

**LINKED MINUTES OF A REGULAR MEETING OF THE CITY COUNCIL OF THE  
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL ANNEX  
BUILDING ON JANUARY 8, 2019 AT 6:00 P.M.**

Present:	Dale Janway	Mayor
	Lisa A. Anaya Flores	Councilor
	Edward T. Rodriguez	Councilor
	Leo B. Estrada	Councilor
	Jason O. Chavez	Councilor
	Jason Shirley	Councilor
	Judith E. Waters	Councilor
	Wesley A. Carter	Councilor
Absent:	Mark C. Walterscheid	Councilor
Also Present:	Michael Hernandez	City Administrator
	John Lowe	Deputy City Administrator
	Eileen P. Riordan	City Attorney
	Nadine Mireles	City Clerk
	Ken Britt	Community Dev. Director
	Angie Barrios-Testa	Director of Municipal Services
	KC Cass	Director of Projects
	Ron Myers	Director of Utilities
	Sam Plumlee	IT Director
	Wendy Austin	Finance Director
	Richard Lopez	Fire Chief
	Scot Bendixsen	HR Director
	Jeff Patterson	Planning Director
	Shane Skinner	Police Chief
	Patrick Cass	Public Works Director

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

0:00:00      **Call Meeting to Order**

0:00:01      Invocation - Pledge of Allegiance

0:00:41      **Mr. Hernandez** introduced Mr. KC Cass, who has been promoted to Director of Projects. He explained Mr. Cass has been with the city for several years and has had many key critical roles. **Mr. Hernandez** said he is proud to have Mr. Cass in this position and knows he will be a big asset to the city.

0:01:21 **1. APPROVAL OF AGENDA**

0:01:23 **Motion**

The motion was made by Councilor Carter and seconded by Councilor Rodriguez to approve the Agenda

0:01:27 **Vote**

The vote was as follows: Yes - Chavez, Carter, Estrada, Rodriguez, Shirley, Waters, Anaya Flores; No - None; Absent- Walterscheid; the motion carried.

0:01:35 **2. ROUTINE AND REGULAR BUSINESS**

- A. Minutes of the Regular City Council Meeting held on December 11, 2018
- B. City Personnel Report
- C. Purchasing
  - 1) Consider Approval to Advertise Request for Proposals for Grounds keeping and Management at Will Merchant Softball Complex
- D. Monthly Reports
  - 1) Community Development Department November 2018
  - 2) Municipal Services Department November 2018
  - 3) Personnel Department December 2018
  - 4) Planning, Engineering & Regulations Department November 2018
  - 5) Utilities Department November 2018
- E. Set Date: February 12, 2019
  - 1) Consider Approval of Ordinance 2019-, an Ordinance regarding the Board of Trustees of the Carlsbad Public Library changing the frequency of the meetings from monthly to every other month
  - 2) Consider Approval of Ordinance 2019-, an Ordinance amending Section 50-3(a) of the City of Carlsbad Code of Ordinances regarding Penalty Assessments for the New Mexico Uniform Traffic Ordinance

0:01:58 **Mayor Janway asked Mr. Pat Cass to discuss Item C.1 Consider Approval to Advertise Request for Proposals for Grounds keeping and Management at Will Merchant Softball Complex**

**Mr. Cass** explained this item is to consider approval to advertise Request for Proposals for the Grounds keeping and Management at Will Merchant. He explained the current contract ends in April.

**Councilor Rodriguez** asked if there were any major changes to the RFP. **Mr. Cass** said no, the RFP is basically identical to the prior years contract.

0:03:19 **Motion**

The motion was made by Councilor Carter and seconded by Councilor Rodriguez to approve Routine and Regular Business

0:03:25 **Vote**

The vote was as follows: Yes - Chavez, Carter, Estrada, Rodriguez, Shirley, Waters, Anaya Flores; No - None; Absent- Walterscheid; the motion carried.

0:03:50 **3. CONSIDER APPROVAL OF RESOLUTION NO 2019-01, A RESOLUTION REQUIRING THE REMOVAL OF TRASH AND DEBRIS AT 905 N THOMAS STREET OWNER: ARCHIE & SONJA HARPER**

**Ms. Riordan** explained this matter has been brought before Council in September and December of 2018. She explained on both occasions the owner was given additional time to clean up the property. She said the property has not been brought into compliance and staff has not seen the progress they were hoping for.

**Mr. Trent Harper**, son of Archie Harper, said his brother Vince Harper is working on cleaning up the property. He said with the approval of the Resolution and a final 30 days, Vince may allow him to help with the cleanup.

