

Regular Meeting of the City Council, City of Farmington, New Mexico, held in the Council Chamber at City Hall at 6:00 p.m. on Tuesday, February 23, 2016. The open regular session was held in full conformity with the laws and ordinances and rules of the Municipality.

Upon roll call, the following were found to be present, constituting a quorum:

MAYOR	Tommy Roberts
COUNCILORS	Linda Rodgers Mary M. Fischer Gayla A. McCulloch Nate Duckett

constituting all the members of said Governing Body.

Also present were:

ASSISTANT CITY MANAGER	Bob Campbell
CITY ATTORNEY	Jennifer Breakell
CITY CLERK	Dianne Smylie

The meeting was convened by the Mayor. Thereupon the following proceedings were duly had and taken:

INVOCATION: The invocation was offered by Pastor Jerry Strickler of Crossroads Community Church.

Councilor Fischer led the Pledge of Allegiance.

CONSENT AGENDA: The Mayor announced that those items on the agenda marked with an asterisk (*) have been placed on the Consent Agenda and will be voted on without discussion by one motion. He stated that if any item did not meet with approval of all Councilors or if a citizen so requested, that item would be removed from the Consent Agenda and heard under Business from the Floor.

- *MINUTES: The minutes of the Regular Meeting of the City Council held February 9, 2016.
- *BID: The Chief Procurement Officer recommended that the bid for safety improvements at the intersection of San Juan Boulevard and Scott Avenue (Public Works) be awarded to MWI, Inc. on its low bid of \$503,054.40. Bids opened January 4, 2016 with two bidders participating.
- *GRANT MODIFICATION 3 TO AWARD NO. G15SN0010A between the City and the Office of National Drug Control Policy increasing the award amount by \$20,000 for the High Intensity Drug Trafficking Areas Program (HIDTA) (total award \$241,314).
- *ADOPTION OF RESOLUTION NO. 2016-1581 authorizing the city manager to prepare and submit a request for funds for construction of the Rock Garden Habitat Improvement Project on the Animas River, pursuant to the New Mexico River Stewardship Program.
- *WARRANTS PAYABLE for the time period of February 7, 2016 through February 20, 2016, for current and prior years, in the amount of \$5,803,255.30.

There being no requests to remove any items, a motion was made by Councilor Duckett, seconded by Councilor Rodgers to approve the Consent Agenda, as presented, and upon voice vote the motion carried unanimously.

RECOMMENDATION FROM THE PLANNING AND ZONING COMMISSION:

CONSENT AGENDA: Community Development Director Mary Holton requested that the Planning and Zoning Commission recommendation marked with an asterisk () be placed on the Planning and Zoning Commission Consent Agenda and voted on without discussion by one motion. She asked that if the item proposed did not meet with approval of all Councilors or

if a citizen so requested, the item would be removed from the Consent Agenda and heard in regular order.

- * (1) Adoption of the recommendation from the Planning and Zoning Commission as contained within the Community Development Department Petition Report to approve Petition No. ZC 16-01 from Keystone Investments, LLC, Russell Casazza and John and Amy Clawson, represented by Marlo Webb, requesting a zone change from the IND, Industrial, District to the SF-MH, Single-Family-Mobile Home, District for properties located at 2601, 2605, 2607, 2609, 2701 and 2703 Fox Street.

There being no requests to remove the item, a motion was made by Councilor Duckett, seconded by Councilor Rodgers to approve the Planning and Zoning Commission Consent Agenda, as presented, and upon voice vote the motion carried unanimously.

RECOMMENDATION FROM THE PUBLIC UTILITY COMMISSION/RULES AND REGULATIONS COVERING ELECTRIC SERVICE

Noting that this item was initially presented to the Council at the February 16, 2016 Work Session, Acting Electric Utility Director Rodney Romero announced that staff has made revisions to Rule 1 to accommodate the concerns expressed at that meeting by local realtors.

Utility Business Operations Manager Sue Nipper directed the Council's attention to page 5.1 of the agenda materials and noted that she has recommended that Item No. 2 of the proposed revision asking whether the applicant is the owner or tenant of the premises has been deleted and that Item D has been revised to state that only the party or their duly authorized representative who will be responsible for payment of the utility bills may request service. She stated that she believes that these proposed amendments will address the concerns expressed at the February 16, 2016 meeting and assured the Council that realtors will still be allowed to connect utilities for a prospective customer if authorized to do so.

