

**LINKED MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF THE
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL BUILDING
ON SEPTEMBER 27, 2016 AT 6:00 P.M.**

Present:	Dale Janway	Mayor
	Lisa A. Anaya Flores	Councilor
	Edward T. Rodriguez	Councilor
	Leo B. Estrada	Councilor
	J. R. Doporto	Councilor
	Wesley A. Carter	Councilor
	Jason Shirley	Councilor
	Richard Doss	Councilor
	Janell E. Whitlock	Councilor

Absent:

Also Present:	Steve McCutcheon	City Administrator
	Stephanie Shumsky	Deputy City Administrator
	Eileen P. Riordan	City Attorney
	Annette Barrick	City Clerk
	Wendy Hammett	Finance Director
	Jeff Patterson	Planning Director
	Luis Camero	Director of Engineering Services
	Thomas Carlson	Public Works Director
	Richard Lopez	Fire Chief
	Kent D. Waller	Police Chief
	Patsy Jackson-Christopher	Director of Arts & Culture
	Steve Hendley	Director of Parks & Recreation

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

0:00:29 **Mayor Janway asked Chief Waller for an update on the new Motorola Radio System.**

Chief Waller said the Motorola Radio System has been signed off on and is totally operational now. He said the project started in March 2015 and was completed September 20, 2016 with the total cost of \$1.2 million. He explained the old system was in place for many years with a single repeater on C-Hill. He said if the repeater went down the public safety system would lose radio. He explained the new simulcast system uses 3 repeater sites, Loop Road, Public Works, and Reservoir #2. He said the

new system has 6 frequencies, 3 for the Police Department and 3 for the Fire Department. He added another important part is that if one site goes down the other two systems will still function properly. He explained the new system will allow for future growth and additional frequencies can be added for another department, if needed.

Councilor Rodriguez asked if the big circle on the topo map is the estimated range of service. **Chief Waller** said the green area is the estimated range of coverage even with the portables. **Councilor Rodriguez** asked if the service was based on line of sight. **Chief Waller** said yes. **Councilor Rodriguez** asked if there are backup generators at each location and if the generator at the location shared with the County is shared. **Chief Waller** answered yes, there is a generator at each location, and the generator is not shared with the County.

0:11:15 **1. APPROVAL OF AGENDA**

0:11:17 **Motion**

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

0:11:22 **Vote**

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

0:11:36 **2. PRESENTATION OF THE AUGUST 2016 FINANCIAL REPORT**

Ms. Hammett reviewed the revenues and expenditures as of August 2016 for the General Fund and selected Enterprise and Special Funds contained within the City Budget.

0:12:33 **3. PRESENTATION BY CARLSBAD CHAMBER OF COMMERCE AND DAVE HAYDUK OF NM TRUE REGARDING THE NM TRUE ADVERTISING CAMPAIGN**

Councilor Whitlock introduced Mr. Dave Hayduk and Mr. Jim Glover with H&K Advertising, Mr. Robert Defer, CEO of the Chamber, and the Director of Tourism Ms. Lisa Bakey.

Mr. Defer said he is excited to have Mr. Hayduk present tonight. He explained Mr. Hayduk has a lot of experience working with other cities in the community and the State of New Mexico Tourism Department. He said he brings a wealth of experience to Carlsbad and the Chamber has been working with Mr. Hayduk for about 6 years.

0:13:52 **Mr. Hayduk** said he is excited to be here because there are great things happening for Carlsbad. He said he and Mr. Glover work together throughout the state on branding initiatives. He said branding helps economic development, community

pride, and helps drive tourism for communities. He said the Department of Tourism is spending about \$7.3 million, telling people how True New Mexico is. He said what H&K advertising does is come in behind the Department of Tourism's messaging and say when visiting New Mexico, the tourist should visit Carlsbad because Carlsbad is New Mexico True. He said the key is how the assets of Carlsbad are presented. He said the media vehicles being used are print, radio, television, digital, and messaging. He added that travelers like to travel for adventure but also for events. He said the Caverns, the Water Park, Brantley Lake, and the Living Desert Zoo and Gardens State Park and special events such as the winter wine festival and Christmas on the Pecos are a great way to get people interested in visiting Carlsbad.

0:22:31 **Mr. Glover** said he and Mr. Hayduk are very enthusiastic about communities. He explained he has worked with communities at a strategic level and does a lot of work on economic development. He said he has had the opportunity to drive overarching community brands, creating an impression in people's minds about what your community is all about. He said branding will help create a clear understanding of what the community is all about. He said the overarching community brands are about driving interests by residents, businesses, and visitors. He explained community branding is focused on all elements of the community. He said he is present to show how important it is to have a clearly understood brand when people are thinking about where they want to live, work, and play.

