

**LINKED MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF THE  
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL BUILDING  
ON AUGUST 25, 2009 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.

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

0:00:01                    **Invocation - Pledge of Allegiance**

0:00:35                    **1. APPROVAL OF AGENDA**

0:00:39                    **Motion to approve Agenda**

The motion was made by Councilwoman Nunley and seconded by Councilman Aguilar to approve the August 25, 2009 Agenda.

0:00:45                    **Vote**

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

0:01:00                    **2. ROUTINE AND REGULAR BUSINESS**

- A. Minutes of Regular City Council meeting held August 11, 2009
- C. City Personnel Report
- D. Check Register & Bills and Petty Cash

- E. Purchasing:
  - 1) Award Bid No. 2009-40, in the amount of \$14,951 for the purchase of a 2010, 4-door mid-size Sedan for the Carlsbad Police Department
  - 2) Award RFP No. 2009-30 to Sites Southwest for the Comprehensive Master Plan of the downtown MainStreet District
  - 3) Award Bid No. 2009-39 to L & J Construction, Inc. in the amount of \$492,491.41 for Animal Control Fencing at the Cavern City Air Terminal
- F. Contracts and Agreements:
  - 1) Consider approval of Agreement between the City of Carlsbad and Eddy County regarding joint ownership and operation of the Sandpoint Landfill and the Carlsbad Convenience Station
  - 2) Consider approval of extension of Agreement with NM Department of Finance and Administration for a Community Development Block Grant Program-Grant Agreement, Project No. 07-C-NR-I-06-G-45
  - 3) Consider approval of First Renewal of Agreement between the City of Carlsbad and Guy Lutman Enterprises, LLC for Promotion and Operation of the Walter Gerrells Performing Arts and Exhibition Centre
  - 4) Consider approval of a four (4) year John Deere Equipment Lease Agreement between the City of Carlsbad and John Deere Credit for equipment use at the Sports Complex
  - 5) Consider approval of a four (4) year John Deere Equipment Lease Agreement between the City of Carlsbad and John Deere Credit for one (1) 8700 Fairway Mower and one (1) 1445 Deck Mower for use at the Municipal Golf Course
  - 6) Consider approval of Section 5317 Grant Application from New Mexico Department of Transportation New Freedom Program for funding to assist the Carlsbad Municipal Transit System
  - 7) Consider approval of Section 5316 Grant Application from New Mexico Department of Transportation JARC Program for funding to assist the Carlsbad Municipal Transit System
  - 8) Consider approval of Section 5311 Grant Application from New Mexico Department of Transportation for funding to assist the Carlsbad Municipal Transit System for public transportation to the communities of Carlsbad, Loving and Southern Eddy County
- G. Miscellaneous Requests:
  - 1) Consider request from David G. Gonzalez- CHS Cross Country Coach for permission to hold Annual Cross Country Meet at the beach area and across the floating bridge behind the Recreation Center on Saturday, September 19, 2009 from 9:30am to 2:00pm
  - 2) Consider request from David G. Gonzalez- CHS Cross Country Coach for permission to hold CHS Cross Country District Meet at the beach area and across the floating bridge behind the Recreation Center on Saturday, October 31, 2009 from 9:30am to 2:00pm
- H. Overnight Travel:

- 1) Sandra Nunley- 2014 Carlsbad Graduation Summit Team Meeting in Las Cruces, NM on Wednesday, September 9, 2009
- I. City of Carlsbad Department Monthly Reports:
  - 1) Community Development Department Report for July 2009
  - 2) Fire Department Report for July 2009
  - 3) Police Department Report for July 2009
  - 4) Transportation Department Report for July 2009
  - 5) Utilities Department Report for July 2009
- J. Board/Committee Appointments:
  - 1) 2014 Carlsbad Graduation Summit Team: City Councilor, Sandra K. Nunley
  - 2) Carlsbad Department of Development: City Councilor, Paul Aguilar
  - 3) Census Complete Count Committee: City Councilor, Jim Grantner  
City Councilor, Paul Aguilar, SENMCAC Elisa Davis, Brotherhood James Williams, Ministerial Alliance Rev. Gene Harbaugh, LULAC Christina Beasley, Eddy County Warren Hardin, Eddy County Linda Martinez, Retired School Teacher Steve West, Minister, David Prell, NMSU Financial Aide & SENMCAC Board Member Bertha Jasso, Headstart Daina Taylor
  - 4) Sunset Gardens Committee:  
City Councilor, Ned Elkins, City Councilor, Brad Day, City Councilor, Wes Carter, City Councilor, Jeff Diamond

