

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

The Council of the City of Ruidoso Downs met in regular session on November 8, 2010. Mayor Armstrong called the meeting to order at 5:30 p.m. and asked Jim Kofakis 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
H. John Underwood, City Attorney
Cleatus Richards, Public Works Director
Terri Mosley, Finance Director
A.C. Ortiz, Chief of Police
Steve Dunigan, Planning & Zoning Director
Jim Kofakis, Interim Museum Director

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

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

APPROVAL OF MINUTES OF REGULAR MEETING OF OCTOBER 25, 2010

Councilor Williams moved to approve Minutes of Regular Meeting of October 25, 2010. Seconded by Councilor Hood.

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

APPROVAL OF ACCOUNTS PAYABLES

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

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

PUBLIC HEARINGS

A. ORDINANCE NO. 2010-07 AN ORDINANCE AMENDING TITLE V PUBLIC WORKS; CHAPTER 51 SEWER DEPARTMENT; SECTION 13, TITLED "CONNECTIONS OUTSIDE CITY" OF THE CITY OF RUIDOSO DOWNS CODE OF ORDINANCES.

Mayor Armstrong stated he would hereby open the Public Hearing to consider adopting Ordinance No. 2010-07 and would be accepting comments in the following order. Interested persons must approach the podium one at a time, state their name, and present 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?

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

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

There were no persons present to speak in support of the action?

Mayor Armstrong said he would hereby close the Public Hearing.

B. CONSIDER ADOPTING ORDINANCE NO. 2010-07

Mayor Armstrong entertained a motion to adopt Ordinance No. 2010-07.

Councilor Williams moved to approve adopting Ordinance No. 2010-07. Seconded by Councilor Olivo.

H. John Underwood, City Attorney said he wanted to explain why he recommended to do this. The issue is to how a water connection could be done with an outside city residence as addressed in paragraph "A" and the issue as to a violation by city officers and employees is in paragraph "B". It says and refers to both water and sewer systems unless prior approval is obtained from the city council. He said it says it's not a violation to hook up to city sewer or water main so long as there is prior approval. In subsection "B" relating to sewer didn't have the same clause as subsection "A" relating to water saying "unless expressly approved by the city council." Because the issue has come up recently he said he thought it would be best to amend that Ordinance to allow hooking up sewer if approved by city council.

Councilor Williams asked if the bold lettering on "B" was just for the addition?

H. John Underwood, City Attorney said yes.

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

C. EMERGENCY 911 ADDRESS CHANGES

Mayor Armstrong stated he would hereby open the Public Hearing to consider approving Resolution No. 2010-16 Emergency 911 Addressing Renaming Existing Streets and would be accepting comments in the following order. Interested persons must approach the podium one at a time, state their name, and present 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?

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

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

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

Mayor Armstrong said he would hereby close the Public Hearing.

D. CONSIDER APPROVING RESOLUTION NO. 2010-16 EMERGENCY 911 ADDRESSING RENAMING EXISTING STREETS

Mayor Armstrong entertained a motion to approve Resolution No. 2010-16.

Councilor Williams moved to approve Resolution No. 2010-16. Seconded by Councilor Hood.

Councilor Williams asked if once this was implemented, and practically everyone was getting their addresses changed, would the people that have cluster boxes with the Post Office, utility

companies that require addresses for their property, and/or county if there were any issues on property taxes. What is the city's responsibility in ensuring that it is taken care of or is it the citizens' responsibility for notification of the changes?

Carol Virden, City Clerk/Treasurer said should the governing body approve the Resolution on the Emergency 911 Address Changes what will take place in Mr. Dunigan's office of Planning & Zoning is they will send letters to each and every single resident as attached to Exhibit A to notify them that city council did approve the Resolution to change those addresses for the purpose of 911 Emergencies. They will also be notified that they will have to update their voter registration so that when the March 2012 elections come that their signature rosters match their resident address. They will be notified of all the changes that will be made and he will notify Post Office, Zia Natural Gas, PNM, and all the other agencies that are involved in this.

Councilor Williams said so it would be the City's responsibility?

Carol Virden, City Clerk/Treasurer said yes.

Councilor Williams said he would like to ask on the last "whereas" it states "the mayor and city council" and he would like that changed to "governing body".

Carol Virden, City Clerk/Treasurer said the section under the City of Ruidoso Downs Code of Ordinances Title IV, Land Usage, Chapter 150, that's a law that was adopted by the governing body so she said couldn't just change that without having another Public Hearing and going through the same process that they were going through tonight for Ordinance No. 2010-07 in notifying the public of that.

Councilor Williams said so we need to notify the public that we want to make a change in this language and go through Public Hearings accordingly?

Carol Virden, City Clerk/Treasurer said that was correct. For a new Ordinance amending any Ordinance appealing they have to notify the public.

Councilor Olivo said he thought they were also going to rename some streets along with new addresses.