Councilor Fischer questioned why staff is recommending that the statement, "In some instances, realtors may connect for clients, provided that they agree to be responsible for the bill in the event the prospective Customer does not follow through within the required time limit..." be deleted since the policy seems to be effectively working. In response, Ms. Nipper explained that staff believes that the proposed revisions "cleans up" the policy and assured her that realtors will still be allowed to connect utilities for their clients. Councilor Fischer stated that she would prefer that this statement remain a part of Rule 1.

Councilor Duckett announced that he also met with some of the realtors last week and stated that it is his understanding that by amending Section D to state that duly authorized representatives may connect service for an individual has satisfied their concerns.

Nancy Eaves addressed the Council on behalf of Dimmick Realty. She stated that she does not believe that "cleaning up" the Rule is a good enough reason to support the proposed amendments. She also stated that she is concerned that realtors will not be able to obtain the information needed to proceed with their real estate transactions (e.g. the dates when utilities are initiated and disconnected at certain locations).

Michelle Martinez also addressed the Council on behalf of Dimmick Realty and reported that there is an inconsistency in the type of information that is provided to realtors depending upon the individual employee's interpretation of the Rule. She suggested that employees be trained in order to reduce the frustrations that are being experienced by realtors and appraisers alike. In response, Ms. Nipper assured her that she will schedule a training session, noting that she was unaware of this problem until now.

Mayor Roberts stated that he believes that a reasonable approach would be to proceed with the proposed revisions and then readdress the matter if problems arise.

Thereupon, a motion was made by Councilor McCulloch, seconded by Councilor Rodgers to approve the proposed revisions to the Rules and Regulations covering Electric Service, as proposed at tonight's meeting. The roll was called with the following result:

Those voting aye: Linda Rodgers
Gayla A. McCulloch
Nate Duckett

Those voting nay: Mary M. Fischer

The presiding officer thereupon declared that three Councilors having voted in favor thereof, the said motion carried.

UNFINISHED BUSINESS:

- (1) Adoption of the recommendation from the Planning and Zoning Commission as contained within the Community Development Department Petition Report to approve Petition No. PFP 15-01 from Four Corners Land, LLC, represented by George Walters, requesting preliminary plan/final plat approval for 3.94 acres of land located at 2500 Farmington Avenue.

Councilor McCulloch announced for the record that she has a family member that is involved in the subject project and, as a result, she disqualified herself from discussing or voting on the subject petition. She left the room at 6:19 p.m.

With regard to the issues that were discussed at the February 9, 2016 regular City Council meeting concerning ex parte discussions and the possibility for a rolling quorum, Mayor Roberts announced that he met with Mr. Bingham following the last Council meeting but stated for the record that he did not indicate to Mr. Bingham how he would be voting on the matter. Mr. Bingham confirmed Mayor Robert's statement to be true and stated that it also true for Councilors Rodgers, Fischer and Duckett whom he also met with.

Providing background information and utilizing a Powerpoint presentation, Associate Planner Keith Neil reported that the subject subdivision consists of three lots on 3.94 acres of land which are zoned OP, Office Professional. He reported that the original Nygren Subdivision No. 5 was surveyed on April 30, 1991 and recorded on June 26, 1992. It consisted of three lots, with Lot 1 being 4.36 acres; Lot 2 being 8.27 acres and Lot 3 being 0.64 acres. He noted that Nygren Subdivision No. 5, Replat A, was surveyed on August 24, 1992 and recorded on October 14, 1992 and divided Lot 2 into two tracts with Tract 2A being 4.47 acres and Tract 2B being 3.80 acres. Furthermore, he pointed out that the subject petition would consolidate Lot 2, Tracts A and B, with the adjacent property owned by WBR properties (acquired from the City in September 1996 through a land exchange agreement) and then subdivide them into three new tracts to be known as Lots B-1, B-2 and B-3. He noted, however, that Lot B-1 (owned by the Pond family), located just north of the subject lots, was created through a warranty deed in July 1996 which did not comply with the subdivision regulations at that time because Section 6.3B of the Unified Development Code ("UDC") states that, "...all lots of record subdivided after July 22, 1971 are required to follow summary plat guidelines" to be legally recognized as a subdivision. Mr. Neil stated that if the subject petition is approved, Lot B-1 will be a legally-subdivided parcel. Furthermore, he noted that Lot B-2 would total 2.18 acres and is currently being developed as a medical office for Four Corners Spine and Pain (owned by Dr. and Mrs. Thad Ray). He reported that through staff's research, it was determined that the original property owner, William Nygren, entered into an Agreement with the City in January 1992 ("1992 Agreement") regarding the future development of Cliffside Drive. He directed that Council's attention to pages 6.1 and 6.3 of the agenda materials and clarified that the statement, "the City of Farmington is responsible for improvements on Cliffside Drive from Huntzinger Avenue to Farmington Avenue when the City believes it is an appropriate time for the improvements to take place. If the property owner wishes to develop land that is adjacent to Cliffside Drive, the owners shall be required to bear the cost of such improvement." was inadvertently put in quotes. He did point out, however, that Article II, Section 2A of that agreement states that the City agrees, "subject to the understanding set forth in Article III, Section 4 hereof, to assume responsibility for the improvement and the paving of the east one-half of Farmington Avenue located on Tract 3 and the north and south halves of Cliffside Drive located on tract 13 at such time as such portions of Farmington Avenue and Cliffside Drive require improvement in the future." However, he noted that Article III, Section 5, states, "Should the owners wish to develop land adjacent to

