

**LINKED MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF THE  
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL BUILDING  
ON JANUARY 12, 2010 AT 6:00 P.M.**

Present:	Bob Forrest	Mayor
	Paul C. Aguilar	Councilor
	Wesley Carter	Councilor
	Brad Day	Councilor
	Jeff Diamond	Councilor
	Ned Z. Elkins	Councilor
	Jim Grantner	Councilor
	Sandra Nunley	Councilor
	Nick G. Salcido	Councilor

Absent: None

Also Present:	Harry Burgess	City Administrator
	Eileen P. Riordan	City Attorney
	Amanda J. Asbury	City Clerk

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

**000 Call Meeting to Order**

**000 Invocation - Pledge of Allegiance**

**000 1. Approval of Agenda**

**000 2. Budget Review as of November 30, 2010**

**000 Motion**

The motion was made by Councilman Elkins and seconded by Councilman Carter to approve the Budget Review.

**000 Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**003 Start Recording [6:21:02 PM]**

**003 Stop Recording [6:21:04 PM]**

- 0:00:11
3. Routine and Regular Business
    - A. Minutes of Regular City Council meeting held December 8, 2009
    - B. City Personnel Report
    - C. Check Register Bills & Petty Cash
    - D. Purchasing:
      - 1) Consider approval to purchase Thirty (30) Patrol Rifles from Pro Force, Inc. in the amount of \$20,154.30, Twenty Thousand One Hundred Fifty-Four Dollars and Thirty Cents (Carlsbad Police Department)
      - 2) Consider approval of Award of Bid No. 2009-62, East Greene Street Road Reconstruction to Constructors, Inc. in the amount of \$815,478.42, Eight Hundred-Fifteen Thousand Four Hundred Seventy Eight Dollars and Forty Two Cents
    - E. Contracts and Agreements:
      - 1) Consider approval of Agreement with Till It Shines for management of the Walter Gerrells Performing Arts and Exhibition Center
      - 2) Consider approval of Memorandum of Understanding with New Mexico State University-Carlsbad for the use of the multimedia equipment (Lights and Sound equipment)
      - 3) Consider approval of a Grant from the Traffic Safety Bureau for Selective Traffic Enforcement Program (Grant #10-PT-RF-013) in the amount of \$3,940.23, Three Thousand Nine Hundred Forty Dollars and Twenty Three Cents
      - 4) Consider approval of Memorandum of Understanding between the City of Carlsbad and Eddy County, the City of Artesia, NM and the Waste Isolation Pilot Plant regarding the establishment, operation, and management of a Regional Haz-Mat Team
    - F. City of Carlsbad Department Monthly Reports:
      - 1) Personnel Department Monthly Report for December 2009
      - 2) Transportation and Facilities Monthly Report for November 2009
      - 3) Utilities Department Monthly Report for November 2009
    - G. Board/Committee Appointments:
      - 1) Veterans Committee-Mario Salinas (4-year)
      - 2) Recycling Committee-Kathy Elmore, Kathy Law, Lorie Mitchell (4-year) and David Gillen, Kristine Nelson (2-year)
    - H. Discuss appointments to the Disabilities Committee
    - I. Overnight Travel:
      - 1) Mayor Forrest , 2010 Legislative Session, Santa Fe, NM on February 1st and 2nd, 2010
      - 2) Councilmen Aguilar, Carter, Diamond, and Salcido, 2010 Legislative Session, Santa Fe, NM on January 31st to February 2nd, 2010.

**Paul Aguilar requested Agenda item 3.E.1. be pulled for further discussion.**

**0:00:11 Motion**

The motion was made by Councilman Aguilar and seconded by Councilman Salcido to approve the Routine and Regular Business with the exception of 3.E.1.

**0:00:11 Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**Discussion regarding the Agreement between the City of Carlsbad and Till It Shines:**

- Wear and tear on the auditorium as a result of alcohol sales
- Marketability of facility with additional sales of alcohol in Auditorium
- Contract prices and deposits regarding alcohol sales
- Name change of the facility from the Walter Gerrells Performing Arts and Exhibition Centre to Walter Gerrells Performing Arts and Exhibition Center

**03:12:0 Motion**

The motion was made by Councilman Diamond and seconded by Councilman Aguilar to approve the Agreement between the City of Carlsbad and Till It Shines for the management of the Walter Gerrells Performing Arts and Exhibition Centre with the stipulation of no alcohol sales in the auditorium. Alcohol may be sold in the annex and the foyer only and for a deposit of \$750.00.

