

**LINKED MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF THE
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL BUILDING
ON APRIL 27, 2010 AT 6:00 P.M.**

Present:	Dale Janway	Mayor
	Paul C. Aguilar	Councilor
	Nick G. Salcido	Councilor
	Richard Graves, Jr.	Councilor
	Judith E. Waters	Councilor
	Wesley Carter	Councilor
	Richard Doss	Councilor
	Fred Woody	Councilor
Absent:	Sandra K. Nunley	Councilor
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.

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

0:00:14 Start Recording [5:59:56 PM]

0:00:19 Invocation - Pledge of Allegiance

0:01:05 **1. APPROVAL OF STATEMENT REGARDING CLOSED
SESSION**

Mayor Janway stated that pursuant to the requirements of the Open Meetings Act, the minutes should reflect that the matters discussed in the closed meeting held on April 13, 2010, were limited only to those matters relating to threatened/pending litigation as specified in the motion for closure.

0:01:38 **Motion to approve Statement**

The motion was made by Councilman Aguilar and seconded by Councilman Doss to approve the Statement regarding the Closed Session held on April 13, 2010.

0:01:48 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Salcido, Waters, Woody; No - None; Absent - Nunley. The motion carried.

0:02:13 **2. APPROVAL OF AGENDA**

0:02:17 **Motion to approve Agenda**

The motion was made by Councilman Woody and seconded by Councilman Waters to approve the April 27, 2010 Agenda.

0:02:34 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Salcido, Waters, Woody; No - None; Absent - Nunley. The motion carried.

0:02:49 **3. BUDGET REVIEW AS OF MARCH 31, 2010**

Mr. Burgess reviewed the revenues and expenditures as of March 31, 2010 for the General Fund and selected Enterprise and Special Funds contained within the City Budget.

0:07:42 **Motion to approve Budget Review**

The motion was made by Councilman Carter and seconded by Councilman Graves to approve the Budget Review as of March 31, 2010.

0:07:56 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Salcido, Waters, Woody; No - None; Absent - Nunley. The motion carried.

0:08:15 **4. ROUTINE AND REGULAR BUSINESS**

A. Minutes of regular City Council meeting held on April 13, 2010

B. City Personnel Report

C. Check Register, Bills, and Petty Cash Report

D. Contracts & Agreements:

- 1) Consider approval of Workers' Compensation Claims Administrative Services Agreement between the City of Carlsbad and New Mexico Mutual
- 2) Consider approval of Agreement between the City of Carlsbad and Ken Thurston Development Corporation regarding Financial Guarantees for Construction of Spring Hollow Subdivision, Phase 2 Improvements
- 3) Consider approval of Memorandum of Agreement between the City of Carlsbad and Eddy County for a joint Task Force for the DWI Prevention Program

E. Miscellaneous Requests:

- 1) Consider approval of request from Patsy Grantner, San Jose Catholic Church, for use of the San Jose Plaza for a Parish Mass and cook-out on Sunday, May 2, 2010 from 9:00 a.m. to 3:00 p.m.
- 2) Consider approval of request from Ken Britt, Living Desert Zoo & Gardens State Park, for the 24th annual Mescal Roast and Mountain Spirit Dances beginning on Thursday, May 6, 2010 and ending Sunday, May 9, 2010

F. City of Carlsbad Department Monthly Reports:

- 1) Monthly report for Community Development Department for March 2010
- 2) Monthly report for Carlsbad Fire Department for March 2010
- 3) Monthly report for Carlsbad Police Department for March 2010
- 4) Monthly report for Transportation and Facilities Department for March 2010
- 5) Monthly report for Utilities Department for March 2010

G. Boards and Committee Appointments:

SENMEDD - Councilor Richard Graves
SERPO - Stephanie Shumsky, Tom Carlson
CARLSBAD LODGERS' TAX ADVISORY BOARD - Councilor Dick Doss
BRINE WELL TECHNICAL COMMITTEE- Joel Arnwine, Bob Forrest, John Heaton, Regina Ballard, Harry Burgess, Luis Camero, Ned Elkins, Dave Freeman, Don George, Jim Griswold, Dave Henard, Courtney Herrick, Dudley Jones, Len Kaskiw, Dwayne Kicker, Lee Moo, Christi Leigh, Ralph Meeks, Mike Moore, Stan Patchet, Russ Patterson, Don Peterson, Don Purvis, Drew Stout, George Veni, Jack Volpato, Frank Weldon, Jim Wilcox, Clay Wilson, Kevin Wilson

H. Resolutions:

- 1) Consider approval of Resolution 2010-17, declaring certain City property to be obsolete and unusable (Community Development and Finance Department)

I. Overnight Travel:

- 1) Wes Carter- ECA Conference, Augusta, Georgia on April 21 through April 23, 2010

0:08:44 **Councilman Doss questioned the Check Register and Bills and Petty Cash Report**

Councilman Doss and **Ms. Riordan** discussed the transactions with Modrall Sperling and Hinkle, Hensley, Shanor and Martin for legal services.