0:01:06                    **Mayor Forrest pulled item F. 3 from the Routine and Regular Business for further discussion**

0:01:17                    **Motion to approve Routine and Regular Business**  
 The motion was made by Councilman Elkins and seconded by Councilman Diamond to approve the Routine and Regular Business with the exception of item F. 3 which was pulled for further discussion.

0:01:22                    **Vote**  
 The vote was as follows: Yes - Salcido, Aguilar, Carter, Day, Nunley, Diamond, Elkins, Grantner; No - None; Absent - None. The motion carried.

0:01:38                    **F. 3. Consider approval of First Renewal of Agreement between the City of Carlsbad and Guy Lutman Enterprises, LLC for Promotion and Operation of the Walter Gerrells Performing Arts and Exhibition Centre**

**Mayor Forrest** explained the status of the contract between Guy Lutman Enterprises, LLC and the City of Carlsbad. **Mr. Rick Serrano** came forward and explained that he had spoken with several of the Councilors regarding obtaining the contract to operate the performing arts and exhibition centre. He explained that he continuously receives calls from a promotion company called Icon Entertainment and Live Nation that wants to bring big name acts to Carlsbad but because of the stipulations regarding leasing the civic center he is unable to bring them into town. He explained that he felt the

performing arts centre should be open to the public for people who want to work with the promotional companies and bring big entertainment acts into town.

**Councilman Diamond** asked Mr. Serrano to review Mr. Lutman's contract and put something into writing suggesting ways for someone to operate the performing arts centre year round and allow promoters to come in and do an event so that it is fair to everyone.

0:07:04                    **Councilman Carter and Mr. Serrano**

**Mr. Serrano** explained that he has the opportunity to bring in an act on November 5, 2009 and he would like to be able to prove that he can make it happen. **Councilman Carter** inquired if there was a scheduling conflict or if he and Mr. Lutman could not agree to terms. **Mr. Serrano** explained that they could not agree to terms. He explained the process of bringing in a big entertainment act and that Mr. Lutman's commission was not reasonable.

0:09:40                    **Mr. Guy Lutman explained the basis of receiving commission**

0:12:15                    **Councilman Day explained the deficiencies of the current contract**

0:15:41                    **Discussion regarding:**

- Actions taken by the Walter Gerrels Performing Arts & Exhibition Centre Board regarding these issues
- Previous transactions between Mr. Serrano and Mr. Lutman

0:21:47                    **Ms. Meg Milligan stated that Mr. Lutman has done wonderful things for the facility and that she would like to see it continue to grow. She explained that the Board needed to do a better job of publicizing the notice of the meetings**

0:23:06                    **Discussion regarding:**

- Advertisement of meeting dates for the Walter Gerrels Performing Arts & Exhibition Centre Board
- Advertisement of the RFP for the Walter Gerrels contract
- How much the Centre has improved in the last 8 years
- Amending the contract before it goes out to RFP
- Setting a fee schedule
- Current fee structure

0:33:24                    **Motion to table item F.3**

The motion was made by Councilman Diamond and seconded by Councilman Day to table the First Agreement between the City of Carlsbad and Guy Lutman Enterprises,

LLC for promotion and operation of the Walter Gerrells Performing Arts and Exhibition Centre.