**03:22:0 Vote**

The vote was as follows: Yes - Diamond, Aguilar, Day, Elkins, Grantner, Salcido, ; No - Carter, Nunley; Absent - None. The motion carried.

**05:03:0 16. Consider approval to pursue options for purchase of property for parking along Canal Street**

**Discussion**

Dave Rodgers of the Citizens Advisory Committee for the Canal Street Renovation Project said the Committee has been meeting for three years. The project is set for groundbreaking this summer to begin a twelve month, \$19 million dollar renovation of Canal Street. Mr. Rodgers explained the details of the project and the need for parking to replace the on-street parking that will be removed during the renovation of Canal Street. Other issues regarding the project and the need for property to create a City owned parking lot were discussed. They were as follows: Funding, Drainage, ADA Compliance and Parking Needs.

(Motion and Vote were taken later in meeting)

**25:11:0 4. Consider approval of Resolution No. 2010-01, a Resolution opposing the New Energy Economy Petition regarding Greenhouse Gas Emissions**

Steve McCutcheon said the Department of Development met with Jeff Newell with PNM. New Energy Economy is an Environmental Group from Santa Fe, NM, who has filed a petition with the Environmental Improvement Board, a non-technical board appointed by the Governor. He said this petition requests that NEE take carbon emissions in the state of NM to 20% below the 1990 levels by year 2020. For a state to take that on without Texas, NM, Mexico, Canada and the entire world, doesn't make sense. He said PNM says the cost of electricity in NM will go up 90% and the capital costs to comply with this petition will be \$1.9 Billion for New Mexicans. Mr. McCutcheon said this petition opposing the action has been passed by many surrounding cities such as Clovis, Artesia, Farmington, and many industrial and community development organizations around the state, to get it into a global context instead of a state wide context.

**27:24:0 Motion**

The motion was made by Councilman Grantner and seconded by Councilman Carter to approve Resolution No. 2010-01, a Resolution opposing the New Energy Economy Petition regarding Greenhouse Gas Emissions

**29:15:0 Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**29:32:0 5. Consider approval of Resolution No. 2010-02, a Resolution of support for the joint EDA Application of the City of Carlsbad and Carlsbad Department of Development for a Brownfield Redevelopment Project**

John Waters said Resolution No. 2010-02 is part of an application that the Department of Development is pursuing to complete the Cascades at Carlsbad. The Cave-Karst Institute, Adult Day Care-Respite Center, and another project that will be going in at the site. He said turning the site into a commercial and retail center is planned to complete the project. The entire match funding will be provided by CDOD, but a local government fiscal agent is a requirement of the application. CDOD will not request any funding from the City and the Grant Administration Services will be handled by Hubert Quintana of the Southeast New Mexico Economic Development District.

**32:42:0 Motion**

The motion was made by Councilman Day and seconded by Councilman Nunley to approve Resolution 2010-02, supporting the joint EDA .

Fern Lawson said she thinks this issue should be a referendum vote.

**40:00:0 Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**40:03:0**                    **6. Consider approval of request from Yates Petroleum Corporation to drill on City property and for two variances from the General Surface Use Policy for a larger drill pad and lower liability limits**

Richard Aguilar told the Council that this request is no different than previous requests. He said Yates is willing to pay the \$10,000 as they have in the past for the 300 X 300 pad. They provided the insurance information that shows they have a policy of \$1 million auto liability and an umbrella coverage of \$25 million. He said they are going from \$1,000,000 that is the City requirement to the \$1 million and the \$25 million umbrella. That is the only change from the standard contract. He added that it is consistent with the policy and Yates has the extra coverage on the \$25 million umbrella.

**41:30:0**                    **Motion**

The motion was made by Councilman Aguilar and seconded by Councilman Diamond to approve the Yates Petroleum request.

**44:00:0**                    **Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**44:33:0**                    **16. Consider approval to pursue options for purchase of property for parking along Canal Street**

**45:54:0**                    **Motion**

The motion was made by Councilman Elkins and seconded by Councilman Carter to approve the pursuit of options for purchase of property for parking along Canal Street.