0:10:16 **Motion**

The motion was made by Councilor Carter and seconded by Councilor Waters to approve Resolution No. 2019-01, a Resolution requiring the removal of trash and debris at 905 N. Thomas Street; Owner: Archie & Sonja Harper

0:10:25 **Vote**

The vote was as follows: Yes - Chavez, Carter, Estrada, Rodriguez, Shirley, Waters, Anaya Flores; No - None; Absent- Walterscheid; the motion carried.

**Ms. Riordan** explained to Mr. Harper that if the property is not cleaned within thirty days, the city can have a contractor clean the property and the cost will be placed as a lien on the property.

0:11:36 **4. CONSIDER APPROVAL OF RESOLUTION NO 2019-02, A RESOLUTION AUTHORIZING FILING OF AN APPLICATION TO THE NEW MEXICO ENVIRONMENT DEPARTMENT RECYCLING AND ILLEGAL DUMPING (RAID) GRANT FOR FY20**

**Mr. Myers** explained the Solid Waste Department is requesting permission to apply for this grant through the RAID program. He said the grant would be used to purchase two 30 yard roll off containers that would be used for neighborhood cleanup events. He said in order to apply for the grant a Resolution in support of the application must be approved by Council.

**Councilor Rodriguez** asked if there is any monetary tracking or anything else that needs to be kept to receive the grant. **Mr. Myers** said staff only has to put the containers to the proposed use.

**Councilor Shirley** asked if the city has applied for this grant in the past. **Mr. Myers** said he believes this grant has existed for some time. **Ms. Garwood** added that the city has applied and used this grant in the past.

0:14:01      **Motion**

The motion was made by Councilor Rodriguez and seconded by Councilor Estrada to approve Resolution No. 2019-02, a Resolution authorizing filing of an application to the New Mexico Environment Department Recycling and Illegal Dumping (RAID) Grant for FY20

0:14:07      **Vote**

The vote was as follows: Yes - Chavez, Carter, Estrada, Rodriguez, Shirley, Waters, Anaya Flores; No - None; Absent- Walterscheid; the motion carried.

0:14:25      **5. CONSIDER APPROVAL OF ORDINANCE 2019-01, AN ORDINANCE AUTHORIZING THE CONVEYANCE BY THE CITY TO OXY USA INC. OF APPROXIMATELY 17.02 ACRES OF REAL PROPERTY IN THE CARLSBAD AIRPORT INDUSTRIAL PARK AS PART OF AN ECONOMIC DEVELOPMENT PROJECT**

0:14:52      **Ms. Riordan** explained the New Mexico Constitution prohibits municipalities from making donations to private entities. She explained there are a few exceptions and one of those exceptions is Economic Development. She said in the case of Economic Development it is not a donation it is an exchange of something for Economic Development. She explained in this case OXY has asked for 17.02 acres of land in exchange for the development of the property. She explained the city would grant them this property without charging the sales price but OXY must provide a lengthy portion of Economic Development. She reviewed the items that OXY has agreed to and city staff has determined that OXY would essentially be able to repay in Economic Development the value of the land in approximately 5 years. She said the 17.02 acres is valued at a little over \$900,000. She added the development includes land further to the south which OXY has purchased or acquired from the county.

**Mr. Mike Hilfinger** said OXY is very excited about the project and working with the city. He explained the county conveyed just over 20 acres and are looking to convey the 17.02 acres from the city. He said the plan is to build a 60,000 square foot state of the art engineering office building, a fabrication distribution facility, and a lay down yard. He explained the plan is to break ground within the next month and complete the project by the first quarter of 2020.

**Councilor Rodriguez** asked how many of the employees will live in Carlsbad permanently and how many will be new to Carlsbad. **Mr. Hilfinger** said 70% of the employees will live here permanently or already reside here in the community.

**Ms. Riordan** explained in the event that OXY is unable to make their Economic Development milestones the city could place a lien on the facility and OXY would have to repay the portion of the appraised price that had not been repaid by Economic Development.

**Councilor Chavez** asked if Council could receive a data sheet as to how many of the 100 employees will reside in Carlsbad permanently. **Mr. Hilfinger** said yes.

