

Work Session of the City Council, City of Farmington, New Mexico, held Tuesday, November 17, 2009 at 9:00 a.m. in the Executive Conference Room at City Hall, 800 Municipal Drive, Farmington, New Mexico, in full conformity with the rules, regulations and ordinances of the municipality.

At such meeting the following were present, constituting a quorum:

MAYOR	William E. Standley
COUNCILORS	Dan Darnell Mary M. Fischer George F. Sharpe Jason Sandel

Constituting all the members of the Governing Body.

Also present were:

CITY MANAGER	Rob Mayes
ASSISTANT CITY MANAGER	Bob Campbell
CITY ATTORNEY	Jay B. Burnham
DEPUTY CITY CLERK	Melody Coyner

BID/PURCHASE OF HERBICIDES, FUNGICIDES AND MISCELLANEOUS CHEMICAL SUPPLIES

Purchasing Supervisor Kristi Benson reported that bids for purchase of herbicides, fungicides and miscellaneous chemical supplies opened on October 27, 2009 with seven bidders participating. She recommended that the bid be awarded to the lowest and best bidder per line item after application of five percent in-state preference (items 1E, 1H, 1J, 1P, 2E-2H & 3D-3E - Univar USA, Inc., \$12,376.61; items 1A, 1C-1D, 1F-1G, 1I, 1K-1L, 1R-1S, 3B-3C, 4A & 4F-4G - Helena Chemical Co., \$32,648.72; items 2A-2C, 2I-2J & 4E - Adapco, Inc., \$7,098.40; items 1M, 1Q & 1T - Deangelo Brothers Inc., \$6,344; and items 1B, 1N-1O, 2D, 3F, 4B-4D & 4H - John Deer Landscapes, \$19,080.40). She also recommended that categories 1, 2 and 3 be canceled and awarded by line item; the bid received from CWC Chemical (line item 1O) be rejected for not being in the best interest of the City; and that the bid received from John Deere Landscapes (line item 3C) be rejected for being non-responsive and not meeting specifications.

Thereupon, a motion was made by Councilor Sharpe, seconded by Councilor Darnell to award the bid for purchase of herbicides, fungicides and miscellaneous chemical supplies, as recommended by the Purchasing Supervisor, and upon voice vote the motion carried unanimously.

PROPOSED ORDINANCE DEALING WITH OIL AND GAS WELLS

City Attorney Jay Burnham introduced a proposed ordinance amending Chapter 19 of the Farmington City Code dealing with oil and gas wells. He requested permission to proceed with publication of a Notice of Intent to Consider said ordinance.

Directing the Council's attention to page 2.0 of the agenda materials, Community Development Director Michael Sullivan reported that on June 16, 2009 the Oil & Gas and Geologic & Engineering Hazards Advisory Commission ("Oil & Gas Commission") reaffirmed its 2007 recommendation that the City not regulate drilling methods (e.g. directional drilling). However, he announced that staff has included three alternatives for Council consideration at a later date. He asked that the Council not delay action upon the proposed ordinance just because the decision on directional drilling is still pending. He introduced Associate Planner Fran Fillerup.

Referring to the hi-light and strike-out version of the proposed ordinance, Mr. Fillerup reviewed the proposed amendments to the provisions entitled, Definitions; Proximity of well, tanks or pipelines to buildings; Workover and Temporary Reserve Pits; Enforcement and penalties; Annexation of Existing Wells; Well Site Equipment Modification

Permit Requirements; Nuisances and Annoyances; Operations Generally; and Fencing and Landscaping of Well Sites.

Discussion followed concerning the 200-foot separation requirement from any residence, commercial or industrial building.

In response to inquiry from Councilor Fischer, Mr. Sullivan explained that the Fire Department enforces the safety provisions of Chapter 19 and the State of New Mexico enforces all State regulations concerning oil and gas well operations. He noted that the Oil & Gas Commission simply serves in an advisory capacity to staff and the Council. City Manager Rob Mayes pointed out that the proposed amendments to Section 19-2-3 will allow staff to designate a person to enforce the non-safety aspects of oil and gas well operations. Councilor Fischer suggested that a checklist of safety and non-safety issues be created to facilitate enforcement.

Councilor Sandel expressed concern for the lack of a definition for the term "non-safety aspects". In response, Mr. Sullivan explained that staff needs the latitude to conduct enforcement on a case-by-case basis.

Following further discussion, a motion was made by Councilor Sharpe, seconded by Councilor Sandel to amend Section 19-1-5(a) to delete the words "outside corporate limits" in the last sentence, and upon voice vote the motion carried unanimously.

