z meeting but did not voice an opinion for or against the R-1 designation and stated that he will not be benefiting from this change.

Mayor Armstrong said he believed the zoning change requires that they only go out so many feet.

Councilor Williams said it was 200 feet.

Councilor Holman said he had a couple of questions. It stated here from the letter from the notation from the Planning & Zoning that this is a matter of law that it reverts to R-1. He said that would be a question for the City Attorney.

Zach Cook, City Attorney said it does revert as a matter of law from PUD to R-1. Under the Ordinances the developer had to get a bond and the bond according to the requirement of the Ordinance is that if you don't fulfill the project then the project goes away. The motion is to recognize the legal function of what has happened.

Councilor Holman said the term “revert back to R-1” he has heard opinions both ways and that it has never been an R-1 and that it was an R-1. Does this make any difference and do they know if it was an R-1 before?

Zach Cook said our Ordinance says whenever you annex property, if it’s not expressly zoned through the regular process of zoning then the default is an R-1. The City annexed this property and it was never expressly zoned anything and therefore is zoned R-1.

Councilor Holman said when it was looked at by our city attorney’s that the owners were sent notice that they were in default by non-action and therefore have forfeited their rights. He said he thought several notifications were sent out to be sure that nobody was missed. He asked if they have determined who owns that? He said he would like to know and residents in that subdivision would be interested? Who owns the title?

Zach Cook, City Attorney said as they have been dealing with this issue over the past several months they did a title search. According to the title search the current owner is an entity called C & S Resort Properties, a Texas Corporation. The obtained title on March 18, 2009 by way of a Special Warranty Deed from James Clifton Rowe to that corporation.

Councilor Williams said they have noticed the activity that has developed due to this default and it has been mentioned by the residents that the property is in disarray. It is a safety hazard to citizens not only in that part of the City anyone else that may venture in that area. He said the Public Works Director wasn’t here but asked what the City was doing to prevent any type of liability that could be brought against the City even though this owner has put this property in default? Is the City liable for any issues that somebody may bring up in a lawsuit because of safety issues, injuries, disease that may come about because of rabid animals that habitat in that area?

Zach Cook, City Attorney said the City doesn’t own the property. The extent that the City has done something out there that would create liability.

Councilor Williams said somebody could sue. If they sue this resource and this company would be the only one going to court and the City would not be liable in any way with anything that would happen with that property?

Zach Cook, City Attorney said a potential plaintiff could bring the City into a lawsuit. He said he wasn’t aware of any facts that would create liability for the City. He said if there were issues out there then they need to mitigate that.

Councilor Williams said the City was involved at the very beginning of that project. He said they have been able to get someone out there to mow but it hasn’t gotten to the point where it’s a lot that is presentable in any way. There are broken water lines, sewer lines,

debris all over the place. He said he wants to be assured that these people are going to be pursued for any violation of Code of Ordinances for that property.

Zach Cook, City Attorney said if they didn't abide by it then the City would sue to enforce.

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

Mayor Armstrong stated next on the agenda is item 2. That certain "Survey Plat of Escondido Hills, a Subdivision of the Country Club Tract, Agua Fria Subdivision, Ruidoso Downs, New Mexico" which was filed for Record in the Office of the County Clerk of Lincoln County, New Mexico on October 24, 2005, in Cabinet I, Slide 401, be vacated by appropriate action of the Council.

Mayor Armstrong entertained a motion to approve that certain "Survey Plat of Escondido Hills, a Subdivision of the Country Club Tract, Agua Fria Subdivision, Ruidoso Downs, New Mexico" which was filed for Record in the Office of the County Clerk of Lincoln County, New Mexico on October 24, 2005, in Cabinet I, Slide 401, be vacated by appropriate action of the Council.

Councilor Holman moved to approve that certain "Survey Plat of Escondido Hills, a Subdivision of the Country Club Tract, Agua Fria Subdivision, Ruidoso Downs, New Mexico" which was filed for Record in the Office of the County Clerk of Lincoln County, New Mexico on October 24, 2005, in Cabinet I, Slide 401, be vacated by appropriate action of the Council. Seconded by Councilor Williams.

Councilor Holman said he wanted to understand what he was reading and that this was a zoning issue that allowed the developer to put in a Planned Unit Development and asked if that is what that document was?

Mayor Armstrong said it was just the plat and showed the size of the lots and the roadways.

Councilor Hood asked if he said it was just the plat?

Mayor Armstrong said yes.

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

Mayor Armstrong stated next item on the agenda was Consider Approving Special Dispenser Permit Application-Golden Aspen Motorcycle Rally-September 16, 17 and 18, 2010.

Mayor Armstrong entertained a motion to approve the Special Dispenser Permit Application-Golden Aspen Motorcycle Rally-September 16, 17 and 18, 2010.

Councilor Olivo moved to approve the Special Dispenser Permit Application-Golden Aspen Motorcycle Rally-September 16, 17 and 18, 2010. Seconded by Councilor Williams.

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

Mayor Armstrong stated next item on the agenda was Consider Approving Resolution No. 2010-13 Supporting the Filing of an Application to New Mexico Department of Transportation for Funding Assistance for FY 2011-2012.

Mayor Armstrong entertained a motion to approve Resolution No. 2010-13 Supporting the Filing of an Application to New Mexico Department of Transportation for Funding Assistance for FY 2011-2012.

Councilor Williams moved to approve Resolution No. 2010-13 Supporting the Filing of an Application to New Mexico Department of Transportation for Funding Assistance for FY 2011-2012. Seconded by Councilor Hood.

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

Mayor Armstrong stated next item on the agenda was Consider Approving Fiscal Year 2011 (FY 2011) Memorandum of Agreement Between the New Mexico Department of Transportation and City of Ruidoso Downs.

Mayor Armstrong entertained a motion to approve Fiscal Year 2011 (FY 2011) Memorandum of Agreement Between the New Mexico Department of Transportation and City of Ruidoso Downs.

Councilor Hood moved to approve Fiscal Year 2011 (FY 2011) Memorandum of Agreement Between the New Mexico Department of Transportation and City of Ruidoso Downs. Seconded by Councilor Williams.

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

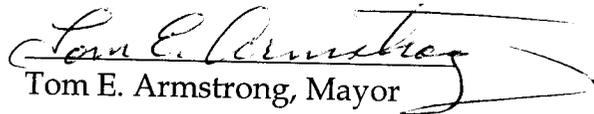
Robert Chisholm asked if there was a bond on this land in Agua Fria? He said the City Council has told him there was no bond. At the meeting the other night Steve Dunigan and your lawyer were saying the same thing, that there was a bond. He said he wants to know who is lying. He said he would like it public in the newspaper about who is telling the truth. If there was a bond he said he would like to have a copy of the bond. If the bond was taken back because he didn't abide by all of the agreement he would like it in writing and where the money from that bond is.

ADJOURNMENT

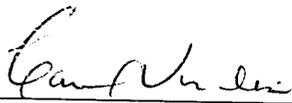
They're being no further business to attend to Mayor Armstrong entertained a motion to adjourn.

Councilor Williams moved to adjourn at 6:08 p.m. Seconded by Councilor Holman.

All were in favor and motion passed.


Tom E. Armstrong, Mayor

ATTEST:



Carol Virden, City Clerk/Treasurer