

**LINKED MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF THE
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL BUILDING
ON MARCH 14, 2017 AT 6:00 P.M.**

Present:	Dale Janway	Mayor
	Lisa A. Anaya Flores	Councilor (via telephone)
	Edward T. Rodriguez	Councilor
	Leo B. Estrada	Councilor
	J. R. Doporto	Councilor
	Wesley A. Carter	Councilor
	Jason Shirley	Councilor
	Richard Doss	Councilor

Absent:	Ward 4	Vacancy
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Also Present:	Steve McCutcheon	City Administrator
	Stephanie Shumsky	Deputy City Administrator
	Eileen P. Riordan	City Attorney
	Annette Barrick	City Clerk
	Patsy Jackson-Christopher	Director of Arts & Culture
	Luis Camero	Director of Engineering Services
	Steve Hendley	Director of Parks & Recreation
	Michael Hernandez	Director of Utilities
	Wendy Hammett	Finance Director
	Richard Lopez	Fire Chief
	Jeff Patterson	Planning Director
	Kent D. Waller	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**
- 0:00:00 Start Audio Recording
- 0:00:03 Invocation - Pledge of Allegiance
- 0:00:42 **1. APPROVAL OF AGENDA**

0:00:44 **Motion**

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

0:00:49 **Vote**

The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:01:02 **2. ROUTINE AND REGULAR BUSINESS**

- A. Minutes of the Regular City Council Meeting Held on February 28, 2017
- B. Minutes of the Special City Council Meeting Held on March 3, 2017
- C. City Personnel Report
- D. Monthly Reports:
 - 1) Municipal Court Monthly Report, February 2017
 - 2) Personnel Department Monthly Report, February 2017
 - 3) Planning, Engineering, Regulation Department Monthly Report, February 2017
 - 4) Transportation and Facilities Department Monthly Report, January 2017
- E. Contracts and Agreements:
 - 1) Consider approval of an Agreement between the County of Eddy, the City of Carlsbad and FTI Consulting, LLC, for Lobbyist Services
 - 2) Consider approval of an Agreement between the City of Carlsbad and the Shorthorn Little League for League Services at the Bob Forrest Youth Sports Complex
 - 3) Consider approval of an Agreement between the City of Carlsbad and the National Little League for League Services at the Bob Forrest Youth Sports Complex
 - 4) Consider approval of Renewal of Agreement with AMEC Foster Wheeler Environment and Infrastructure, Inc. for Construction Observation Services
 - 5) Consider approval of Renewal of Agreement with AMEC Foster Wheeler Environment and Infrastructure, Inc. for Construction Quality Control Services
- F. Set Date-April 25, 2017
 - 1) An Ordinance Rezoning part of "I" Industrial District to "R-1" Residential District for an approximately 0.82 acre property, located at 2502 South Canal Street, legally described as Tract B, Pope Replat No. 1, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(B) and 56-140(I), Carlsbad Code of Ordinances
 - 2) An Ordinance Rezoning part of "I" Industrial District to "C-2" Commercial District for an approximately 5.44 acre property, located at 2502 South Canal Street, legally described as Tract A, Pope Replat No. 1, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(B) and 56-140(I), Carlsbad Code of Ordinances

0:01:23 **Mayor Janway asked Mr. McCutcheon to discuss Item E.4 Consider approval of Renewal of Agreement with AMEC Foster Wheeler Environment and Infrastructure, Inc. for Construction Observation Services; and Item E.5 Consider approval of Renewal of Agreement with AMEC Foster Wheeler Environment and Infrastructure, Inc. for Construction Quality Control Services**

Mr. McCutcheon explained the city currently has a contract with AMEC Foster Wheeler for assisting if there is an oil and gas development within the city's wellhead protection area or if there is something that could affect the city's water well. He said this contract is exercised only when needed. He explained Item 5 includes renewal of agreement also with AMEC Foster Wheeler which includes construction quality control services. He said AMEC has done an adequate job and staff is recommending approval.

0:02:46 **Councilor Doporto** requested that Item E.1 Consider approval of an Agreement between the County of Eddy, the City of Carlsbad and FTI Consulting, LLC for Lobbyist Services to be removed from Routine and Regular Business to be voted on separately. **Mayor Janway** said Item E.1 will become Item No. 8.

