

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, October 13, 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
DEPUTY CITY CLERK	Melody Coyner

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

INVOCATION: The invocation was offered by City Attorney Jay Burnham.

The Mayor led the Pledge of Allegiance.

A moment of silence was observed in honor of Army Sergeant 1st Class Kenneth W. Westbrook who died October 7, 2009 from injuries received while serving in Afghanistan.

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 Meetings of the City Council held September 8, 2009 and September 22, 2009 and the minutes of Regular Work Session of the City Council held September 15, 2009.

*BID: The Purchasing Officer recommended that the bid for purchase of shielded copper cable and tray cable (Electric Utility) be awarded to Wesco Distribution on its low bid meeting specifications after application of five percent in-state preference of \$47,042.70, and that the Alternate bid received from Summit Electric Company be rejected for not meeting specifications. Bids opened September 29, 2009 with nine bidders participating.

*APPLICATION FOR FEDERAL ASSISTANCE/S*T*O*P* VIOLENCE AGAINST WOMEN FORMULA GRANT for funding in the amount of \$111,992 to provide a specially trained unit of certified law enforcement officers (Domestic Violence Advocacy and Law Enforcement Response Team - DVALERT) to work in conjunction with existing victim advocates and improve police response to victims of domestic violence and stalking.

*PURCHASE AGREEMENT BETWEEN THE CITY AND THE SPARE RIB BARBEQUE, INC. for purchase of City-owned property located near the northeast intersection of Fairgrounds Road and East Main Street (purchase price \$42,500).

*RECOMMENDATION FROM THE PARKS, RECREATION & CULTURAL AFFAIRS COMMISSION to designate the name for the new park located in the Pueblo de Farmington Subdivision as "Milagro Park".

*ADOPTION OF RESOLUTION NO. 2009-1329 approving the Auburn Avenue Resurfacing project and accepting funds from the New Mexico Department of Transportation 2009/2010 Municipal Arterial Program (M.A.P.) for such project.

*WARRANTS PAYABLE for the time period of September 20, 2009 through October 10, 2009, for current and prior years, in the amount of \$8,061,421.50.

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

2009 BYRNE JUSTICE ASSISTANCE GRANT PROGRAM AWARD - Public Hearing/Authorization to Expend Funds

Police Chief Jim Runnels recommended approval of Grant Award No. 2009-DJ-BX-1498 accepting funding from the 2009 Byrne Justice Assistance Grant ("JAG") Program. He advised that the City and San Juan County are to receive \$69,161 and \$36,492, respectively, for a total award amount of \$105,653.

The public hearing was convened by the Mayor for the purpose of hearing comments concerning proposed uses for the 2009 JAG funding, for which staff is recommending that it be used to purchase various unfunded items of police equipment required to maintain operational efficiency and regional response capabilities.

There was no response to the Mayor's call for public comment and the public hearing was declared to be closed.

Thereupon, a motion was made by Councilor Sharpe, seconded by Councilor Darnell to approve Grant Award No. 2009-DJ-BX-1498 accepting funding from the 2009 Byrne Justice Assistance Grant ("JAG") Program, as presented, and to authorize staff to expend the FY 09 JAG Program funds, and upon voice vote the motion carried unanimously.

RESOLUTION NO. 2009-1330 APPROVING THE GAS PREPAY ARRANGEMENT WITH THE NEW MEXICO MUNICIPAL ENERGY ACQUISITION AUTHORITY AND AUTHORIZING THE MAYOR TO SIGN THE GAS SUPPLY AGREEMENT (TERM TO 2039) AND ADDENDUM NO. 1 TO THE GAS PURCHASE AND SALE AGREEMENT DATED JULY 21, 2004 BETWEEN THE CITY AND BP (TERM TO 2020)

The Mayor asked that RBC representative Lynn Goodwin be contacted by speaker telephone for participation in the discussion of the proposed resolution concerning a gas prepay arrangement between the City and the New Mexico Municipal Energy Acquisition Authority ("NMMEAA").