0:11:15 **Motion to approve the Routine and Regular Business**

The motion was made by Councilman Doss and seconded by Councilman Waters to approve the Routine and Regular Business.

0:11:22 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Salcido, Waters, Woody; No - None; Absent - Nunley. The motion carried.

0:11:39 **5. REVIEW OF U. S. CENSUS STATUS BY ELAINE AVINA**

Ms. Elaine Avina Partnership Specialist, U. S. Census Bureau explained that as of April 27 Eddy County was at 63 percent of participation rate and that Carlsbad was at 65 percent. She explained that the State is third from the last in terms of participation. She explained that because lots of communities in New Mexico are rural or contain many

vacation homes the law participation rate is to be expected. She explained that the national participation rate was at 72 percent which was good because the 2000 Census participation rate. She explained that starting May 1, 2010 a door-to-door follow up process will begin for those residences that did not turn in their census information as of April 16, 2010. She explained that they were having a hard time hiring people in this area to conduct the door-to-door surveys and without workers they can not enumerate. She asked that the Council promote Census jobs. She explained the follow-up process and asked that the local media be involved in getting the word out that census workers will be coming around. She also explained how census workers can be identified and that with the process the U. S. Census Bureau is using they should exceed the participation rate of the 2000 Census.

0:22:44 **Discussion regarding:**

- ❖ Rate of pay for census workers
- ❖ Background checks
- ❖ Time frame in which census workers will be conducting follow-up visits

0:24:46 **Councilman Salcido gave an update of what the Census Committee has been doing to promote the 2010 Census**

0:25:55 **6. REMOVE FROM TABLE AND CONSIDER APPROVAL OF SPECIAL LICENSE REQUEST FROM FROSTY TREATS OF TEXAS, INC. FOR MOBILE SALES OF ICE CREAM ON CITY RIGHTS-OF-WAY**

0:26:11 **Motion to remove from table**

The motion was made by Councilman Aguilar and seconded by Councilman Carter to remove from table and consider approval of Special License request from Frosty Treats of Texas, Inc. for mobile sales of ice cream on City rights-of-way.

0:26:20 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Salcido, Waters, Woody; No - None; Absent - Nunley. The motion carried.

0:26:35 **Consider approval of Special License request**

Jack and David Baldoon of Frosty Treats Inc. explained that they would like to start their business here in Carlsbad and that they intend to hire two or three drivers and plan to utilize local business for service needed to operate their own business. **Mr. Baldoon** named the locations of other Frosty Treats vendors in the United States. He handed out menus and explained the measures the company takes to ensure safety.

Councilman Graves explained that he had researched Frosty Treats and did not find any consumer complaints and that they have a great menu.

Discussion was held regarding their permanent local location and the requirements for hiring drivers.

0:33:20 **Motion to approve Special License request**

The motion was made by Councilman Graves and seconded by Councilman Woody to approve the request for Special License from Frosty Treats of Texas, Inc. for mobile sales of ice cream on City rights-of-way.

0:33:30 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Salcido, Waters, Woody; No - None; Absent - Nunley. The motion carried.

0:33:57 **7. CONSIDER APPROVAL OF GENERAL SURFACE USE AGREEMENT WITH YATES PETROLEUM CORPORATION TO DRILL ON CITY PROPERTY, OUTSIDE THE CITY LIMITS (CHEVRON BOT #5H, TOWNSHIP 24 SOUTH, RANGE 29 EAST, EDDY COUNTY, NEW MEXICO AND TOWNSHIP 23 SOUTH, RANGE 29 EAST, EDDY COUNTY, NEW MEXICO), INCLUDING A VARIANCE FOR WELL PAD SIZE (300'X300')**

Mr. Cy Cowan, Land Regulatory Agent, Yates Petroleum Corporation came forward with Mr. Richard Aguilar. Mr. Aguilar explained that the request for variance was in the pad size and insurance. He explained that variances of this nature were common and that the Council has approved several in the past without consequence.

0:35:34 **Motion to approve request for variance**

The motion was made by Councilman Aguilar and seconded by Councilman Waters to approve the General Surface Use Agreement with Yates Petroleum Corporation to drill on City property, outside the City limits (Chevron BOT #5H, Township 24 South, Range 29 East, Eddy County, New Mexico and Township 23 South, Range 29 East, Eddy County, New Mexico), including a variance for well pad size (300'x300') and allow the reduction of \$1,050,000 to \$1,000,000 and allow their \$25,000,000 umbrella insurance cover all other liabilities.