0:03:25 **Motion**

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

0:03:31 **Vote**

The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:03:53 **3. CONSIDER APPROVAL OF A BEER AND WINE RESTAURANT LICENSE LOCATED AT 106 W. BONBRIGHT STREET FOR MARION'S NEW AMERICAN RESTAURANT; APPLICANT: NICHOLAS MELBOURNE**

Mr. McCutcheon explained this is the former Chapman's Restaurant. He explained all of the requirements have been met by Mr. Melbourne. He said the last function is approval by the Council to grant the license.

0:04:47 **Motion**

The motion was made by Councilor Carter and seconded by Councilor Rodriguez to approve a Beer and Wine Restaurant License located at 106 W. Bonbright Street for Marion's New American Restaurant; Applicant: Nicholas Melbourne

0:04:53 **Vote**

The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:05:45 **4. CONSIDER APPROVAL OF RESOLUTION NO. 2017-12, A RESOLUTION DECLARING CERTAIN CITY PROPERTY UNUSABLE OR OBSOLETE**

Mr. McCutcheon explained this is the standard Resolution for following statute to dispose of obsolete and unusable City property.

0:06:46 **Motion**

The motion was made by Councilor Shirley and seconded by Councilor Doss to approve Resolution No. 2017-12, a Resolution Declaring Certain City Property unusable or obsolete

0:06:52 **Vote**

The vote was as follows: Yes - Doport, Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:07:06 **5. CONSIDER APPROVAL OF AN APPEAL OF THE PLANNING AND ZONING COMMISSION'S DECISION TO DENY A VARIANCE REQUEST FROM SECTION 56-90(B) TO ALLOW A FRONT-YARD SETBACK VARIANCE OF 24.5', WHICH WOULD RESULT IN A 5-5' FRONT-YARD SETBACK AT 3317 KUYKENDALL STREET: ERIC ROBINSON**

Mr. Patterson explained this is an appeal of the Planning and Zoning Commission's decision to deny the variance request. He explained the applicant had a carport placed in their front setback located at 3317 Kuykendall Street before they received a variance or a building permit to do so. He explained staff informed the applicant of the process and the Mr. Robinson brought the variance request to the Planning and Zoning Commission where the variance was denied. **Mr. Patterson** explained the denial required the removal of the carport and the applicant requested to appeal the decision.

Councilor Rodriguez asked if the applicant applied for the building permit. **Mr. Patterson** said the applicant applied for the variance, but he is not sure if he applied for the building permit.

0:09:31 **Mayor Janway asked if anyone would like to speak regarding the appeal.**

Mr. Eric Robinson explained that he purchased the carport and after the purchase the seller informed him that he needed to obtain a building permit. He explained the seller was to install on Friday, but installed on Thursday while he was at work and before he obtained a permit. He said his neighbor informed him that the carport was put up in 40 minutes. He explained he went in on Friday to obtain a building permit and was told by the building inspector that he would need to apply for a variance. He said the reason he bought the carport was to protect his investment of his vehicles.

Councilor Rodriguez said it appears that the house had a garage that has been enclosed. **Mr. Robinson** said yes, the garage was enclosed before he purchased the

property. **Councilor Rodriguez** added that Mr. Robinson bought the property knowing there was no garage.

Councilor Carter asked if the variance is denied will the applicant would have to remove the carport. **Ms. Riordan** answered yes. She explained if there is a portion that does not encroach into the 30' setback that portion could be kept. **Councilor Carter** said until there is a solution he cannot deny the variance.

Councilor Doss said the problem is that the application for the building permit was not obtained. He said without a building permit the carport should not have been installed.

Councilor Carter said he does not disagree but there are other carports that do not follow the setbacks and they are still up.

Councilor Shirley said ignorance of the law is not an excuse to break the law. He added he believes the company should also be held accountable.

Mr. Robinson asked if the carport ordinance could be brought back to Council for consideration. He said his carport looks great, matches the decor of his home, and is 13' feet from the street. He asked if he could keep the carport until Council votes on the ordinance.

Councilor Carter said there is no blanket solution. **Mr. Patterson** said Council can only make a blanket solution. He said Council has the Planning & Zoning Commission to consider the items separately and make a decision based on the information they are presented. He said Council could give the Planning & Zoning Commission guidance or direction on the matter. He added he does not feel like Council should make a definitive decision when they have the Planning & Zoning Commission to look at each item separately.