0:33:28 **Vote**

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

0:34:01 **Mayor Forrest announced that everything on the consent agenda had passed**

0:34:20 **3. REVIEW OF STATUS OF PREVIOUSLY CONDEMNED PROPERTY LOCATED AT 1202 W. MERMOD STREET OWNED BY MR. TOM BENAVIDEZ (RES. NO. 2009-01)**

**Ms. Riordan** gave a brief overview of the actions taken by Council regarding this property. She gave the current status of the property and an explanation of staff recommendations. She explained that while staff is very pleased that Mr. Benavidez removed the underground tanks, initially they were more concerned with the deteriorating building and at the current time it has not been properly addressed. **Councilman Elkins** explained that it seems that they have ran into a halt with this matter and that they should hold Mr. Benavidez to the September 25, 2009 date for completion and that he be put on notice of what Council's expectations are for the property. **Ms. Riordan** explained that all of the letters written to Mr. Benavidez include that failure on his part will result in demolition of the property. She also explained that Mr. Benavidez has not been able to comply with the two major requirements of keeping the property clean and the building secure. **Ms. Riordan** explained that her recommendation was to let the existing deadline stand that all work and inspections be completed by September 25, 2009.

0:41:17 **Motion to approve staff recommendations**

The motion was made by Councilman Elkins and seconded by Councilman Grantner to allow Mr. Benavidez until September 25, 2009 to complete all work obtain inspections for the property located at 1202 W. Mermod Street.

0:41:26 **Vote**

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

0:41:40 **4. REVIEW OF STATUS OF PREVIOUSLY CONDEMNED PROPERTY LOCATED AT 409 LAREDO STREET OWNED BY MR. DARRYEL BROUGHTON (RES. NO. 2009-17)**

**Ms. Riordan** explained that the exterior of the property had been cleaned up and the debris from the interior removed from the property. She explained that staff remains deeply concerned with the underlying structural soundness of the building due to a fire that occurred and afterward the building remained open to damage. She explained

some of the other concerns regarding the structure and that she explained to Mr. Broughton that he needed to provide a plan for rehabilitation, the structure needed to be secured and all weeds and debris be cleared from the property and that he has not been in compliance. She explained that he was notified that he was to report to Council on August 25, 2009 with a complete renovation plan for the property. She explained the conflicts with the property ownership. She explained that it would seem that Mr. Broughton has determined that he does not wish to pursue renovation of this property. She explained that her recommendation was to proceed with demolition.

0:45:33                    **Motion to proceed with demolition**

The motion was made by Councilman Carter and seconded by Councilman Elkins that staff proceed with Resolution No. 2009-17 for the demolition of the property located at 409 Laredo.

0:45:39                    **Vote**

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

0:45:55                    **5. CONSIDER A SPECIAL USE PERMIT REQUEST FROM KRYSTAL PATTERSON TO ALLOW FOR A MASSAGE THERAPY BUSINESS (HOME OCCUPATION) AT HER RESIDENCE LOCATED AT 606 N. 4TH STREET AND ZONED "B" RESIDENCE DISTRICT**

Ms. Krystal Patterson stated that she would like to have a massage therapy business at her home.

0:46:42                    **Motion to approve Special License**

The motion was made by Councilman Diamond and seconded by Councilman Carter to approve a Special Use Permit request from Krystal Patterson to allow for a Massage Therapy business (Home Occupation) at her residence located at 606 N. 4th Street zoned "B" Residence District.

0:46:47                    **Vote**

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

0:47:07                    **6. CONSIDER ORDINANCE NO. 2009-14, CREATING THE CITY OF CARLSBAD VETERANS MEMORIAL BOARD; AUTHORIZING THE APPOINTMENT OF MEMBERS; SETTING THE TERMS AND CONDITIONS OF OFFICE, FREQUENCY OF MEETINGS, DUTIES OF THE BOARD; AND CREATION OF A SECRETARY**

**A) Public Hearing**

Mayor Forrest convened the Council into a public hearing board. He asked if there was anyone in the audience who like to speak regarding this matter no one appeared and

the Mayor declared the public hearing closed and reconvened the Council into regular session.

0:47:32                    **B)     Consider Ordinance**

0:47:34                    **Motion to approve Ordinance No. 2009-14**

The motion was made by Councilman Elkins and seconded by Councilman Diamond to approve Ordinance No. 2009-14 creating the City of Carlsbad Veterans Memorial Board authorizing the appointment of members; setting the terms and conditions of office, frequency of meetings, duties of the Board; and creation of a Secretary.