In response to concern expressed by Councilor Fischer regarding the issuance of the permit by the Clerk's office, Mr. Sullivan noted that the City Clerk's role in the process is merely administrative and that the permit and license is not issued until the applicant has complied with all requirements of Chapter 19.

Following further discussion, a motion was made by Councilor Sharpe, seconded by Councilor Darnell to amend Section 19-3-3(d) to replace the word "during" with the words "other than" in the second sentence, and upon voice vote the motion carried unanimously.

In response to inquiry from Councilor Fischer, Mr. Burnham stated that individuals claiming damages caused by the drilling and/or operation of a well may have a cause of action against the well operator. In the event that the cause of damage is expansive and ongoing, he stated that the City could look at bringing a public nuisance action against the well operator.

Following discussion concerning 24-hour and directional drilling, Councilor Sandel suggested that the City promote directional drilling rather than regulate vertical drilling.

Following further discussion, a motion was made by Councilor Sharpe, seconded by Councilor Sandel to amend Section 19-3-4(c) to replace the word "may" with the word "shall" in the second sentence.

In response to inquiry from Councilor Sandel, Mr. Sullivan stated that owners of property within 100 feet of the proposed well site are notified of an application to drill.

The Mayor called for the vote upon the motion to amend Section 19-3-4(c) to replace the word "may" with the words "shall" in the second sentence, and upon voice vote the motion carried unanimously.

A motion was made by Councilor Sandel, seconded by Councilor Sharpe to amend the last sentence of Section 19-3-4(c) to replace the word "shall" with the word "may" and, following the word "only", include the words "unless otherwise approved by the City Council. All occupied dwellings within 500 feet of the well hole will be notified of a request for 24-hour drilling and when it will be heard", and upon voice vote the motion carried unanimously.

Following discussion concerning the co-location and directional drilling alternatives contained in Mr. Sullivan's July 21, 2009 memorandum, a motion was made by Councilor Sharpe, seconded by Councilor Darnell to add Section 19-1-8 stating, "No well shall be drilled at a new well site unless there are no other well sites within the same 160-acre quarter section area as the new well or, if other well sites exist, an affidavit is provided stating why the existing well site is not practicable."

Councilor Sandel stated he would prefer language that recognizes the Council's position and promotes directional drilling. He suggested that a policy statement be issued clarifying that the City strongly encourages multiple wells to be co-located on a single well pad and that applications for the co-location of wells will be viewed more favorably.

The Mayor called for the vote upon the motion to add Section 19-1-8 stating, "No well shall be drilled at a new well site unless there are no other well sites within the same 160-acre quarter section area as the new well or, if other well sites exist, an affidavit is provided stating why the existing well site is not practicable." 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.

In response to inquiry from Councilor Fischer concerning the enforcement of noise from well sites, Deputy Police Chief Kyle Westall reported that the Police Department owns one medium-quality decibel meter. Councilor Fischer contended that one meter is insufficient and suggested that additional, higher-quality meters be requested in the FY 2011 budget.

Following further discussion, a motion was made by Councilor Sharpe, seconded by Councilor Darnell to amend the proposed ordinance to specifically allow the Council to grant waivers to the requirements of Section 19, and upon voice vote the motion carried unanimously.

Thereupon, a motion was made by Councilor Sharpe, seconded by Councilor Darnell to direct the City Attorney to publish notice of intent to consider adoption of the proposed ordinance, as amended, in accordance with State Statutes. The roll was called with the following result:

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

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

RECESS

The Mayor called a recess at 10:39 a.m.

The meeting was reconvened by the Mayor at 10:49 a.m. with all members of the Council being present.

PROPOSED ORDINANCE DEALING WITH SUBSIDIZED LOANS FOR WATER SYSTEM IMPROVEMENTS

Mr. Burnham introduced a proposed ordinance authorizing the execution of an agreement dealing with a subsidized loan for water system improvements from the Drinking Water State Revolving Fund. He requested permission to proceed with publication of a Notice of Intent to Consider said ordinance.

Following brief discussion, a motion was made by Councilor Sharpe, seconded by Councilor Darnell to direct the City Attorney to publish notice of intent to consider adoption of a proposed ordinance in accordance with State Statutes.

Staff responded to questions from the Council concerning the term of the loan, the payment amount and whether the agreement contains a penalty clause for early payoff.

Following the discussion, the Mayor called for the vote upon the motion to direct the City Attorney to publish notice of intent to consider adoption of a proposed ordinance in accordance with State Statutes. The roll was called with the following result:

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

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

METROPOLITAN TRANSPORTATION PLAN/FUTURE PROPOSED ROAD NETWORK SCENARIOS

Community Development Director Michael Sullivan noted that every five years the Metropolitan Planning Organization ("MPO") is required to update the Metropolitan Transportation Plan ("MTP") for inclusion in the State Transportation Improvement Program.

