

Regular Meeting of the City Council, City of Farmington, New Mexico, held in the Council Chamber at City Hall at 7:00 p.m. on Tuesday, September 8, 2009. 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	William E. Standley
COUNCILORS	Dan Darnell Mary M. Fischer George F. Sharpe Jason Sandel

constituting all the members of said Governing Body.

Also present were:

CITY MANAGER	Rob Mayes
ASSISTANT CITY MANAGER	Bob Campbell
CITY ATTORNEY	Jay B. Burnham
CITY CLERK	Dianne Fuhrman

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

INVOCATION: The invocation was offered by Father Robert Bailey of St. John's Episcopal Church.

The Mayor led the Pledge of Allegiance.

CONSENT AGENDA: The Mayor announced that those items on the agenda that are marked with an asterisk (\*) have been placed on the Consent Agenda and will be voted on 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 August 25, 2009 and the minutes of the Regular Work Session of the City Council held August 18, 2009.

\*DECLARATION OF SURPLUS PROPERTY: The Purchasing Officer recommended that worn-out, unusable or obsolete vehicles (Administrative Services, Central Warehouse, General Services and Vehicle Maintenance) be declared surplus to the needs of the City and not essential for municipal purposes, and that the City Manager or his designee be authorized to dispose of such surplus property pursuant to State Statutes.

\*AGREEMENT BETWEEN THE CITY AND THE NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT for funding in the amount of \$120,000 for code improvements and equipment at the Bonnie Dallas Senior Center (term to June 30, 2013).

\*WAIVER TO WATERLINE IMPROVEMENTS, PAVING AND UNDERGROUND UTILITY FOR PETITION NO. SD SP 09-22 from Edward and Victoria Schmidt, represented by Joe Aguiñaga, requesting a lot-split of 2.08 acres of land located on Road 3451 outside the city limits but within Tier 3 of the City's five-mile planning and platting jurisdiction [the split will create Tracts 19B-1 and 19B-2 (formerly Lot 19)].

\*WARRANTS PAYABLE for the time period of August 23, 2009 through September 5, 2009, for current and prior years, in the amount of \$3,754,154.86.

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

NATIONAL ALCOHOL AND DRUG ADDICTION RECOVERY MONTH PROCLAMATION

The Mayor presented Councilor Darnell with a Proclamation declaring September 2009 as "National Alcohol and Drug Addiction Recovery Month".

CONSTITUTION WEEK PROCLAMATION

The Mayor presented Marsha Lane from the Daughters of the American Revolution with a Proclamation declaring September 17 through 23, 2009 as "Constitution Week".

Reading from a prepared statement, Ms. Lane encouraged everyone to take the time to read the Constitution of the United States of America and to proudly fly the flag of the United States of America in honor of our war heroes.

BLUE AND WHITE SUNDAY PROCLAMATION

The Mayor presented Pastor Dan Mauldin of Grace Baptist Church with a Proclamation declaring September 20, 2009 as "Blue and White Sunday".

INTERNATIONAL WALK TO SCHOOL DAY PROCLAMATION

The Mayor presented Metropolitan Planning Organization Planner Joe Delmagori with a Proclamation declaring October 7, 2009 as "International Walk to School Day".

SPECIAL USE PERMIT NOS. SUP 08-27A AND SUP 08-27B - XTO ENERGY AND ENERGEN RESOURCES

- (1) Reconsideration of action taken by the City Council on August 11, 2009 to deny Special Use Permit Nos. SUP 08-27A and SUP 08-27B to expand the existing well site of the City of Farmington #2E (Dakota) and the Tiger #6 (Pictured Cliffs) gas wells located south of the intersection of Daybreak Drive and Piñon Hills Boulevard in the OP District, subject to condition (a), as recommended by the Oil and Gas Commission; amended condition (b) to require the petitioner to obtain a fence permit within 30 days of approval in a location that accommodates the 30-foot access road, as shown on the revised fence location exhibit; and amended condition (c) to require landscaping to be installed prior to October 31, 2009, as recommended by staff.

Referring to Section 8.9.4 of the Unified Development Code ("UDC"), City Attorney Jay Burnham advised that Special Use Permits may be approved where it is reasonably determined that there will be no significant negative impact upon the residents of the surrounding property or upon the public. Furthermore, he stated that the following criteria shall be considered in the application review process: a) effects on the environment; b) compatibility with surrounding area; c) the minimization of external impacts and infrastructure; d) consistency with the UDC and Comprehensive Plan; e) the size of the parcel; and f) the site plan.