Electric Utility Director Maude Grantham-Richards confirmed her support for the proposed gas prepay arrangement with NMMEAA. She also provided a brief overview of the proposed transaction, which will save the Electric Utility customers approximately \$912,500 per year, and recommended adoption of Resolution No. 2009-1330. In response to inquiry from Councilor Sharpe, she explained that if the discount were to reach zero, the agreement with NMMEAA could be terminated because it will no longer be beneficial to the City. Under those circumstances, she stated that the City would revert back to the contract terms that currently exist with BP Energy Company.

Thereupon, a motion was made by Councilor Sharpe, seconded by Councilor Darnell to adopt Resolution No. 2009-1330 approving the gas prepay arrangement with the New Mexico Municipal Energy Acquisition Authority and authorizing the Mayor to sign the Gas Supply Agreement and Addendum No. 1 to the Gas Purchase and Sale Agreement, as presented. The roll was called with the following result:

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

The presiding officer thereupon declared that three Councilors having voted in favor thereof, the said motion carried and Resolution No. 2009-1330 was duly passed and adopted.

The telephone call with Mr. Goodwin was terminated at 7:15 p.m.

RESOLUTION NO. 2009-1331 ADOPTING THE METROPOLITAN REDEVELOPMENT AREA PLAN

Mayor Standley reminded the Council that they have received numerous updates from the Chairman of the Metropolitan Redevelopment Agency Board, the members of the Metropolitan Redevelopment Area ("MRA") Planning Committee and staff regarding the proposed MRA Plan. He called for questions and/or comments from the Council.

Councilor Fischer questioned the need for criteria number 2, as presented in the subject resolution. In response, Senior Planner Cindy Lopez explained that the criteria is included in Section 3-60A-9(C) of the State Statute governing MRA's, but stated that it appears to conflict with recent changes in eminent domain laws. She suggested that criteria number 2 be deleted from the resolution.

Councilor Fischer also expressed concern for the extensive amount of City involvement in the proposed MRA Plan. In response, City Manager Rob Mayes assured her that there will not be any monetary commitment made to any MRA project without Council approval. Furthermore, he explained that the intent of the MRA Plan is to elicit investment from the private sector in the downtown area.

Councilor Sharpe commended everyone involved with the development of the proposed MRA Plan and expressed his complete support for the project.

Councilor Sandel stated that he supports putting the MRA Plan into action and reiterated his suggestion that staff explore the legalities of redirecting some of the revenue being collected in the 201 and 202 Funds to subsidize a portion of the MRA projects.

Addressing the Council, Tommy Roberts emphasized that the purpose of the Metropolitan Redevelopment Agency Board is to simply serve as an advisory group to the Council, noting that they do not have the authority to commit City funds. Addressing Councilor Fischer's concern regarding the City's involvement in the MRA, Mr. Roberts explained that the MRA Plan is governed by State Statutes which provide a mechanism for local government involvement.

Thereupon, a motion was made by Councilor Sharpe, seconded by Councilor Sandel to adopt Resolution No. 2009-1331 approving the Metropolitan Redevelopment Area Plan, as presented. The roll was called with the following result:

Those voting aye:	Dan Darnell George F. Sharpe Jason Sandel
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Those voting nay:	Mary M. Fischer
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The presiding officer thereupon declared that three Councilors having voted in favor thereof, the said motion carried and Resolution No. 2009-1331 was duly passed and adopted.

Councilor Sharpe briefly left the meeting.

RECOMMENDATIONS FROM THE PLANNING AND ZONING COMMISSION:

CONSENT AGENDA: Senior Planner Cindy Lopez requested that those Planning and Zoning Commission recommendations marked with an asterisk () be placed on the Planning and Zoning Commission Consent Agenda and voted on by one motion. She asked that if any item proposed 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 in regular order.