Steve Dunigan, Planning & Zoning Director said there is a specific street that is in the process of being worked on so it can be dedicated to the City. Once they have a formal survey that they can present for that dedication by proclamation that street name can be done at the same time. He said he was going to bring that to council as soon as he has formal documentation.

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

E. APPEAL CASE #2010-05: APPEAL DENIAL OF PZD2010-05, VARIANCE APPLICATION FOR SECTION 29, TOWNSHIP 11S, RANGE14E, TRACT OF LAND BEING A PART OF THE N2SE4 CONT'G 5.052 ACRES, MORE OR LESS. DEREKK CHAVEZ, APPELLANT.

Mayor Armstrong stated he would hereby open the Public Hearing Appeal Case #2010-05 and would be accepting comments in the following order. Interested persons must approach the podium one at a time, state their name, and present 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?

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

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

Derekk Chavez said all he was asking for was to put a singlewide trailer that is paid off on their zoning for doublewide. He said all they want to do is find a place to live besides in a trailer park.

Pam Williams said she would like to speak on behalf of Mr. and Mrs. Chavez. She said Derekk and Shamie have worked for her stepdaughter and son-in-law for the last year and a half to two years and they have nothing but high praises to say for these people. They are dependable and Shamie has never missed a day of work and it is hard to find good and dependable people. She said she feels like they are not asking for a hand out. They are asking for a hand up and if there was any way they could help them she would appreciate that because they would be productive members of our community.

Joyce Gustafson said her heart goes out to the family and she was sure they were hoping for a singlewide property but they have ordinances on the books. She said if she understood correctly there were not to be singlewides permitted within the city limits in the R-1 sections. She said she understands where Mr. Chavez comes from as far as not wanting to go into a mobile home park. She said as far as what Mrs. Williams just said they are a good family and they kind they would love to come into Ruidoso Downs and would like to have more of them. She said she read what Steve Dunigan of Planning & Zoning had to say in the last meeting concerning this matter and she felt like Steve presented his case very well and felt like they need to stick by the rules on the books. If they allow one person to do it another is going to fall right in behind them and ask to change the rules again. This is what we pay the attorney's your money to write these ordinances and our taxpayers are the ones paying for that. Why write the ordinances if you're not going to stand behind them?

Mayor Armstrong said he would hereby close the Public Hearing.

F. CONSIDER APPROVING APPEAL CASE #2010-05, VARIANCE APPLICATION FOR SECTION 29, TOWNSHIP 11S, RANGE 14E, TRACT OF LAND BEING A PART OF THE N2SE4 CONT'G 5.052 ACRES, MORE OR LESS. DEREKK CHAVEZ, APPELLANT.

Mayor Armstrong entertained a motion to approve or disapprove Appeal Case No. 2010-05.

Councilor Olivo moved to approve Appeal Case No. 2010-05. Seconded by Councilor Hood.

Councilor Williams asked Steve Dunigan, Planning & Zoning Director to outline this case for the public so they could get an idea of what we are looking at.

Steve Dunigan, Planning & Zoning Director said "variance" as written in our Ordinance as related to physical character and "variances may only be granted for hardships related to physical characteristics of the land." He said in this particular case the reason Planning & Zoning denied the request is that this is not a variance related to the land. It was more of a convenience or asking for a financial hardship or convenience factor. He said as written in his Agenda Briefing Memo he pointed out the reasons of why they were turned down. He said there was not more from their standpoint that could be discussed about it. Nothing at this point has changed since their request.

Councilor Hood asked Steve if the people listed in their as property owners in their packet were for or against it?

Steve Dunigan, Planning & Zoning Director said there was one return response that was in favor of it and other than that it was silent.

Councilor Holman said after reading the report from Planning & Zoning and the detailed explanation from Steve Dunigan he said he wanted to compliment Steve because he did a good job on explaining what the situation was and laying out the facts. He told Steve that he really appreciated the detailed work that went behind this and it helps the council make these decisions.

H. John Underwood, City Attorney said, as he understands the property where they want to put the singlewide on that it is an R-1 zoning. He said when he goes to the City's R-1 Zoning Code regarding the requirements for the R-1 residential district it says the purpose is to provide for the development of low density single-family detached dwellings. The district is intended to be strictly residential in character of minimum disturbance to traffic overcrowding and shall be developed at a gross residential density of no more than four units per acre. He said all of that fits the issue. It says no livestock including horses are permitted in an R-1 residential district. Then it says the principal permitted uses in R-1 districts are as follows: single-family dwellings in public parks. He said then he goes to the definition of what is a single-family dwelling and is defined as a building. Then he said he goes to the definition of a building within our zoning code and it is defined as any structure having enclosed space and a roof for a housing and enclosure for a persons, animals, or chattels, except mobile homes and mobile offices. He said from the definition of an R-1 district mobile homes are excluded and