**46:15:0**                    **Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**46:30:0**                    **7. Consider approval of a Variance Request from the City's Zoning Regulations, Section 56-94(2) "B" Residence District/Area Regulations, to allow construction of a carport at 612 Hickory Street that encroaches 5' into the required 5' side-yard setback, for a total remaining setback of 0'**

Yolanda Davis, owner of the property, said the residence was built in the 1950's when the garages were built very close together and she wanted to make a carport to cover her car. Stephanie Shumsky said variances are considered on a case by case basis. Ned Elkins pointed out that the Planning and Zoning Commission voted unanimously to approve the request.

**49:35:0**                    **Motion**

The motion was made by Councilman Aguilar and seconded by Councilman Nunley to approve the Variance Request from the City's Zoning Regulations, Section 56-94(2) "B" Residence District/Area Regulations, to allow construction of a carport at 612 Hickory

Street that encroaches 5' into the required 5' side-yard setback, for a total remaining setback of 0'.

**49:47:0**                      **Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**51:02:0**                      **8. Consider approval of a Variance from the Approved Final Plat, Quail Hollow Subdivision, Unit 4, Replat 1, Lot 16, Section 56-484, to allow a new single-family dwelling unit to encroach into the required 25' front yard setback a total of 5'9", for a total remaining setback of 19'3"**

Derik Brown, owner of the property, told the Council that his request for a variance for less than six feet. Due to the shape of the lot and the narrowness, the home that he wishes to build will not fit on the lot. Councilor Diamond asked why the Planning and Zoning Commission as well as the Public Works Department recommended denial. Stephanie Shumsky said the reason the request was denied by Planning and Zoning Commission is because the lots in that subdivision were granted a Variance when it was subdivided. Generally the setback requirement for residential is 30'. This lot has already been granted a five foot setback variance. She said Mr. and Mrs. Brown were aware of the shape of the lot when they purchased it. Councilor Diamond asked if there were any other Variances granted in that subdivision. Eileen Riordan said there was one in which the garage was already built before it was discovered there was a setback issue. She said she thinks there has been one more. Councilor Elkins said it does not appear to interfere with line of sight compared to capability for this setback.

**53:04:0**                      **Motion**

The motion was made by Councilman Carter and seconded by Councilman Elkins to approve the Variance from the Approved Final Plat, Quail Hollow Subdivision, Unit 4, Replat 1, Lot 16, Section 56-484, to allow a new single-family dwelling unit to encroach into the required 25' front yard setback a total of 5'9", for a total remaining setback of 19'3" .

**53:11:0**                      **Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**53:31:0**                      **9. Consider approval of a Variance Request from the City's Zoning Regulations, Section 56-347, Fences and Hedges to allow the construction of a five-foot (5') fence along the inside of the front and side property lines at 806 N. Mesquite Street, from Tiffany Sullivan-Owens on behalf of the Carlsbad Community Garden Association and Lyle & Barbara Barron.**

Tiffany Sullivan-Owens explained that she is a co-coordinator of the Community Garden that was formed in September 2009. She said they chose a vacant lot at 806 N. Mesquite for the first year demonstration garden. The property is owned by Lyle and

Barbara Barron. She said they are requesting a garden fence not a property line fence. The purpose of the fence is to limit liability and unauthorized access during non-business hours. Councilor Diamond asked if the land was being deeded to the Community Garden Association. Ms. Owens said it is not. Councilor Diamond asked if the fence would only remain on the property while being used as a community garden. Ms. Riordan said the variance could be restricted if granted.

**56:45:0 Motion**

The motion was made by Councilman Diamond and seconded by Councilman Grantner to approve the Variance Request from the City's Zoning Regulations, Section 56-347, Fences and Hedges to allow the construction of a five-foot (5') fence along the inside of the front and side property lines at 806 N. Mesquite Street as long as the Community Garden Association utilizes the property .

**57:00:0 Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**57:22:0 10. Consider approval of a Variance Request from the City's Zoning Regulations, Section 56-94, "B" Residence District/Area Regulations, to allow construction of a carport at 2513 Spruill Drive that encroaches 5' into the required 5' side-yard setback, for a total remaining setback of 0', and that encroaches 4' into the required 30' front-yard set back, for a total remaining front-yard setback of 25' and 10' into the 20' rear-yard setback, so that the remaining rear-yard setback will be 10'**  
Mr. Edward Pando, owner of the property, said he is requesting a variance to construct a carport to protect his vehicles. He said a patio will be used for a recreational area for his four children. Ms. Shumsky said the Planning and Zoning Commission recommended denial of the side-yard setback request. She said the Commission felt the setback would be too close to the property on the south. The rear-yard and front-yard setbacks were recommended for approval.