0:22:19      **A.      Public Hearing**

**Mayor Janway** asked if anyone else would like to speak regarding the Ordinance. **No one appeared and the Mayor declared the public hearing closed and reconvened the Council in regular session.**

0:22:40      **B.      Consider Approval of Ordinance 2019-01**

0:22:45      **Motion**

The motion was made by Councilor Rodriguez and seconded by Councilor Waters to approve Ordinance No. 2019-01, an Ordinance authorizing the conveyance by the City to OXY USA, Inc. of approximately 17.02 acres of real property in the Carlsbad Airport Industrial Park as part of an Economic Development Project

0:22:54      **Vote**

The vote was as follows: Yes - Chavez, Carter, Estrada, Rodriguez, Shirley, Waters, Anaya Flores; No - None; Absent- Walterscheid; the motion carried.

0:23:20      **6.      CONSIDER APPROVAL OF ORDINANCE 2019-02, AN ORDINANCE AUTHORIZING THE LEASE OF APPROXIMATELY 11.7 MILES OF PIPELINE AND RELATED FACILITIES IN THE DOUBLE EAGLE WATER SYSTEM WITH SUCH PORTION COMMONLY KNOWN AS THE GRUBBS LINE TO SELECT ENERGY SERVICES, LLC DBA GREGORY ROCKHOUSE RANCH FOR THE TRANSMISSION OF WATER**

0:23:47      **A.      Public Hearing**

**Mr. Myers** explained the city was approached in 2017 regarding the possibility of leasing the Grubbs Water Line. He said an RFP was published in August of 2017 and one proposal was received from Select Energy Services. He explained this proposal from Select Energy is to use the pipeline to transport their water adding that the Double Eagle will not be supplying any of the water. He said Select Energy proposes to pay the city 7/10ths of a cent per barrel of water transported through the pipeline with a minimum monthly payment of \$625.00. He explained that Select Energy will also take over the maintenance of the line. He said the Water and Sewer Commission and staff recommend approval.

0:25:41 **Mayor Janway asked if anyone else would like to speak regarding the Ordinance. No one appeared and the Mayor declared the public hearing closed and reconvened the Council in regular session.**

0:26:00 **B. Consider Approval of Ordinance 2019-02**

0:26:05 **Motion**

The motion was made by Councilor Carter and seconded by Councilor Rodriguez to approve Ordinance No. 2019-02, an Ordinance authorizing the lease of approximately 11.7 miles of pipeline and related facilities in the Double Eagle Water System with such portion commonly known as the Grubbs line to Select Energy Services, LLC dba Gregory Rockhouse Ranch for the transmission of water

0:26:10 **Vote**

The vote was as follows: Yes - Chavez, Carter, Estrada, Rodriguez, Shirley, Waters, Anaya Flores; No - None; Absent- Walterscheid; the motion carried.

0:26:26 **7. CONSIDER APPROVAL OF ORDINANCE 2019-03, AN ORDINANCE REZONING PART OF "I" INDUSTRIAL DISTRICT TO "C-2" COMMERCIAL 2 DISTRICT FOR AN APPROXIMATELY 16 ACRE PROPERTY, LOCATED AT 1200 DERRICK ROAD APPLICANT: L & S VENTURES LLC**

**Mr. Patterson** explained this request is to change zoning of the subject property from "I" Industrial District to "C-2" Commercial 2 District. He explained the property is adjacent to "C-2" zoning and will not create a spot zone. He said the Planning and Zoning Commission voted to recommend approval.

0:27:54 **A. Public Hearing**

**Mayor Janway asked if anyone else would like to speak regarding the Ordinance. No one appeared and the Mayor declared the public hearing closed and reconvened the Council in regular session.**

0:28:13 **B. Consider Approval of Ordinance 2019-03**

0:28:18 **Motion**

The motion was made by Councilor Shirley and seconded by Councilor Waters to approve Ordinance No. 2019-03, an Ordinance rezoning Part of "I" Industrial District to "C-2" Commercial 2 District for an approximately 16 acre property, located at 1200 Derrick Road; Applicant: L & S Ventures LLC

0:28:24 **Vote**

The vote was as follows: Yes - Chavez, Carter, Estrada, Shirley, Waters, Anaya Flores; No - None; Absent- Walterscheid; Abstain: Rodriguez; the motion carried.

0:28:47      **8. CONSIDER APPROVAL OF REQUEST FOR TEMPORARY USE APPLICATION TO ALLOW EXPANSION OF TEMPORARY HOUSING AS A TEMPORARY USE AT 2021 SAN JOSE BLVD ZONED "R-R" RURAL RESIDENTIAL APPLICANT/OWNER: DAVID MALEY**

**Mr. Patterson** explained this request is to expand an existing temporary RV Park. He said the applicant would like to increase the capacity of the Park by 94 spaces bringing the total to 244 RV spaces and 19 crew housing units. He said the Planning and Zoning Commission recommend approval.