0:47:39                    **Vote**

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

0:47:53                    **7.     CONSIDER RESOLUTION NO. 2009-31, DECLARING CERTAIN CITY PROPERTY OBSOLETE AND UNUSABLE**

0:48:04                    **Motion to approve Resolution No. 2009-31**

The motion was made by Councilwoman Nunley and seconded by Councilman Aguilar to approve Resolution No. 2009-31 declaring certain City Property obsolete and unusable.

0:48:10                    **Vote**

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

0:48:24                    **8.     CONSIDER RESOLUTION NO. 2009-32, AUTHORIZING THE MAYOR TO EXECUTE AN APPLICATION FOR GRANT FUNDING AND ACCEPTING THE RESULTING GRANT OFFER ONCE TENDERED BY THE FEDERAL AVIATION ADMINISTRATION FOR PAVEMENT MARKINGS ON RUNWAY 3-21 AT THE CAVERN CITY AIR TERMINAL**

0:48:44                    **Motion to approve Resolution No. 2009-32**

The motion was made by Councilman Aguilar and seconded by Councilman Grantner to approve Resolution No. 2009-32 authorizing the Mayor to execute an application for grant funding and accepting the resulting grant offer once tendered by the Federal Aviation Administration for pavement markings on Runway 3-21 at the Cavern City Air Terminal.

0:49:01                    **Vote**

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

0:49:15

**9. CONSIDER APPROVAL OF THREE (3) VARIANCES FROM THE CITY OF CARLSBAD SUBDIVISION REGULATIONS FROM WILLIAM AND LYNNETTE WALKER FOR THE WALKER ESTATES SUBDIVISION**

**A) SECTION 47-42 (C) (3) TO ALLOW CONSTRUCTION OF A FIFTY (50) FOOT ROAD IN THE WALKER ESTATES SUBDIVISION INSTEAD OF THE REQUIRED SIXTY (60) FEET**

**B) SECTION 47-43 TO ALLOW A BLOCK IN THE WALKER ESTATES SUBDIVISION TO EXCEED THE MAXIMUM BLOCK LENGTH**

**C) SECTION 47-62 (4) (D) TO ALLOW CONSTRUCTION OF ROADS WITHIN THE WALKER ESTATES SUBDIVISION WITHOUT THE REQUIRED CURB AND GUTTER**

0:50:05

**Mr. William Walker**

**Mr. Walker** explained that he is half of the owners of the Walker Estates Subdivision and they were requesting to put in a 50 lot subdivision featuring mostly three-quarter acre lots. He explained why they were requesting a variance from the curb and gutter requirement and that there would not be any on-street parking. He explained his proposal for the variance from the block length requirement which included a 100 foot diameter turnaround. He explained the need for a variance from the easement requirement.

0:52:43

**Discussion regarding installation of the sewer system near and in Walker Estates Subdivision**

0:59:10

**Discussion regarding the subdivision easement**

1:03:54

**Ms. Shumsky**

**Ms. Shumsky** explained that the reason for the subdivision rules was for uniform, planned, orderly development and when there is a request for variance to the subdivision requirements without a justifiable reason from the developer other than a financial reason, she is inclined to recommend denial. She explained that in this case the developer does not have a viable reason for the variances.

**Councilman Diamond** and **Ms. Shumsky** discussed the differences in the Walker Estates Subdivision and the Spring Hollow Subdivision.

**Ms. Shumsky** also explained that the City spends millions of dollars every year installing curb and gutter into areas in Carlsbad that do not currently have them due to drainage and other problems that exist because curb and gutter were not installed at the time the subdivision was being built.

**Discussion regarding CDBG funding eligibility.**

1:07:09                    **Discussion regarding the length of the road in relation to safety and emergency access**

**Chief Reynolds** explained that the length of the road for the Fire Department would be problematic because taking a fire truck down a half a mile of road to a dead end even though they can turn around would be a problem because if there were to be a fire at the entrance of the road they would block it for several hours. He explained that the weight of the fire trucks would not agree with the proposed surface of the roadways.