0:31:34 **4. ROUTINE AND REGULAR BUSINESS**

- A. Minutes of the Regular City Council Meeting Held on September 13, 2016
- B. City Personnel Report
- C. Check Register
- D. Purchasing:
 - 1) Consider approval to Award Bid No 2016-26, to BFX Fire Apparatus for One (1) Wildland Fire Apparatus in the amount of \$139,900
 - 2) Consider approval to Award RFP No 2016-27, to Rebecca Thompson for the Concession Services at Bob Forrest Youth Sports Complex pending successful negotiation of an Agreement with the City of Carlsbad
- E. Contracts and Agreements
 - 1) Consider approval of the Agreement between the City of Carlsbad and Keep New Mexico Beautiful, Inc. for a Litter Control and Beautification Grant Agreement
 - 2) Consider approval of the Agreement between the City of Carlsbad and Gregory Rockhouse Ranch, Inc. regarding the purchase of Effluent Wastewater
 - 3) Consider approval of Memorandum of Understanding between the City of Carlsbad, the Eddy County Commission, and the Carlsbad Municipal Schools for the Provision of School Resource Officers in the Carlsbad Municipal Schools for the 2016-2017 school year
- F. Set Date (November 8, 2016)

1) Naming/Transferring the "Bill Edmonson Field" from the Sunset Park (Shorthorn Little League Field) to the Bob Forrest Youth Sports Complex Baseball Field #5

G. Monthly Reports

1) Planning, Engineering & Regulation Department Monthly Report, August 2016

2) Sports and Recreation Department Monthly Report, August 2016

3) Utilities Department Monthly Report, August 2016

H. Board Appointments:

1) Disability Advisory Board: Brenda Wiedenmann and Rebecca Sanchez for 4-year term

0:31:57 **Mayor Janway asked Mr. McCutcheon to discuss Item E.2 Consider approval of the Agreement between the City of Carlsbad and Gregory Rockhouse Ranch, Inc. regarding the purchase of Effluent Wastewater; and Chief Lopez to discuss Item D.1 Consider approval to Award Bid No. 2016-26, to BFX Fire Apparatus for One (1) Wildland Fire Apparatus in the amount of \$139,900**

Mr. McCutcheon explained this is an agreement to purchase excess Effluent Water from the sewer treatment plant. He said the New Mexico Environment Department required the city to complete a discharge permit modification. He said staff has received preliminary notice that the permit has been approved and that the city will have final approval by October 1, 2016. He said this will be a good replacement for potable water in the oil and gas industry. He said Gregory Rockhouse Ranch, Inc., proposed at the highest price per barrel and agreed to take the minimum 20 acre feet per month in a take or pay situation. He said once the final discharge permit is received from NMED the City will move forward with the contract.

0:34:14 **Chief Lopez** explained Item D.1 is approval to award bid to BFX Fire Apparatus for the purchase of a brush truck. He said with all the rain the brush has grown and when it dries it will be an issue. He said he currently has two brush trucks; one is getting older and could go down anytime, so this purchase is in preparation.

0:35:19 **Councilor Doport** said he would like to talk about Item F.1 Set Date: November 8, 2016, Naming/Transferring the "Bill Edmonson Field" from Sunset Park (Shorthorn Little League Field) to the Bob Forrest Youth Sports Complex Baseball Field #5. He explained Mr. Edmonson was involved with Shorthorn Little League for over 20 years. He said Mr. Edmonson was the score keeper and loved to watch the game. He said Mr. Edmonson devoted a lot of time from 1958 to 1970 to Shorthorn Little League. In honor of his devotion, Shorthorn Little League would like to transfer the naming of a field to the Sports Complex.

0:37:00 **Motion**

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

0:37:07 **Vote**

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

0:37:20 **5. CONSIDER APPROVAL OF AGREEMENT BETWEEN THE CITY OF CARLSBAD AND AVALON RANCH FOR THE OPERATION OF A SUBSTANCE ABUSE TREATMENT FACILITY FOR WOMEN WITH YOUNG CHILDREN**

Mr. McCutcheon explained that Council previously voted to support the re-introduction of the Crossroads Program. He said Representative Brown was successful in obtaining a grant from the New Mexico Legislature in the amount of \$485,000 to assist with capital improvements in the program. He explained an agreement must be in place for bonds to be sold. He explained Ms. Riordan has spent a lot of time working with the Board on the agreement. He said there are many unknowns in the agreement but there must be an agreement to move forward.

Councilor Rodriguez asked how secure the grant funding is without a concrete plan in place. **Mr. McCutcheon** said staff has received correspondence from Mr. Quintana who oversees the capital assets for our region. He explained various agencies are looking at capital assets which have not been funded prior to 2013. He said correspondence states that 2016 capital outlay was not being considered for any kind of claw back.