0:30:16      **Motion**

The motion was made by Councilor Waters and seconded by Councilor Shirley to approve request for a Temporary Use Application to allow expansion of Temporary Housing as a Temporary Use at 2021 San Jose Blvd zoned "R-R" Rural Residential Applicant/Owner: David Maley

0:30:27      **Vote**

The vote was as follows: Yes - Chavez, Carter, Estrada, Rodriguez, Shirley, Waters, Anaya Flores; No - None; Absent- Walterscheid; the motion carried.

0:30:44      **9. CONSIDER APPROVAL OF REQUEST FOR TEMPORARY USE APPLICATION FOR TEMPORARY HOUSING AS A TEMPORARY USE AT 2411 A E. GREENE STREET ZONED "R-R" RURAL RESIDENTIAL APPLICANT: PEGASUS OPTIMIZATION MANAGERS**

**Mr. Patterson** explained this request is to allow temporary housing as a temporary use at 2411A E. Greene Street. He said the property is zoned Rural Residential which fits the current temporary housing ordinance and also fits the size requirement at 14.08 acres. **Mr. Patterson** explained the applicant is requesting to have 4 RV spaces and 2 trailer type housing units to house their employees.

0:32:08      **Motion**

The motion was made by Councilor Carter and seconded by Councilor Chavez to approve Request for Temporary Use Application for Temporary Housing as a Temporary Use at 2411A E. Greene Street zoned "R-R" Rural Residential; Applicant: Pegasus Optimization Managers

0:32:14      **Vote**

The vote was as follows: Yes - Chavez, Carter, Estrada, Rodriguez, Shirley, Waters, Anaya Flores; No - None; Absent- Walterscheid; the motion carried.

0:32:31      **10. CONSIDER APPROVAL OF AN APPEAL OF THE DECISION BY THE PLANNING & ZONING COMMISSION TO DENY A VARIANCE REQUEST FOR PLACEMENT OF A STRUCTURE WITHIN THE REQUIRED 5' SIDE SETBACK AT 604 RIVERA CT., ZONED PUD PLANNED UNIT DEVELOPMENT APPELLANT: CHRIS HAMILL**

**Mr. Patterson** explained at the November Planning and Zoning Commission meeting the Planning Department presented the request for a variance. He explained the appellant stated he would like to place a storage structure within the side setback of his property. **Mr. Patterson** added at the time of the November meeting the appellant had already installed the structure without a building permit and without an approved variance. He explained the departments Building Official was informed of the construction and visited the property on September 27, 2018. He said the Building Official observed that the storage building was in the process of being constructed and posted a stop work red tag on the structure. He explained on September 28, 2018 the appellant came into the office and the Building Official informed the appellant that he needed a building permit and a variance in place in order to continue the project and asked the appellant to stop work on the project moving forward. He explained that after the meeting with the appellant the Building Official went back to the property and the structure was complete meaning that the appellant had worked through the red tag and without a permit or a variance. **Mr. Patterson** said the Planning and Zoning Commission heard the request and also the actions of the appellant and denied the request for variance.

**Mr. Chris Hamill** passed out photos to the Council of dwellings within the neighborhood that are on or are less than the 5' setback. **Mr. Hamill** said he continued with the construction based on the safety of the structure. He said the slab was already there and the building does not have any electrical or plumbing so he did not think a permit was needed.

**Councilor Carter** asked what the building is being used for. **Mr. Hamill** answered bicycles and lawnmowers.

**Councilor Chavez** asked if the building could be unbolted and moved. **Mr. Hamill** said the building cannot be moved but said the building can be unbolted and fall within the portable building category.

**Councilor Rodriguez** asked if it would have been equally safe to take down the building and go through the process rather than continue to finish the structure. **Mr. Hamill** said no, the structure was over 70% complete, when it was red tagged.

0:43:27 **Mayor Janway** asked if anyone else would like to speak regarding this issue.

**Mr. Ted and Evelyn Cordova** came forward to speak against the ordinance. **Mr. Cordova** explained he and his wife had their home built and have lived there for 15 years. He added that there are a lot of other structures in the neighborhood that do not follow the setback requirements and added those wrongs do not make this right. He said he and his wife are against the 3' setback because they feel it is encroaching on their property and also devalues their property.



**Ms. Cordova** read from page 109 of the city ordinance which states that a variance is to allow a building to be built but this structure is already built and she would like the structure to be moved to comply with the required setbacks.