that is the problem the applicant faces. The variance he applied for, if the five-acre tract of land which I understand this is on, were situated such that it were on a hillside and there was only one level spot or something of that nature, then that is what the purpose of a variance is for. He said what we really have here is an application for a dwelling in an R-1 district that is not allowed in our zoning code in an R-1 district. He said that is not a proper subject for a variance application. He said we do have zoning in the City for mobile homes and that is M-1 and M-2. Unfortunately this property is not so zoned. If the applicant wanted to re-apply to the City to rezone his property that would be a far more proper application. He said the problem is that he didn't want to mislead the applicant but the problem with asking for a rezone of a single piece of property within a generally residential district to M-1 is you end up with spot zoning issues and those are prohibited as well. He said if you want to comply with your current zoning code a mobile home is prohibited from placement in an R-1 zone. He said it goes on to define mobile home and modular home as well. He said he wouldn't or couldn't encourage the council to approve this based on whether or not it was done in the past because they would like to have consistent zoning and people buying their property based upon the zoning their property had are their availability to the City in upholding their ordinances.

Mayor Armstrong asked Carol what the motion was?

Carol Virden, City Clerk/Treasurer said Councilor Olivo moved to approve the variance and Councilor Hood seconded it for discussion.

Councilor Hood said he only made the motion so they could discuss it.

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

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 on the agenda was Proclamation-America Recycles Day 2010.

Mayor Armstrong read the proclamation to the audience and Proclaimed November 15th as American Recycles Day.

Mayor Armstrong said there were some new hires in the audience.

Cleatus Richards, Public Works Director said he would like to introduce Israel Chavez as a new employee in the Street Department. He said there was another employee but he was unable to reach him but would have him at the next meeting.

Chief Ortiz said the new officer in his department was unable to make it tonight but he would be here for the next meeting.

NEW BUSINESS

Mayor Armstrong stated next item on the agenda was-Consider Approving Personnel Recommendation-Position-Part-Time Driver-Lincoln County Transit.

Mayor Armstrong entertained a motion to approve Personnel Recommendation-Position-Part-Time Driver-Lincoln County Transit.

Councilor Hood moved to approve Personnel Recommendation-Position-Part-Time Driver-Lincoln County Transit. Seconded by Councilor Williams.

Patty DeSoto explained what the position was.

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.

There was no Public Input.

CLOSED SESSION

Discussion of the purchase, acquisition or disposal of real property and/or water rights § 10-15-1, H8 NMSA 1978. Discussion of Threatening and/or Pending Litigation Pursuant to § 10-15-1, H7 NMSA 1978.

Mayor Armstrong entertained a motion to go into Closed Session for Discussion of the purchase, acquisition or disposal of real property and/or water rights § 10-15-1, H8 NMSA 1978. Discussion of Threatening and/or Pending Litigation Pursuant to § 10-15-1, H7 NMSA 1978.

Councilor Williams moved to go into Closed Session for Discussion of the purchase, acquisition or disposal of real property and/or water rights § 10-15-1, H8 NMSA 1978. Discussion of Threatening and/or Pending Litigation Pursuant to § 10-15-1, H7 NMSA 1978. Seconded by Councilor Holman.

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

Mayor Armstrong closed the regular meeting at 6:06 and invited H. John Underwood; City Attorney, Carol Virden; City Clerk/Treasurer, Cleatus Richards; Public Works Director Jim Kofakis; Interim Museum Director and Terri Mosley; Finance Director and called for a five-minute recess.

Mayor Armstrong entertained a motion to go back into Open Session.

Councilor Williams moved to go back into Open Session. Seconded by Councilor Holman.

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

Mayor Armstrong called the regular meeting back to order at 7:07 p.m. and asked that a member of the City Council attest to the fact that the only items discussed in Closed Session were that of Discussion of the purchase, acquisition or disposal of real property and/or water rights § 10-15-1, H8 NMSA 1978. Discussion of Threatening and/or Pending Litigation Pursuant to § 10-15-1, H7 NMSA 1978.

Councilor Hood attested to the fact that the only items discussed in Closed Session were that of Discussion of the purchase, acquisition or disposal of real property and/or water rights § 10-15-1, H8 NMSA 1978. Discussion of Threatening and/or Pending Litigation Pursuant to § 10-15-1, H7 NMSA 1978 and no action was taken.

Mayor Armstrong entertained a motion to authorize H. John Underwood to negotiate additional terms and for clarification of terms of agreement.

Councilor Holman moved to authorize H. John Underwood to negotiate additional terms and for clarification of terms of agreement. Seconded by Councilor Olivo.

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

ADJOURNMENT

There being no further business, Mayor Armstrong entertained a motion for adjournment.

Councilor Williams moved to adjourn at 7:10 p.m. Seconded by Councilor Hood.

All were in favor and motion passed.



Tom E. Armstrong
Tom E. Armstrong, Mayor

ATTEST:

Carol Virden

Carol Virden, City Clerk/Treasurer