Councilor Whitlock asked if an existing facility can be remodeled or if a new building will have to be built. **Ms. Riordan** said facility is defined in the agreement as a structure to be remodeled or constructed on the property.

0:42:29 **Motion**

The motion was made by Councilor Shirley and seconded by Councilor Anaya Flores to approve Agreement between the City of Carlsbad and Avalon Ranch for the operation of a substance abuse treatment facility for women with young children

0:42:34 **Vote**

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

0:43:02 **6. CONSIDER APPEAL OF THE PLANNING AND ZONING COMMISSION'S DECISION TO GRANT A CONDITIONAL USE PERMIT TO SBA TOWERS IX, LLC FOR THE ERECTION OF AN 89' COMMUNICATIONS TOWER FOR VERIZON WIRELESS, TO BE LOCATED AT 1502 N. 8TH STREET**

Mr. Patterson explained this item is an appeal of the Planning and Zoning Commission's decision to grant a conditional use permit to SBA Towers. He said the request is to build an 89 foot wireless communication tower at 1502 N. 8th Street. He explained at the August 1, 2016 Planning and Zoning Commission meeting the Commission voted 5 to 0 to approve the request with the condition that SBA Towers

present the City with a letter from the FAA with a determination of any air hazard presented by the erection of the tower and SBA has provided the letter. **Mr. Patterson** explained that on August 12, 2016 he received a letter of appeal from Michael Ristom, EMS Division Chief with the Carlsbad Fire Department. He explained Mr. Ristom stated there is evidence that was not considered at the Planning and Zoning Commission meeting and that is the reason for his appeal. He said after speaking with both sides and staff, the Planning Departments recommendation is that the Conditional Use Permit be remanded back to the Planning and Zoning Commission for consideration.

0:45:51 **A. Public Hearing**

0:45:52 **Mayor Janway asked if anyone would like to speak against the appeal.** *Ms. Kimberly Allen*, on behalf of the applicant SBA Towers, said she is present to ask the Council to deny the appeal. She explained SBA did everything right to obtain the permit. She said SBA filed a complete application with the Planning Department, paying for drawings, studies, and real estate costs. She said the application was circulated for review by all city departments, including the fire department and no comments or objections were received. She added public notice was properly given regarding the hearing before the Planning and Zoning Commission and there were no objections received at the meeting. She said the issue of the proximity to the helipad was raised by a member of the Commission who added the condition of approval that SBA submit a determination of no hazard from the FAA, which has been submitted. She added the owner of the helipad, the hospital, was properly notified of the hearing date and has to date raised no objections to the tower. **Ms. Allen** said the legal requirements to the City's code have not been met. She added the code requires for an aggrieved person to appeal, there must be a factual basis to the appeal or an avenue of fraud and she states none of those things are alleged by Mr. Ristom. She added the code says this is a closed record appeal and the code should be enforced as written. She explained land use processes are very time sensitive and to remand would result in a two month delay. She said SBA Towers requests that the appeal be denied and the permits be properly issued.

0:50:52 **Mayor Janway asked if anyone else would like to speak against the appeal, no one appeared. Mayor Janway asked if anyone would like to speak in favor of the appeal.**

Ms. Kathy Hibbs, CEO at Carlsbad Medical Center, said she understands that the helicopters that land at the helipad have very limited access for a safe approach and landing. She explained the tower could impede the ability to approach and land safely. She said the hospital does between 80 and 90 transfers per month. She added she would like the landing of helicopters to be as safe as possible.

0:52:06 **Mr. Jacquin Silva**, Regional Clinical Manager for Air Methods operating locally as Native Air and Tri State Care Flight explained the flight patterns and wind

will affect the entrance and egress. He said the helicopters have to land into the wind and will need to be able to adjust patterns when necessary. He explained the most predictable and safest pattern most frequently used is the pattern that would take the helicopter over the path of the tower. He said Air Methods has a long standing history of safety and the best interest for the safety of the community and patients, first and foremost. He added if the Council approves the placement of the tower as requested he asks that the tower not have led lights because they cannot be seen well at dark.

Councilor Doss asked what height the helicopter would come over the particular property. Mr. Silva said the helicopter begins to descend just before the property in question. He said the helicopter would be directly in the line of the tower as the helicopter begins the short final approach.

Councilor Whitlock asked if he was notified of the pending tower. **Mr. Silva** responded that Air Methods was not notified.

0:56:02 **Ms. Stacy West**, Aero care, explained Aero care is a medi vac service. She said Aero care only has about 5 or 6 transfers per month. She said with the unfamiliarity of the area the tower will be a direct obstacle. She said she is a nurse practitioner and would not want to send patients out knowing there is a potential obstacle.