Farmington Avenue or Cliffside Drive which may require the improvement of Farmington Avenue or Cliffside Drive or any parts thereof prior to the time when the City shall determine that there is a need for Farmington Avenue or Cliffside Drive, as specified in paragraph 4 above, owners shall be required to bear the cost of such improvement required by such development..." Mr. Neil contended that it is staff's position that the property owner should bear the cost to construct Cliffside Drive because of 1) the construction of the medical office; 2) the request for subdivision of the property; and 3) the shared access with proposed Lot B-2 to Cliffside Drive through proposed Lot B-3. He explained that proposed Lot B-3 will be 1.01 acres in size, noting that the triangle-shaped piece of property located in the southwest corner was originally obtained by the City as right-of-way for the construction of Farmington Avenue but was later determined to be unnecessary. As a result, this section was exchanged with WBR Properties for property located along Piñon Hills Boulevard. In closing, Mr. Neil announced that the Community Development Department is recommending approval of the subject petition, subject to a) the improvements to Cliffside Drive being completed prior to the issuance of a Certificate of Occupancy for the medical office on proposed Lot B-2; and b) the property owner being responsible for improvements to the western half of Huntzinger Avenue from Cliffside Drive to the northern property line if access is proposed in the future from Lot B-2 to Huntzinger Avenue.

Mayor Roberts asked staff who made the determination that the petitioner should be responsible for developing Cliffside Drive. In response, City Attorney Jennifer Breakell stated that it is her legal opinion that the petitioner is financially responsible for the construction of Cliffside Drive based upon the verbiage in the 1992 Agreement because their development is triggering the need for the roadway. She stated that it is also her opinion that the City would be responsible for the costs if it decided that Cliffside Drive needed to be developed. In response to further inquiry from Mayor Roberts with regard to Article III, Section 5 of the 1992 Agreement, Ms. Breakell explained that it is her interpretation that the phrase "which may require the improvement" is triggered because of the shared access between Lots B-2 and B-3.

Attorney Seth Bingham addressed the Council on behalf of Dr. and Mrs. Ray. He announced that during his first meeting with Ms. Breakell and Community Development Department staff he asked if the drawing that was submitted by George Walters of Cheney-Walters-Echols was what triggered them to believe that Cliffside Drive needed to be constructed and stated that their answer was no. He claims that staff indicated to him that the request for the subdivision replat is what triggered the event. Utilizing a Powerpoint presentation, he pointed out that the Farmington Avenue corridor is office/professional in nature; stated that Four Corners Land, LLC does not need or want Cliffside Drive to develop or use the subject property; noted that the minutes from the February 5, 1991 regular City Council meeting indicate by unanimous vote that a variance to the Land Subdivision Regulations (including base, paving, curb and gutter) was granted to Nygren Subdivision No. 5; and stated that an agreement between the City and Nygren Investment was entered into as a result of the variance which required the City to acquire the east half of Farmington Avenue for the construction of Cliffside Drive. He read an excerpt from the February 5, 1991 regular City Council meeting minutes that states, "The request for a variance from the improvement requirement is consistent with previous agreements negotiated with property owners regarding Farmington Avenue and Cliffside Drive in the area of the subject property wherein the City obtained right-of-way in exchange for waiving the street improvements. These agreements stipulated that the City would obtain title to needed right-of-way in exchange for obligating the City to install all required public improvements, excluding sidewalks, sewer lines and water lines. The agreements further provide that the City may determine when the streets will be constructed unless the subdividers want the streets constructed before the City has determined it necessary for system-wide purposes and in that event, the developers will be responsible for the costs of construction." He argued that this verbiage is instructive and should give the Council an understanding of what was intended at that time. He also directed the Council's attention to Section 9 of the 1992 Agreement which states, "The terms of this Agreement shall be binding alike upon the parties hereto and upon their heirs, executors, personal representatives, successors and assigns" and argued that Dr. Ray is a successor and should be subject to the provisions of the 1992 Agreement. He also argued that the 1992 replat of Lot 2 into two tracts did not trigger any obligation to improve