Councilor Doporto said he does not mind looking at these variances on a case by case basis. He said he believes this carports location is far enough from the sidewalk and that the carport is not obstructing any views.

Councilor Rodriguez said the contractor works for the buyer. He said if the carport was installed in 40 minutes, it can be removed in 40 minutes. He said when the home was purchased it had no garage and the process is in place for a reason.

Mr. Robinson said Mr. Cass explained to him that it is ultimately the homeowner's responsibility. He said when he found out a building permit was required; he wanted to do things legally.

Mr. Gary Procter explained he is Mr. Robinson's neighbor. He said the installer came and installed the carport while Mr. Robinson was not home. He said these carports are all over town.

0:30:17 **Ms. Riordan** explained that it will take 6 votes to override the Planning & Zonings Commissions decision to not allow the carport.

0:30:40 **Motion**

The motion was made by Councilor Doporto and seconded by Councilor Shirley to approve the appeal of the Planning and Zoning Commission's decision to deny a Variance request from section 56-90(b) to allow a front-yard setback variance of 24.5', which would result in a 5-5' front-yard setback at 3317 Kuykendall Street: Eric Robinson

0:30:52 **Vote**

The vote was as follows: Yes - Doporto, Estrada, Shirley, Carter, Anaya Flores; No - Doss, Rodriguez; Absent- None; The motion was denied.

0:31:35 **6. CONSIDER APPROVAL OF ORDINANCE NO. 2017-03 ANNEXING A PORTION OF LAND CONTAINING 15.59 ACRES MORE OR LESS, CONTIGUOUS TO THE CITY OF CARLSBAD, NEW MEXICO, LOCATED ALONG CENTER AVENUE, LEGALLY DESCRIBED AS THE WEST 135 FEET OF LOT 19, BLOCK A, HALL'S SUBDIVISION LESS THE SOUTH 100 FEET AND LESS THE NORTH 445 FEET (4.60 ACRES), LOT 17, BLOCK A, HALL'S SUBDIVISION LESS THE SOUTH 150 FEET OF THE EAST 50 FEET AS DESCRIBED (0.26 ACRES), LOT 18, BLOCK B, HALL'S SUBDIVISION (4.80 ACRES), LOTS 32 AND 33, FUSON LAND DIVISION (4.78 ACRES), PART OF JASMINE STREET (0.12 ACRES), PART OF CENTER AVENUE (1.03 ACRES), PURSUANT TO THE PETITION METHOD PROVIDED FOR IN SECTION 3-7-1 ET. SEQ., NMSA 1978**

0:32:45 **A. Remove from Table**

Mr. McCutcheon explained this request came before Council a few weeks ago with an opinion expressed by the Otis Water Coop that this annexation is not something the City could undertake. He said staff recommended to table. He said he has received calls from both the applicant and the Attorney for the Otis Water Coop that the items be removed from table and tabled for an additional 30 days to give them time to work on the situation.

0:34:22 **Motion**

The motion was made by Councilor Doss and seconded by Councilor Carter to Remove from Table

0:34:28 **Vote**

The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:34:56 C. Consider Ordinance No. 2017-03

0:34:59 **Motion to Table**

The motion was made by Councilor Doss and seconded by Councilor Rodriguez to table approval of Ordinance No. 2017-03 annexing a portion of Land containing 15.59 acres more or less, contiguous to the City of Carlsbad, New Mexico, located along Center Avenue, legally described as the West 135 Feet of Lot 19, Block A, Hall's Subdivision less the South 100 Feet and less the North 445 Feet (4.60 Acres), Lot 17, Block A, Hall's Subdivision less the South 150 Feet of the East 50 Feet as described (0.26 Acres), Lot 18, Block B, Hall's Subdivision (4.80 Acres), Lots 32 and 33, Fusion Land Division (4.78 Acres), part of Jasmine Street (0.12 Acres), part of Center Avenue (1.03 Acres), pursuant to the Petition Method provided for in section 3-7-1 et. Seq., NMSA 1978

Councilor Doporto said it seems like Otis Water has taken the City hostage until this issue is resolved. He asked is the city notified before a coop places these restrictions on the city. **Ms. Riordan** said the Federal Government has the restrictions. She explained the restriction arise when the coop receives Federal funds. She said the restrictions exist not because the coop has claimed them but because federal law grants the coop the funds. **Councilor Doporto** asked if the coop can expand as far as they would like. **Ms. Riordan** said they can claim everything that is in their service area.