1:08:58                    **Discussion regarding the street surface within the subdivision**

**Mr. Walker** explained that they were proposing to put in the least expensive type of surface because it would be less expensive to replace once the City has installed the sewer line under the road. He explained that they were proposing a turn around at 1200ft. in the road. He explained that the County has many double penetration roads and they seem to do well with the heavy truck traffic.

1:10:54                    **Mr. Camero**

**Mr. Camero** explained that because of the distance of the subdivision from the nearest sewer line Mr. Walker will not be required to tie into City sewer which is his reason for the chip seal surface, therefore; we are going to end up with a subdivision with a chip seal road and no curb and gutter because there is the possibility that one day they are going to put in the sewer. He explained that he agreed with Cheif Reynolds that it is unsafe to have a 2400ft. street. He explained that the Planning and Zoning Commission suggested that Mr. Walker split the road into two. He said there was always the possibility of further development to allow access to the north and south in the distant future.

1:16:14                    **Councilman Aguilar**

**Councilman Aguilar** explained that while curb and gutter is good for drainage due to the size of the lots and the style of the homes it would be okay without curb and gutter as long as it is platted correctly.

1:17:08                    **Discussion regarding:**

- Installation of a lift station large enough to serve that entire area
- Emergency vehicle turn-around
- Drainage
- Right-of-way of Cowboy Country Road
- Access from Donovan Road

1:31:48                    **Councilman Diamond asked that the variances be voted on separately**

1:31:51                    **A) Section 47-42 (c) (3) to allow construction of a fifty (50) foot road in the Walker Estates Subdivision instead of the required sixty (60) foot**

1:32:01                   **Motion to approve**

The motion was made by Councilman Day and seconded by Councilwoman Nunley to approve a variance from the City of Carlsbad Subdivision Regulations from Section 47-42 (c) (3) to allow construction of a fifty (50) foot road instead of the required (60) foot for William and Lynnette Walker for the Walker Estates Subdivision.

1:32:06                   **Vote**

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

1:32:25                   **B) Section 47-43 to allow a block in the Walker Estates Subdivision to exceed the maximum block length**

1:32:33                   **Motion to approve**

The motion was made by Councilman Elkins and seconded by Councilwoman Nunley to approve a variance from Section 47-43 to allow a block in the Walker Estates Subdivision to exceed the maximum block length.

1:32:39                   **Vote**

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

1:32:56                   **C) Section 47-62 (4) (d) to allow construction of roads within the Walker Estates Subdivision without the required curb and gutter**

1:33:03                   **Motion to approve**

The motion was made by Councilman Carter and seconded by Councilman Grantner to approve a variance from Section 47-62 (4) (d) to allow construction of roads within the Walker Estates Subdivision without the required curb and gutter.

1:33:09                   **Vote**

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

1:33:36                   **10. Council Committee Reports**

**Mr. Burgess** stated that he planned to include the ICIP plan at the next meeting. He asked that Council contact either him or Mr. Beasley if they wished to recommend any changes.

1:34:19                   **Mike Daniels, IPR Limited**

**Mr. Daniels** explained that his company does slurry seal work in the State of New Mexico and has held the price agreement for almost 20 years. He said he was there to answer any question that Council may have regarding slurry seal. He explained the different uses of slurry seal and the cost difference between slurry seal and asphalt.

Discussion regarding the difference in the process between IPR Limited and Affordable Asphalt.

1:40:15                    **11. ADJOURN INTO CLOSED SESSION PURSUANT TO SECTION 10-15-1-H(7), NMSA 1978 TO DISCUSS MATTERS REGARDING THREATENED/PENDING LITIGATION**

1:40:27                    **Motion to adjourn into Closed Session**

The motion was made by Councilman Elkins and seconded by Councilwoman to adjourn into Closed Session pursuant to Section 10-15-1-H(7), NMSA to discuss matters regarding threatened/pending litigation.

1:40:32                    **Vote**

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

1:40:51                    **Adjourn**

There being no further business, the meeting was adjourned at 7:43 p.m.

\_\_\_\_\_/s/ Bob Forrest\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_/s/ Amanda J. Asbury\_\_\_\_\_  
City Clerk