0:35:57 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Salcido, Waters, Woody; No - None; Absent - Nunley. The motion carried.

0:36:17 **8. CONSIDER ORDINANCE NO. 2010-13, REVISION TO CHAPTER 8, ARTICLE V, FLOOD DAMAGE PREVENTION ORDINANCE**

0:36:28 **Public Hearing**

Ms. Shumsky explained that every ten years FEMA updates the flood maps and when the maps are updated it is required that the Ordinance be updated as well.

0:39:00 **Consider Ordinance**

Mayor Janway reconvened the Council into regular session to consider Ordinance No. 2010-13.

0:39:20 **Motion to approve Ordinance No. 2010-13**

The motion was made by Councilman Doss and seconded by Councilman Graves to approve Ordinance No. 2010-13, revisions to Chapter 8, Article V, Flood Damage Prevention Ordinance.

0:39:33 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Salcido, Waters, Woody; No - None; Absent - Nunley. The motion carried.

0:39:50 **9. A VARIANCE REQUEST FROM THE CITY'S ZONING REGULATIONS, SECTION 56-542 (2) (A)-AREA REGULATIONS IN THE "RC-3" RESIDENTIAL ZONE, TO ALLOW A SIDE YARD SETBACK VARIANCE OF 10', WHICH WILL ALLOW THE CONSTRUCTION OF A BARN 5' FROM THE SIDE PROPERTY LINE AT 118 W. PEACH LANE. OWNERS: STEPHEN AND KAREN MASSEY**

0:40:18 **Public Hearing**

Ms. Shumsky explained that Mr. Massey went before the Planning and Zoning Commission to construct a garage in his rear yard. She explained that they recommended approval of the request.

0:41:46 **Consider Variance**

Mayor Janway reconvened the Council into regular session.

0:41:52 **Motion to approve request for Variance**

The motion was made by Councilman Aguilar and seconded by Councilman Carter to approve the request for variance from the City's Zoning Regulations, Section 56-542 (2) (a)-Area Regulations in the "RC-3" Residential Zone, to allow a side yard setback variance of 10', which will allow the construction of a barn 5' from the side property line at 118 W. Peach Lane.

0:42:01 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Salcido, Waters, Woody; No - None; Absent - Nunley. The motion carried.

0:42:28 **10. A VARIANCE REQUEST FROM THE CITY'S ZONING REGULATIONS, SECTION 56-94 (1) (C)-AREA REGULATIONS IN THE "B" RESIDENTIAL ZONE, TO ALLOW A SIDE YARD SETBACK VARIANCE OF 20', (A CORNER LOT) WHICH WILL ALLOW THE CONSTRUCTION OF A GARAGE 10' FROM THE SIDE PROPERTY LINE AT 1317 LERA CIRCLE. OWNER: BRAD DAY**

0:43:02 **Public Hearing**

Mr. Brad Day explained that the situation with his lot is unique because his rear lot line is also his neighbor's side lot line the 10' requirement becomes 30', therefore, he was asking for the standard 10' side yard setback. He explained that the Planning and Zoning Commission recommended approval and the neighbors supported his project as well. **Ms. Shumsky** explained that the Planning and Zoning Commission reviewed the request and recommended approval and that they all agreed that his situation was in fact, unique.

0:44:44 **Consider Variance**

Mayor Janway reconvened Council into regular session.

0:45:00 **Motion to approve**

The motion was made by Councilman Graves and seconded by Councilwoman Waters to approve a variance request from the City's Zoning Regulations, Section 56-94 (1) (c)-Area Regulations in the "B" Residential Zone, to allow a side yard setback variance of 20', (a corner lot) which will allow the construction of a garage 10' from the side property line at 1317 Lera Circle.

0:45:07 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Salcido, Waters, Woody; No - None; Absent - Nunley. The motion carried.

0:45:38 **11. COUNCIL COMMITTEE REPORTS**

Councilman Carter gave a general overview of the ECA Conference that he and Mr. Burgess attended in Augusta Georgia.

0:47:14 **12. ADJOURN INTO CLOSED SESSION PURSUANT TO SECTION 10-15-1-H-(2), NMSA 1978 TO DISCUSS MATTERS REGARDING PERSONNEL MATTERS.**

0:47:27 **Motion to adjourn into Closed Session**

The motion was made by Councilman Waters and seconded by Councilman Graves to adjourn into Closed Session pursuant to Section 10-15-1-H-(2), NMSA 1978 to discuss matters regarding personnel matters.

0:47:40 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Salcido, Waters, Woody; No - None; Absent - Nunley. The motion carried.

0:47:59 **Adjourn**

There being no further business, the meeting was adjourned at 6:47 p.m.

____Wesley Carter_____

Mayor Pro Tem

ATTEST:

____Amanda J. McDougall____

City Clerk