0:58:25 **Jeanne**, an Air Methods flight nurse, said patient safety should be first. She said another obstacle could deter some of the abilities to take patients out of Carlsbad. She would like the issue to be reconsidered for her safety and the safety of the patients.

0:59:50 **Chief Lopez** said he would like to clarify that the helipad is not registered with the FAA, so the FAA has no jurisdiction over the helipad. He asked is the letter stating the tower is not a problem simply because there is no jurisdiction over the helipad so the FAA is not going to rule either direction. He said he agrees with the flight services and the hospital that the tower at the proposed location is not a wise decision.

1:00:44 **Mr. Ristom** who authored the appeal said the placement of the tower could not have picked a worse spot. He added all command staff at the Fire Department will now be notified prior to going forward. He said he has been in pre hospital care for over 30 years and in flight medicine. He said he has not flown on any civilian helicopters but he lands a lot of them. He said the proposed placement of the tower is not worth the risk for any amount of money.

1:05:05 **Mayor Janway** asked if anyone else would like to speak in favor of the appeal, no one appeared. Mayor Janway gave Ms. Allen an opportunity for rebuttal.

Ms. Allen said she understands Council is in a difficult position, but the code needs to be followed. She said a lot of testimony has been heard tonight that was not presented to the Planning and Zoning Commission. She added this is a closed record appeal so she would like to object to all the testimony as untimely and asked that the testimony be disregarded. She requested the Council observe the code and deny the appeal for failure to meet the City's code requirements.

1:06:35 **B. Consider Appeal**

1:06:39 **Mayor Janway asked Ms. Riordan to give a legal opinion.**

Ms. Riordan said this is an appeal based on the record. She said this hearing is supposed to be on the record, not based on a new hearing. She explained one of the things that can be considered is that several of the interested parties were not provided notice. She added it seems as if none of the people who actually use the heliport were aware of a request for the communications tower because no notice was sent to them. She explained Council cannot make a decision based on the new evidence presented but can remand the appeal back to the Planning and Zoning Commission for the Commission to have a new hearing to consider the new additional information.

Ms. Riordan asked if the FAA was informed of the existence of the helipad at the time the letter from FAA was issued. She said she has read the letter and no reference is made to the helipad. **Ms. Allen** said as she understands, the helipad is unregistered and that is the hospital's choice. She said one of the reasons one registers with the FAA is so when circumstances like this are being evaluated, the helipad will be evaluated as well. **Ms. Riordan** asked Ms. Allen if she was present at the hearing. **Ms. Allen** said she was not. **Ms. Riordan** asked if Ms. Allen knew if the letter was specifically to address the helipad and its nearness to the proposed tower. Ms. Allen referred to Mr. Potter. **Mr. Potter** said he stated to the Planning and Zoning Commission that the determination may not necessarily call out airports or helipads in the determination. He said the determination would simply state whether there would be a hazard to air space at the proposed location. **Ms. Riordan** said it sounds like the letter may not have addressed the concerns that the Planning and Zoning Board members were hoping it would address, which is whether or not the tower would pose an impediment to the use of the helipad.

1:11:09 **Mr. Patterson** said when he received the determination letter he noticed no mention of the helipad. He explained he emailed the FAA and asked if they considered the helipad in the determination letter. He read the response from the FAA, which does not say whether the helipad was considered and that the situation would be further evaluated.

1:12:47 **Motion**

The motion was made by Councilor Rodriguez and seconded by Councilor Carter to remand the appeal back to the Planning and Zoning Commission and allow proper

discussion and all information to be disclosed and all concerns to be heard regarding the decision to grant a Conditional Use Permit to SBA Towers IX, LLC for the erection of an 89' Communications Tower for Verizon Wireless, to be located at 1502 N. 8th Street. He added this is an issue of life safety versus convenience and if he is going to make a mistake he is going to err on the side of safety.

1:14:31 **Vote**

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

1:14:56 **7. COUNCIL COMMITTEE REPORTS**

Councilor Doss said himself, Councilor Shirley, Mr. John Heaton, Mr. Jack Volpato, Mr. John Waters, and Mr. Russell Hardy made a trip to Washington. He said they attended an ECA meeting, COG meeting, and were able to lobby for the nuclear and oil and gas industry. **Councilor Shirley** added the trip was incredibly productive.

Mr. Ristom said he appreciates the fact that Council has done a great job managing money as compared to other communities that have had to cut salaries.

1:19:42 **8. ADJOURN**

1:19:45 **Motion**

The motion was made by Councilor Whitlock and seconded by Councilor Doporto to Adjourn

1:19:50 **Vote**

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

1:20:16 **Adjourn**

There being no further business, the meeting was adjourned at 7:21 p.m.

Mayor

ATTEST:

City Clerk