Councilor Sandel announced that his company, Aztec Well Service, performs work for both XTO Energy ("XTO") and Energen Resources ("Energen"). However, he stated that he has no financial interest in either of the subject gas wells and stated that he does not perceive the working relationship to constitute a conflict of interest.

Councilor Fischer stated that she holds an interest in a gas well that is owned by XTO, but announced that she has no financial interest in the subject gas wells.

Representing XTO, Kyla Vaughn contended that this has been a long and trying process for everyone concerned and stated that it is her desire that a resolution between the property owners and the gas companies be reached at tonight's meeting. Acknowledging that certain things could have been handled differently, she maintained her position that the agreed upon location of the fence and arrangement of the gas well on the property creates the greatest benefit to all affected parties.

Addressing the Council on behalf of Energen, attorney Rick Tully stated that they were under the impression that all issues had been

resolved except for the reimbursement by Energen of legal, consulting and engineering fees incurred by the property owners as a result of the well site modifications. He stated, however, that this is a civil matter that should be resolved in a court of law. He requested that the Council approve Petition Nos. SUP 08-27A and SUP 08-27B.

In response to inquiry from the Mayor, Ms. Vaughn confirmed that XTO has entered into a written agreement with the property owners concerning the location of the fence and the configuration of the well site. She also noted that XTO has agreed to pay a portion of the costs that were incurred by the property owners as a result of negotiations concerning the well site expansion.

Lengthy discussion followed concerning the layout of the well site, the rationale for the fencing and other improvements, landscaping, and the potential for traffic hazards as a result of water trucks exiting the property. Councilor Sandel maintained his position that Energen, XTO and their fence contractor should be fined for violating City codes. Councilor Sharpe argued that staff acted appropriately and contended that any harsher action would have been inconsistent with prior policy. Ms. Vaughn reiterated that XTO did try to obtain a fence permit from the City but was denied by the Community Development Director because a well site modification permit had not been requested. With regard to trucks exiting the property, Mr. Sullivan stated that the City Engineer has determined that a hazardous situation will not be created because the fence line has been set back by 27 feet. Although he agreed that this option is not optimum, he stated that the only other access point would be across property owned by Tom Dugan and would require the relocation of certain oil well equipment and would limit the use of Mr. Dugan's property.

Addressing the Council on behalf of, Dr. Robert and Gloria Lehmer, attorney Seth Bingham stated that the primary concern of the property owners is the separation of oilfield traffic from commercial traffic on the subject roadway. He reported that the property owners were forced to hire a civil engineer to address the roadway issues; a petroleum engineer to address Energen's concerns about the cathodic protection equipment; and an attorney to represent them on the matter. He encouraged the Council to deny the subject petitions because Energen is refusing to reimburse the Lehmer's for their costs. He contended that the denial of the petitions would "even the playing field" for the property owner and the gas companies.

Following further discussion, Councilor Sharpe stated that it is his opinion that Energen should reimburse the property owners for their expenses, but acknowledged that the Council has no legal authority to impose such requirements. He also contended that it is counterproductive to deny the petitions and force Energen and XTO to start the process over because the end result will likely be the same.

Councilor Fischer maintained her strong position that the gas companies should be penalized for not complying with City Code.

RECESS

The Mayor called a recess at 9:02 p.m. in an effort to give the property owners and Energen an opportunity to reach an agreement on the matter.

The Meeting was reconvened by the Mayor at 9:16 p.m. with all members of the Council being present.

Tom Dugan reported that Energen defined the boundaries of the gas well site and constructed a fence, both of which encroach on his property, without contacting him about the matter.

Following brief discussion, a motion was made by Councilor Sharpe, seconded by Councilor Darnell to grant Special Use Permits to expand the existing well site of the City of Farmington #2E (Dakota) and the Tiger #6 (Pictured Cliffs) gas wells located south of the intersection of Daybreak Drive and Piñon Hills Boulevard in the OP District, subject to the petitioner improving the access driveway onto Daybreak Drive to the standard of four inches of compacted road base, 20 feet wide, and that the access driveway into Daybreak Drive be paved with three inches of asphalt over six inches of road base; the petitioner obtaining a fence permit within 30 days of approval for construction in a location that

accommodates the 30-foot access road, as shown on the revised fence location exhibit; and landscaping being installed prior to October 31, 2009.