- *(1) Adoption of the Planning and Zoning Commission Action Summary and approval of Petition No. ZC 09-06 from Navajo United Methodist Center, represented by Susan Kimbler, requesting a zone change from the RE-20, Residential Estate, District to

the MF-L, Multi-Family Low Density, District to allow the petitioner to apply for a Special Use Permit to expand a group care facility and operate a daycare at 1200 West Apache Street on 14.71 acres (see concurrent Petition Nos. SUP 09-17A and SUP 09-17B).

- * (2) Adoption of the Planning and Zoning Commission Action Summary and approval of Petition No. SUP 09-17A from Navajo United Methodist Center, represented by Susan Kimbler, requesting a Special Use Permit to expand a group care facility located at 1200 West Apache Street in the MF-L, Multi-Family Low Density, District, subject to:

- (a) the petitioner providing proof of licensing by and in compliance with the rules of the State of New Mexico for group care facilities; and
- (b) the petitioner providing parking and circulation for the property in compliance with Article 5 of the Unified Development Code; **AND**

Adoption of the Planning and Zoning Commission Action Summary and approval of Petition No. SUP 09-17B from Navajo United Methodist Center, represented by Susan Kimbler, requesting a Special Use Permit to operate a daycare facility at 1200 West Apache Street in the MF-L, Multi-Family Low Density, District, subject to:

- (a) the petitioner providing proof of licensing by and in compliance with the rules of the State of New Mexico for daycare facilities; and
- (b) the petitioner providing parking and circulation for the property in compliance with Article 5 of the Unified Development Code.

There being no requests to remove any items, a motion was made by Councilor Sandel, seconded by Councilor Darnell to approve the Planning and Zoning Commission Consent Agenda, as presented. The roll was called with the following result:

Those voting aye:	Dan Darnell Mary M. Fischer Jason Sandel
Those voting nay:	None
Those absent:	George F. Sharpe

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

Councilor Sharpe returned to the meeting.

Senior Planner Cindy Lopez also presented the following recommendation from the Planning and Zoning Commission:

- (3) Adoption of the Planning and Zoning Commission Action Summary and denial of Petition No. ABD 09-03 from Manuel C. Hastings, represented by Manalynn Cooper, requesting full abandonment of the southern portion of the Mossey Cup Drive right-of-way, but approval of the petition for partial abandonment for that portion of Mossey Cup Drive that is unimproved, subject to:
- (a) retention by the City of a strip of land that would provide City access to the park property located to the south (no public access);
 - (b) the applicant conveying to the City an easement across a portion of the 20-foot strip of land at the south end of Mossey Cup Drive to allow for the continuation of access to the park property for City use only;
 - (c) retention of all necessary utility easements; and
 - (d) the applicant being responsible for the preparation of a summary subdivision plat that would combine the areas to be abandoned with the adjoining lots and recorded by October 1, 2010.

Providing opening remarks, Ms. Lopez reported that the Petitioner submitted a similar application (Petition No. ABD 86-06) in 1986. She stated that he was denied the request for full abandonment of Mossey Cup Drive but was granted partial abandonment for that portion lying south of the existing street improvements subject to (a) retention of a strip of land by the City that would provide access to the park land to the south; (b) the applicant conveying to the City a portion of the 20-foot strip of land located at the south end of Mossey Cup Drive to allow for the continuation of access to the park land at the south; (c) retention of all necessary utility easements; and (d) the applicant being responsible for the preparation of a summary division plat that will combine the areas to be abandoned with the adjoining lots. She noted, however, that the petitioner did not satisfy condition (d) so the abandonment action was never completed. Referring to a memorandum from Community Development Director Michael Sullivan, Ms. Lopez stated that the Planning and Zoning Commission is recommending that the retained easement be for the City's use only. Noting that there is approximately 16 acres of City-owned open space located to the south of the subject property, she stated that pedestrian access is crucial since the property will likely be developed into a walking trail along the Farmington Glade.