Cliffside Drive and stated that he does not believe that the proposed replat should trigger it either. He also assured the Council that Dr. Ray has no intention of having an access road that goes down to Cliffside Drive to serve proposed Lot B-3 or the remainder of Lot B-2. Lastly, Mr. Bingham pointed out that the newly-constructed building for Four Corners Spine and Pain is nearing completion and stated that staff had indicated that the City will issue a conditional/temporary Certificate of Occupancy if Four Corners Land, LLC gets a bond for the cost of the full improvement of Cliffside Drive. He noted that the preliminary estimate for the full improvement costs are approximately \$227,019 and stated that Section 6.8.2(A) of the UDC requires a Performance Bond that is for 125 percent of the costs of the required improvements. Following his presentation, Mr. Bingham suggested that the Council recognize 1) that the 1992 Agreement is binding on the City and the successors in interest to the Nygren Agreement; 2) that under the 1992 Agreement, the variance and waiver for the landowners obligation to improve Cliffside Drive was contractually extended to Four Corners Land, LLC as successor in interest to Nygren Investments; and 3) acknowledge that the contractual rights and obligations of the City and Four Corners Land under the 1992 Agreement supersede the UDC as to the waiver of the landowners obligation to pay for improvements costs for Cliffside Drive. As a result, he recommended that Petition No. PFP 15-01 be approved subject to the terms and conditions of the 1992 Agreement and that staff be directed to issue a Certificate of Occupancy to Four Corners Spine and Pain without the filing of any bond or requirement that Cliffside Drive be improved at the present time.

In response to inquiry from Mayor Roberts, Mr. Bingham stated that he believes that the petitioner would be willing to pay for the improvements to Cliffside Drive if future development of the property warranted it, but stated that he does not foresee the property being subdivided in such a manner that would warrant such an expense. He also pointed out that Dr. Ray has a potential buyer for proposed Lot B-3.

Mayor Roberts asked Ms. Breakell if her opinion would change if the petitioner does not propose access to Cliffside Drive. In response, Ms. Breakell referred to a Memorandum dated February 23, 2016 whereby staff has proposed a compromise that would require revising the plat to extend the southern boundary of Lot B-2 eastward to the subdivisions' eastern boundary; removing all references to access from the subdivision to Cliffside Drive; and adding a plat note that states, "Construction of the full width of Cliffside Drive from Farmington Avenue to Huntzinger Avenue is required by the owner or developer prior to any resubdivision of Lot B-3 or Lot B-4 or prior to the issuance of a building permit for Lot B-3 or Lot B-4, whichever occurs first, and the owner or developer is responsible for the construction of Huntzinger Avenue adjacent to this subdivision if access to Huntzinger Avenue is proposed for any lot within this subdivision." She also advised the Mayor that such decision could be deferred until development is proposed.

Councilor Duckett asked at what point in time was Dr. Ray made aware of the subject roadway improvements. In response, Mr. Bingham stated that it was made aware in the sale documents with WBR that if construction of Cliffside Drive was ever required that there would be some agreement between the two of them on the cost. However, he noted that Dr. Ray was not made aware of the fact that the Certificate of Occupancy would not be issued without a Performance Bond being provided or the roadway being constructed. He urged the Council to consider approving the petition as he recommended.

Mayor Roberts asked if staff is in agreement that the petition, as proposed, does not trigger the need for construction of Cliffside Drive, provided that the proposed easement is removed. In response, Ms. Breakell answered yes and Mr. Neil, Senior Planner Cindy Lopez and Community Development Director Mary Holton agreed by a nod of the head.

Councilor Fischer questioned whether the zone designation of OP would prohibit the future need for Cliffside Drive since the use of the property would limit the amount of traffic being generated and pointed out that the construction of the Library is what triggered the need for Farmington Avenue. In response, Ms. Lopez pointed out that a three-story office building with intensive use could be constructed on the subject property which could trigger the need for an additional roadway.

Following further discussion, a motion was made by Councilor Fischer, seconded by Councilor Duckett to adopt the recommendation from

the Planning and Zoning Commission to approve Petition No. PFP 15-01 from Four Corners Land, LLC and to grant preliminary plan/final plat approval for 3.94 acres of land located at 2500 Farmington Avenue, subject to the conditions of the January 27, 1992 Agreement.

Mayor Roberts asked if the Pond's illegal subdivision can be corrected independently of the subject petition. In response, Ms. Lopez explained that the Ponds could choose to be party to the subject petition or submit a new plat that would create a lot separate from the subject property. Following discussion, Mr. Bingham stated that he will work with the Ponds to try and resolve the matter.