Councilor Sandel contended that this is a moral issue and should be decided on fairness by ensuring that the City's laws are properly followed. Referring to Section 8.9.4 of the Unified Development Code, he reported that a Special Use Permit should be granted if there is no significant impact upon residents of the surrounding property or the public. Since Dr. and Mrs. Lehmer were significantly impacted, he suggested that the gas companies be required to go back through the permitting process.

Following further discussion, the Mayor called for the vote upon the motion to grant Special Use Permits to expand the existing well site of the City of Farmington #2E (Dakota) and the Tiger #6 (Pictured Cliffs) gas wells located south of the intersection of Daybreak Drive and Piñon Hills Boulevard in the OP District, subject to the petitioner improving the access driveway onto Daybreak Drive to the standard of four inches of compacted road base, 20 feet wide, and that the access driveway into Daybreak Drive be paved with three inches of asphalt over six inches of road base; the petitioner obtaining a fence permit within 30 days of approval for construction in a location that accommodates the 30-foot access road, as shown on the revised fence location exhibit; and landscaping being installed prior to October 31, 2009. The roll was called with the following result:

Those voting aye:	Dan Darnell George F. Sharpe
Those voting nay:	Mary M. Fischer Jason Sandel

The Mayor voted in favor of the motion and declared the motion carried.

#### COUNCIL BUSINESS:

##### Proposed City Code Amendments

The Mayor asked the Council for a consensus to direct staff to recommend amendments to the City Code that would increase the penalties for knowingly violating a City regulation (e.g. failure to obtain a building permit). In addition he suggested that the provisions of the City Code governing business registration be amended to provide for the revocation of a registration in the event that a business is operating in violation of State or local laws.

##### Window Tinting

Mayor Standley reported that a traffic citation was recently issued to a young citizen because the window tinting on her vehicle was too dark. Noting that she purchased the vehicle from a used car dealer, he suggested that the Police Department contact all car dealers to advise them of the State requirements. In response, Police Chief Jim Runnels stated that such a program has been conducted in the past, but assured the Mayor that staff will follow-up on the matter.

##### 42<sup>nd</sup> Annual Boys and Girls Club BBQ

Councilor Sandel reported that the 42<sup>nd</sup> Annual Boys and Girls Club Bar-be-que fundraiser is scheduled to be held on Friday, September 25, 2009. On behalf of Aztec Well Service, he donated 50 tickets to City staff.

City Attorney Jay Burnham presented for discussion a proposed ordinance granting a franchise to Comcast of New Mexico/Pennsylvania. The title of such proposed ordinance being:

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF NEW MEXICO/  
PENNSYLVANIA, LLC, FOR THE OPERATION OF A CABLE TELEVISION SYSTEM  
WITHIN THE CITY OF FARMINGTON; ALLOWING SUCH COMPANY TO USE CITY  
RIGHTS-OF-WAY; AND PROVIDING FOR THE PAYMENT OF A FRANCHISE FEE.

In response to inquiry from Councilor Fischer, Mr. Burnham announced that Comcast is proposing to increase the franchise fee from

four to five percent. He explained that this will represent an increase in revenue for the City of Farmington.

Councilor Fischer also relayed another example of poor customer service that was experienced by a constituent over the weekend. Mayor Standley announced that he has also received calls complaining about the poor customer service being offered by the local Comcast office and stated that he has talked to the local representative about the issue. He also reported that the system upgrades are causing some problems with the cable transmission service and encouraged all residents to contact Comcast Cable because it may require an adjustment to the electrical power within the home.

There being no further response to the Mayor's call for discussion, Mr. Burnham announced that the proposed ordinance will be presented for final action at the September 22, 2009 regular City Council meeting.

There being no further business to come before the Council, a motion was made by Councilor Fischer, seconded by Councilor Sharpe to adjourn the meeting at 9:57 p.m., and upon voice vote the motion carried unanimously.

The City Clerk certified that notice of the foregoing meeting was given by posting pursuant to Resolution No. 96-844, et seq.

Approved this 13<sup>th</sup> day of October, 2009.

Entered in the permanent record book this 14<sup>th</sup> day of October, 2009.

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William E. Standley, Mayor

SEAL

ATTEST:

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Dianne Fuhrman, City Clerk