0:37:39 **Vote**

The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:38:03 **7. CONSIDER APPROVAL OF ORDINANCE NO. 2017-04, ESTABLISHING "R-R" RURAL RESIDENTIAL DISTRICT IN CONJUNCTION WITH THE ANNEXATION OF APPROXIMATELY 15.59 ACRES OF PROPERTY, LOCATED ALONG CENTER AVENUE, LEGALLY DESCRIBED AS THE WEST 135 FEET OF LOT 19, BLOCK A, HALL'S SUBDIVISION LESS THE SOUTH 100 FEET AND LESS THE NORTH 445 FEET (4.60 ACRES), LOT 17, BLOCK A, HALL'S SUBDIVISION LESS THE SOUTH 150 FEET OF THE EAST 50 FEET AS DESCRIBED (0.26 ACRES), LOT 18, BLOCK B, HALL'S SUBDIVISION (4.80 ACRES), LOTS 32 AND 33, FUSON LAND DIVISION (4.78 ACRES), PART OF JASMINE STREET (0.12 ACRES), PART OF CENTER AVENUE (1.03 ACRES), PURSUANT TO SECTION 3-21-1 ET. SEQ. NMSA 1978 AND SECTIONS 56-150(B) AND 56-140(I), CARLSBAD CODE OF ORDINANCES**

0:39:23 A. **Remove from Table**

Mr. McCutcheon explained this is the annexation of the property that is tied to the previous request that was tabled.

0:40:02 **Motion**

The motion was made by Councilor Rodriguez and seconded by Councilor Doss to remove from table

0:40:22 **Vote**

The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:40:37 **C. Consider Ordinance No. 2017-04**

0:40:37 **Motion to Table**

The motion was made by Councilor Rodriguez and seconded by Councilor Shirley to table approval of Ordinance No. 2017-04, establishing "R-R" Rural Residential District in conjunction with the Annexation of approximately 15.59 acres of property, located along Center Avenue, legally described as the West 135 feet of Lot 19, Block A, Hall's Subdivision less the South 100 feet and less the North 445 feet (4.60 Acres), Lot 17, Block A, Hall's Subdivision less the South 150 feet of the East 50 feet as described (0.26 Acres), Lot 18, Block B, Hall's Subdivision (4.80 Acres), Lots 32 and 33, Fusion Land Division (4.78 Acres), part of Jasmine Street (0.12 Acres), part of center Avenue (1.03 Acres), pursuant to section 3-21-1 et. seq. NMSA 1978 and Section 56-150(b) and 56-140(I), Carlsbad Code of Ordinances

0:40:52 **Vote**

The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:41:13 **8. CONSIDER APPROVAL OF AN AGREEMENT BETWEEN THE COUNTY OF EDDY, THE CITY OF CARLSBAD AND FTI CONSULTING, LLC, FOR LOBBYIST SERVICES**

Councilor Doporto said Mr. Murray has done a good job but he feels the city has made good connections, therefore, no longer needs the service. He said he feels it is ridiculous to pay someone to make connections for the city to schedule meetings.

Councilor Doss said there is always someone new in DC. He said Mr. Murray has the contacts and the capability to get appointments that otherwise would not be possible. He said he feels it is critical for the city to have a lobbying service that is responsive to the city's needs and added that is what the city has with FTI.

Councilor Rodriguez said he feels the service keeps the city informed. He said when city representatives visit, Mr. Murray has appointments scheduled. He said he feels the service is a viable expenditure.

Councilor Carter said he agrees that the service is a viable expenditure.

Councilor Shirley added Mr. Murray has the experience to make things happen. He said he believes in what FTI does for the city and recommends approval.

0:46:23 **Motion**

The motion was made by Councilor Doss and seconded by Councilor Rodriguez to approve the Agreement between the County of Eddy, the City of Carlsbad and FTI Consulting, LLC, for Lobbyist Services

0:46:28 **Vote**

The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - Doporto; Absent- None; The motion carried.

0:46:47 **9. COUNCIL COMMITTEE REPORTS**

None to report.

0:47:10 **10. ADJOURN**

0:47:15 **Motion**

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

0:47:23 **Vote**

The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:47:40 **Adjourn**

There being no further business, the meeting was adjourned at 6:48 p.m.

Mayor

ATTEST:

City Clerk