**59:46:0 Motion**

The motion was made by Councilman Diamond and seconded by Councilman Carter to approve the variance as recommended by the Planning and Zoning Commission allowing a 25' front-yard setback, a 10' rear-yard setback and denied the side-yard setback of 0'.

**1:03:22 Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**1:04:04 11. Review status of property and buildings located at 1202 W. Mermod Street, previously condemned by Resolution 2009-01**  
Eileen Riordan gave the Council a report on the condition of the property.

Ms. Riordan said that this case has been active since 2008. Numerous extensions have been granted by the City Council. The last extension of time stipulated specific conditions which have not been maintained or have not been met at all. She said the Code Enforcement and Building Inspector reported public safety issues on the property. Ms. Riordan said the Council's options are to go forward with demolition or grant Mr. Benavidez another extension of time.

**1:12:33 Motion**

The motion was made by Councilman Elkins and seconded by Councilman Nunley to approve demolition of 1202 W. Mermod Street without returning the case to Council.

**1:12:50 Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**1:13:05 12. Discussion regarding planned improvements to Waste Water Treatment Plant**

Harry Burgess explained that the next three items on the Agenda are related. Based on Council's direction in March 2008, the plan was to improve the City's infrastructure up to \$45 million in improvements. There have been many meetings and discussions about the possibilities. He said the agreed action : 1) was to proceed with refinancing of the existing water and sewer bonds, 2) pursue a gross receipts tax and bonding that revenue, 3) pursue a very low interest rate loan with the NM Environment Department, which is known as the Clean Water Revolving Loan Fund. The three items constituted the financing for the \$45 million and also some general fund monies put toward the initial planning activities to begin preparing for the improvements. He said the City successfully refinanced the sewer bond with a better rate than expected and obtained about \$1 million more in revenue. He said the City went through the bonding process for \$8 million from that new Gross Receipt Tax which is available today for projects and obtained authority for \$18 million for this CWRLF loan.

Following this discussion, a presentation was given by Mr. Wade Chacon and Mr. Bill Zimmerman of HDR Engineering, Inc. regarding:

- An overview of planned improvements for necessary repairs,
- A condition assessment,
- History of current Waste Water Treatment Plant,
- Funding

**1:43:18 13. Consider approval of 2009 Water & Sewer Rate Report prepared by Smith Engineering Company**

Rebecca Fink with Smith Engineering gave a summary of the Water & Sewer Rate Report.

Discussion regarding:

- Options,
- Current system,

- Historical data,
- Projected expenditures and revenues,
- Repayment of SIF

Harry Burgess reported on the customer data and information regarding options prepared by the City's Financial Department. Mayor Forrest asked Ms. Fink to bring additional information to the next Council meeting.

**2:32:28            14.        Set Date for Ordinance:**

**A.        An Ordinance regarding the planned improvements to the Waste Water Treatment Plant and Clean Water Revolving Fund Application (Jan. 26, 2010)**

Mr. Burgess asked the Council to grant authority to pursue the Ordinance regarding the planned improvements to the Waste Water Treatment Plant and Clean Water Revolving Fund Application set for January 26, 2010.

**2:32:40            Motion**

The motion was made by Councilman Diamond and seconded by Councilman Elkins to approve setting the date for an Ordinance regarding the planned improvements to the Waste Water Treatment Plant and Clean Water Revolving Fund Application for January 26, 2010.

**2:32:49            Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**2:33:02            15.        Consider renewal of Legislative Appropriations Agreements with the State of New Mexico LGD and Economic Development Department**

**A.        08-L-G-4307; to plan, design, construct, furnish, equip and install improvements to the Battered Families Shelter in Carlsbad, (\$35,787.23) Thirty-Five Thousand Seven Hundred Eighty-Seven Dollars and Twenty Three Cents**

**B.        08-L-5185: to plan, design, construct, equip and furnish the National Cave & Karst Research Institute, (\$544,500) Five Hundred Forty-Four Thousand Five Hundred Dollars**

**C.        08-L-5187: for an Animal Shelter in Carlsbad shall not be expended for the original purpose but is changed to construct, equip and furnish the National Cave and Karst Research Institute in Carlsbad, (\$90,000.00) Ninety Thousand Dollars**