Councilor Sharpe recommended retaining the easement for public access.

Representing the petitioner, Ireke Cooper, 4915 Tampico Way, announced that the petitioner is in full agreement with the recommendation from the Planning and Zoning Commission because he is concerned about the security of his property if public access is allowed. He also provided the Council with a drawing that was prepared by City Landscape Architect Roger Drayer showing that public access to the property could be attained through an easement across 707 West Gladden Drive. Mr. Cooper urged the Council to adopt the recommendations of the Planning and Zoning Commission.

Thereupon, a motion was made by Councilor Fischer, seconded by Councilor Darnell to adopt the Planning and Zoning Commission Action Summary and to deny the request for full abandonment of the southern portion of the Mossey Cup Drive right-of-way, but approve partial abandonment for that portion of Mossey Cup Drive that is unimproved, subject to conditions (a) through (d), as recommended by the Planning and Zoning Commission.

In response to inquiry from Councilor Sharpe concerning the perceived security issue, Mr. Cooper reported that the petitioner is currently experiencing vandalism on his property, but stated that he anticipates this to lessen once a park and trail system are established.

Councilor Sharpe stated that he will support the proposed petition since there is an alternative access to the City-owned open space.

The Mayor called for the vote upon the motion to adopt the Planning and Zoning Commission Action Summary and to deny a request for full abandonment of the southern portion of the Mossey Cup Drive right-or-way, but approve partial abandonment for that portion of Mossey Cup Drive that is unimproved, subject to conditions (a) through (d), as recommended by the Planning and Zoning Commission, and upon voice vote the motion carried unanimously.

UNFINISHED BUSINESS

- (1) ADOPTION OF RESOLUTION NO. 2009-1332 urging the Environmental Protection Agency to balance the need for clean air and good visibility with the need to preserve businesses that contribute to the economic health of the area.

Mayor Standley reminded the Council that the subject resolution was tabled at the October 6, 2009 City Council Work Session.

As a result of comments that were made at the Work Session, City Attorney Jay Burnham announced that an amended resolution is being presented to the Council for consideration. Councilor Sharpe briefly reviewed the amendments to the resolution, noting that visibility is the primary issue addressed by the proposed new Haze Rule. In addition, he reviewed the handout that was prepared by Richard Grimes, Environmental Health and Safety Manager for Arizona Public Service ("APS"), that compare the annual cost/benefit in dollars per deciview for the

installation of advanced combustion control equipment vs. Selective Catalytic Reduction and additional particulate control.

Charles Roybal, Senior Counsel for BHP Billiton ("BHP") New Mexico, provided the Council with a written statement, noting that BHP is the sole supplier of fuel for Four Corners Power Plant. He also explained the socio-economic benefits that are received by Farmington, the Navajo Nation and San Juan County through the fuel that BHP supplies to the Four Corners Power Plant and stated that BHP fully supports the efforts of APS in reducing emissions at Four Corners Power Plant. In closing, Mr. Roybal thanked the Council for its support of APS and BHP.

Councilor Fischer reiterated her contention that the proposed Haze Rule will not force APS to close the Four Corners Power Plant.

Bert Sandoval contended that APS and BHP have been good neighbors and contributors to the Navajo Nation and he voiced his support for the proposed resolution.

APS employee Erickson Benally expressed his sincere appreciation to APS for the opportunities that they have given him and his family. He stated that he fully supports the proposed resolution.

Thereupon, a motion was made by Councilor Sharpe, seconded by Councilor Darnell to adopt amended Resolution No. 2009-1332 supporting a balanced approach to the issuance of Environmental Protection Agency regulations that require the installation of environmental technology at the Arizona Public Service Four Corners Power Plant.