**Councilor Shirley** said it has been mentioned that a portable structure is allowed so he asked if Council has legal authority to have the building removed. **Mr. Cass** explained the zoning ordinance does not apply to portable structures. He said the structure was built to be bolted to the ground and per his interruption; a portable structure would have a floor structure and would be able to be moved on skids.

**Ms. Riordan** explained that for an appeal the Council would have to vote 6 in favor to overturn the decision of the Planning and Zoning Commission. She added that a failure to have 6 votes in favor to overturn the appeal means that the decision of the Planning and Zoning Commission would stand.

0:53:36      **Motion**

The motion was made by Councilor Chavez and seconded by Councilor Rodriguez to uphold the decision by the Planning & Zoning Commission to deny a variance request for placement of a structure within the required 5' side setback at 604 Rivera Ct., zoned PUD Planned Unit Development; Appellant: Chris Hamill

0:54:40      **Vote**

The vote was as follows: Yes - Chavez, Estrada, Rodriguez; No - Carter, Shirley, Waters, Anaya Flores; Absent- Walterscheid; the motion failed.

*Ms. Riordan explained the decision of the Planning & Zoning Commission stands, unless there is a new motion.*

0:55:45      **Motion**

The motion was made by Councilor Shirley and seconded by Councilor Carter to approve the Appeal of the Decision of the Planning & Zoning Commission to deny a variance request for placement of a structure within the required 5' side setback at 604 Rivera Ct., zoned PUD Planned Unit Development; Appellant: Chris Hamill

0:56:38      **Vote**

The vote was as follows: Yes - Carter, Shirley, Anaya Flores; No - Chavez, Estrada, Rodriguez, Waters; Absent- Walterscheid; the motion failed.

*Ms. Riordan explained with no decision from the Council, the Decision of the Planning & Zoning Commission stands and the Appeal is denied*

**Mr. Patterson** added the Planning Department will require removal of the structure or that the structure be brought into compliance with the Ordinance.

0:58:59      **11. CONSIDER APPROVAL OF AN APPEAL OF THE DECISION BY THE PLANNING & ZONING COMMISSION TO DENY A CONDITIONAL USE PERMIT REQUEST TO OPERATE A HOME OFFICE AT 110 S 10TH, ZONED "R-1" RESIDENTIAL 1 DISTRICT APPELLANT: SAUL LICON**

**Mr. Patterson** explained this is an appeal of the Planning & Zoning Commission to deny a Conditional Use Permit request to operate a home office at 110 S. 10th Street which is zoned "R-1" Residential 1 District. He said the Planning & Zoning Commission voted to deny the request and the Appellant appealed the decision.

**Ms. Enadena Ybarra** and **Mr. Saul Licon** came before Council for approval of the Conditional Use Permit for a home office at 110 S. 10th Street. **Ms. Ybarra** explained that there are three employees at the location who only do invoicing at the location. She said they have never had any complaints from any of the other neighbors in the area.

**Ms. Sheila Dinwiddie** said they park multiple vehicles on the street and many of them are trucks with trailers. She stated no one lives in the home it is only used as an office. She said her main concern is with the vehicles always parked along the street an ambulance cannot get down the street.

**Ms. Riordan** explained the appeal process stating the vote would need 6 votes to overturn or approve the appeal.

1:10:02      **Motion**

The motion was made by Councilor Rodriguez and seconded by Councilor Carter to deny the Appeal of the decision by the Planning & Zoning Commission to deny a Conditional Use Permit request to operate a home office at 110 S. 10th, zoned "R-1" Residential 1 district; Appellant: Saul Licon

1:10:13      **Vote**

The vote was as follows: Yes - Chavez, Carter, Estrada, Rodriguez, Shirley, Waters, Anaya Flores; No - None; Absent - Walterscheid; the motion carried and the decision of the Planning & Zoning Commission is upheld.

1:11:03      **12. COUNCIL COMMITTEE REPORTS**

None to report.

1:11:21      **13. ADJOURN**

1:11:26      **Motion**

The motion was made by Councilor Anaya Flores and seconded by Councilor Shirley to Adjourn

1:11:39      **Vote**

The vote was as follows: Yes - Chavez, Carter, Estrada, Rodriguez, Shirley, Waters, Anaya Flores; No - None; Absent- Walterscheid; the motion carried.

1:11:57      **Adjourn**

There being no further business, the meeting was adjourned at 7:13 p.m.

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Dale Janway, Mayor

ATTEST:

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Nadine Mireles, City Clerk