Thereupon, the Mayor called for the vote upon the motion to adopt the recommendation from the Planning and Zoning Commission to approve Petition No. PFP 15-01 from Four Corners Land, LLC and to grant preliminary plan/final plat approval for 3.94 acres of land located at 2500 Farmington Avenue, subject to the conditions of the January 27, 1992 Agreement. The roll was called with the following result:

Those voting aye:	Linda Rodgers Mary M. Fischer Nate Duckett
Those voting nay:	None
Those disqualified from voting:	Gayla A. McCulloch

The presiding officer thereupon declared that three Councilors having voted in favor thereof, the said motion carried.

Councilor Fischer was assured by staff that the Certificate of Occupancy will be issued without the requirement for a Performance Bond.

Councilor McCulloch returned to the meeting at 7:20 p.m.

COMMENDATION OF CITY CLERK DIANNE SMYLIE

Mayor Roberts read in a full a letter that he received from Kirtland Town Clerk Gwen Warner thanking City Clerk Dianne Smylie and her staff for their support and assistance in establishing the new office and in conducting the 2016 Regular Municipal Election.

CITY ATTORNEY BUSINESS

City Attorney Jennifer Breakell presented for discussion a proposed ordinance dealing with training, special events and maintenance at Lake Farmington. The title of such proposed ordinance being:

AN ORDINANCE AMENDING CHAPTER 20 OF THE CITY CODE DEALING WITH LAKE FARMINGTON.

There being no discussion, Ms. Breakell announced that the proposed ordinance will be presented for final action at the March 8, 2016 regular City Council meeting.

BUSINESS FROM THE FLOOR

Statewide Historical Conference

Zang Wood, President of the San Juan County Historical Society, reported that the Statewide Historical Conference will be held here in Farmington, April 14 through 16, and stated that they are seeking volunteers to help with the conference. He proudly announced that Anne Hillerman will be the keynote speaker and he provided the Mayor and Council with information on the upcoming conference.

CLOSED MEETING

A motion was made by Councilor Rodgers, seconded by Councilor McCulloch to close the meeting to discuss request for professional engineering services for the Villa View detention ponds, pursuant to Section 10-15-1H(6) and to discuss the acquisition of real property (riverine trail), pursuant to Section 10-15-1H(8) NMSA 1978. The roll was called with the following result:

Those voting aye: Linda Rodgers
Mary M. Fischer
Gayla A. McCulloch
Nate Duckett

Those voting nay: None

The presiding officer thereupon declared that four Councilors having voted in favor thereof, the said motion carried.

The Mayor convened the closed meeting at 7:32 p.m. with all members of the Council being present.

Following the closed meeting, during which meeting the matters discussed were limited only to those specified in the motion for closure, a motion was made by Councilor Rodgers, seconded by Councilor Duckett to open the meeting for further business, and upon voice vote the motion carried unanimously.

The open meeting was reconvened by the Mayor at 7:43 p.m. with all members of the Council being present.

REQUEST FOR PROPOSALS/PROFESSIONAL ENGINEERING SERVICES FOR THE VILLA VIEW DETENTION PONDS

Purchasing Supervisor Kristi Benson reported that proposals for professional engineering services for the Villa View detention ponds (Public Works) opened on February 2, 2016 with four offerors participating. She recommended that negotiations be commenced with Bohannan-Huston, Inc. as the top evaluated offeror after application of five percent in-state preference.

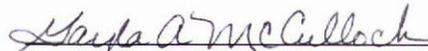
Thereupon, a motion was made by Councilor McCulloch, seconded by Councilor Rodgers to direct staff to commence negotiations on the proposal for professional engineering services for the Villa View detention ponds with Bohannan-Huston, Inc., as recommended by the Purchasing Supervisor, and upon voice vote the motion carried unanimously.

There being no further business to come before the Council, the meeting was adjourned at 7:45 p.m.

The City Clerk certified that notice of the foregoing meeting was given by posting pursuant to Resolution No. 2013-1466, et seq.

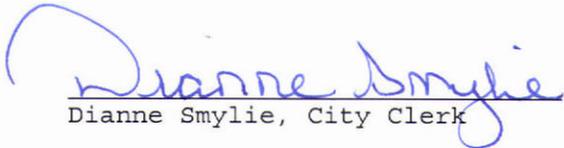
Approved this 8th day of March, 2016.

Entered in the permanent record book this 9th day of March, 2016.


Gayla A. McCulloch, Mayor Pro Tem

SEAL

ATTEST:


Dianne Smylie, City Clerk