In response to inquiry from Councilor Fischer, Mr. Grimes explained that APS will have five years to come into compliance with the Best Available Retrofit Technology if it is imposed by the Environmental Protection Agency. He stated that he is uncertain as to whether APS would litigate the EPA's determination.

APS Plant Manager David Saliba reiterated that if the EPA requires the selective catalytic reduction technology in addition to the combustion and particulate controls, APS would be forced to consider closing the first three units of the Four Corners Power Plant because the improvements would be cost prohibitive. He urged the Council to adopt the proposed resolution.

The Mayor called for a vote on the motion to adopt amended Resolution No. 2009-1332 supporting a balanced approach to the issuance of Environmental Protection Agency regulations that require the installation of environmental technology at the Arizona Public Service Four Corners Power Plant, as presented. The roll was called with the following result:

Those voting aye:	Dan Darnell George F. Sharpe Jason Sandel
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Those voting nay:	Mary M. Fischer
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The presiding officer thereupon declared that three Councilors having voted in favor thereof, the said motion carried and Resolution No. 2009-1332 was duly passed and adopted.

COUNCIL BUSINESS

Farmers' Market

Councilor Fischer announced that she has met with the members of the Farmers' Market board, City Manager Rob Mayes, Assistant City Manager Bob Campbell and Gateway Museum Director Bart Wilsey concerning the possibility of relocating the Farmers' Market to property near Gateway Museum. She contended that there will be little to no impact on the City's budget if it is relocated and stated that the board members are looking forward to working with the City.

Capital Outlay Funding

Councilor Sandel asked for a status report on the capital outlay funds that have not been expended or drawn down by the City.

With regard to the capital outlay funding for the Regional Animal Shelter, City Manager Rob Mayes reported that 80 percent of the appropriated funds have been spent.

Federal Stimulus Funds

Councilor Sandel asked for a status report on the Federal stimulus funds and for ideas on what the City could do to receive additional stimulus funding.

New Mexico National Guard

Mayor Standley reported that on Thursday, October 8, 2009, he met with Major General Kenny C. Montoya at the National Guard headquarters in Santa Fe and toured their training facility. He stated that in 2011, the National Guard plans to construct a \$5 million military police training facility in Farmington, if funds are available.

BUSINESS FROM THE FLOOR:

Request for Information/4627 Barcelona Circle

James Monchamp, 4627 Barcelona Circle, requested a copy of the building inspection records for his residence. Mayor Standley reiterated that Mr. Monchamp needs to provide a list of the items requiring attention, as identified by the State of New Mexico Construction Industries Division. In closing, Mr. Monchamp requested independent meetings with Councilors Sandel, Sharpe and Fischer to discuss his matter in more detail.

Bisti Aviation Lease Agreement/Liability Insurance/Self-Service Fueling Proposal

Don Sitta, owner of Bisti Aviation ("Bisti"), announced that Bisti ceased providing services to the public several months ago. He contended that insurance is no longer necessary nor required by his lease agreement with the City, but stated that he recently purchased a \$1 million general liability insurance policy.

Following discussion concerning the insurance requirements of Bisti's lease with the City, the Mayor asked Mr. Sitta to have his attorney contact City Attorney Jay Burnham regarding the matter.

Mr. Sitta stated that he is actually seeking approval of his self-service fueling station. In response, General Services Director Rod Hunt explained that the City cannot enter into an agreement with him because Bisti is out of compliance with the Storm Water Pollution Prevention Plan that requires the purchase of an environmental liability insurance policy. In closing, Mr. Sitta recommended that a third party review Bisti's lease agreement to determine if all the conditions are being met.

There being no further business to come before the Council, a motion was made by Councilor Fischer, seconded by Councilor Darnell to adjourn the meeting at 9:06 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 day 27th of October, 2009.

Entered in the permanent record book this 28th day of October, 2009.

William E. Standley, Mayor

SEAL

ATTEST:

Dianne Fuhrman, City Clerk