**D.        05-L-1477: to plan, design, construct an Arts Park, including landscaping, at the Carlsbad Library and Museum Complex in Carlsbad, (\$9,269.75) Nine Thousand Two Hundred Sixty-Nine Dollars and Seventy Five Cents**

**E.        07-L-5244: to plan, design, construct, equip and furnish improvements to the Public Library in Carlsbad, (\$50,000) Fifty Thousand Dollars**

**F.        08:L-G-431 to plan, design, construct, purchase, install and equip improvements, including lighting, landscaping, an irrigation system and activity**

areas at the Halagueno Art Park in Carlsbad, (\$64,990.09) Sixty-Four Thousand Nine Hundred Ninety Dollars and Nine Cents

G. 09-L-3412: to purchase equipment for and improve exhibit and storage areas at the Carlsbad Museum and Fine Arts Center in Carlsbad, may include planning, designing, constructing, renovation and furnishing storage areas and installing exterior lighting, (\$30,510.57) Thirty Thousand Five Hundred Ten Dollars and Fifty Seven Cents

H. 09-L-G-3413: to plan, design, construct, furnish and equip improvements, including the purchase of display cases and shelving at the Carlsbad Museum and Fine Arts Center in Carlsbad, (\$20,000.) Twenty Thousand Dollars

I. 05-L-1479: to plan, design and construct landscaping improvements to the Industrial Park in Carlsbad, (\$11,324.66) Eleven Thousand Three Hundred Twenty-Four Dollars and Sixty Six Cents

J. 08-L-G-4311: to purchase, plan, design, construct and install signs and landscaping improvements in the Carlsbad Industrial Park in Carlsbad, (\$8,240.00) Eight Thousand Two Hundred Forty Dollars

K. 07-L-5242: to plan, design, construct and install a bronze sculpture of Jim White in Carlsbad, (\$7,250.) Seven Thousand Two Hundred Fifty Dollars

L. 07-L-5247: to plan, design and renovate the Lake Carlsbad Beach House, including interior and exterior improvements in Carlsbad, (\$1,663.34) One Thousand Six Hundred Sixty-Three Dollars and Thirty Four Cents

M. 07-L-G-6233: to plan, design, improve, construct and equip the Law Enforcement Complex in Carlsbad (\$62,349.) Sixty-Two Thousand Three Hundred Forty-Nine Dollars

N. 06-L-G-1641: to purchase, install and construct directional signage in the downtown area of Carlsbad, (\$14,394.12) Fourteen Thousand Three Hundred Ninety-Four Dollars and Twelve Cents

O. 09-419-A073924: to plan, design and construct the redevelopment of central business districts as part of the MainStreet program, (\$80,150) Eighty Thousand One Hundred Fifty Dollars

P. 05-L-304: to plan, design and construct improvements to the Carlsbad Riverwalk Recreation Center in Carlsbad, (\$4,578.34) Four Thousand Five Hundred Seventy-Eight Dollars and Thirty Four Cents

Q. 06-L-G-1622: to plan, design and construct improvements to the Carlsbad Riverwalk Recreation Center in Carlsbad, (\$68,214.02) Sixty-Eight Thousand Two Hundred Fourteen Dollars and Two Cents

R. 06-L-419: to plan, design and construct improvements to the Carlsbad Riverwalk Recreation Center in Carlsbad, (\$51,032.23) Fifty-One Thousand Thirty-Two Dollars and Twenty Three Cents

## **2:36:59 Motion**

The motion was made by Councilman Elkins and seconded by Councilman Grantner to approve the renewal of Legislative Appropriations Agreements with the State of New Mexico LGD and Economic Development Department.

**2:407           Vote**

The vote was as follows: Yes - Diamond, Aguilar, Carter, Day, Elkins, Grantner, Salcido, Nunley; No - None; Absent - None. The motion carried.

**2:410           17.     Council Committee Reports**

Monica Harris, City Finance Director presented an overview of the new utility bills. She said there will be a savings of approximately \$2,500 per year and staff time. She said the feedback has been very positive.

**2:41:33        Adjourn**

**2:45:42        Stop Recording [9:05:33 PM]**

There being no further business, the meeting was adjourned at 9:05:33p.m.

          /S/ Bob Forrest            
                  Mayor

ATTEST:

          /S/ Amanda Asbury            
                  City Clerk