Utilizing a powerpoint presentation, MPO Planner Joe Delmagori and MPO Associate Planner Martin Lucero reviewed the elements of the MTP, including the development process. They provided the Council with a handout entitled, "MTP Roadway Network Scenario Planning" and explained how the traffic patterns would change as the road networks are constructed.

With regard to Scenario #7 (proposed roadway improvements in the northeast section of town), Councilor Sandel contended that existing residential neighborhoods will be negatively impacted as a result of the roadway extension. He requested a summary of the notes and a copy of the minutes from the MPO meeting where the N1-Northern Route was approved.

In closing, Mr. Lucero reported that the MPO is most favorable to Scenario #11 that extends Highline Road and widens U.S. Highway 64 and County Road 390 in an effort to relieve traffic constraints on Crouch Mesa.

In response to inquiries from Councilor Sandel, Mr. Delmagori confirmed that the Foothills/English road improvement project, identified in the current MTP, does reflect the changes that were made to the City's Major Thoroughfare Plan and that key elements of the Bicycle/Pedestrian Plan will be incorporated in the proposed MTP.

CANCELLATION OF DECEMBER 22, 2009 REGULAR CITY COUNCIL MEETING

Due to the Christmas holiday, a motion was made by Councilor Sharpe, seconded by Councilor Darnell to cancel the December 22, 2009 Regular City Council meeting, and upon voice vote the motion carried unanimously.

UNFINISHED BUSINESS:

- (1) Adoption of the Planning and Zoning Commission Action Summary and approval of Petition No. PD 09-02 from Geltmore LLC, represented by Charles Price, requesting approval of a planned development of 250.97 acres and of the Master Plan for property located north of Piñon Hills Boulevard across from the Sports Complex and east of La Plata Highway, subject to:
 - (a) a Traffic Impact Analysis for the entire Master Plan being submitted to the City Engineer for review and consideration with regard to access and subdivision improvements for on- and off-site infrastructure design, traffic signals, street lighting, etc. prior to the submittal of any preliminary plan to the Community Development Department.;
 - (b) the Developer providing a second access onto Piñon Hills Boulevard at the first phase of the development to meet the recommendations that result from the Traffic Impact Analysis and to meet the requirements of the Unified Development Code; and

- (c) a copy of the New Mexico Department of Transportation permit allowing access to La Plata Highway being provided to the Community Development Department prior to the submittal of any preliminary plan.
- (2) Adoption of the Planning and Zoning Commission Action Summary and approval of Petition No. ANX 09-01 from Geltmore LLC, represented by Charles Price, requesting an annexation of 250.97 acres of property located north of Piñon Hills Boulevard across from the Sports Complex and east of La Plata Highway.
- (3) Adoption of the Planning and Zoning Commission Action Summary and denial of Petition No. MTPA 09-01 requesting inclusion of the spine road for La Plata Ranch Subdivision as a minor arterial on the Master Plan, but approval of including the spine road for La Plata Ranch Subdivision as a collector street on the Master Plan, subject to Council approval of the Planned Development Master Plan and completion of the annexation of La Plata Ranch.
- (4) Preliminary approval of La Plata Ranch Public Improvement District (PID).
- (5) Discussion and approval of the revised La Plata Ranch Annexation/Development Agreement.

Community Development Director Michael Sullivan reminded the Council that action upon Petition Nos. PD 09-02, ANX 09-01, MTP 09-01, the Annexation/Development Agreement and the application for preliminary approval for La Plata Ranch Public Improvement District were tabled at the October 6, 2009 and November 3, 2009 City Council Work Sessions and the November 10, 2009 Regular City Council Meeting to afford staff the opportunity to further negotiate an agreement on the proposed Annexation/Development Agreement. He provided the Council with an updated "Cost Share Summary Table" that identifies those infrastructure projects to be paid by the developer, the City and San Juan County ("County").

Paul Silverman of Geltmore LLC, a representative of the petitioner, agreed with the list of consensus items related to the proposed Annexation/Development Agreement that was compiled by City Manager Rob Mayes following the November 3, 2009 City Council Work Session. However, he voiced opposition to the recommendation that the developer pay 100 percent of the costs associated with constructing the spine road to collector status. He proposed that the cost of constructing phases 1 and 2 of the spine road (to include water, sewer, storm water, landscaping and the high water La Plata River crossing) be split between the developer (50 percent) and the City and County (50 percent). He stated that the developer will be solely responsible for installing the "dry utilities". Mr. Silverman also noted that the developer will pay the City/County share of the construction costs and be reimbursed based upon the proposed tax revenue reimbursement plan.

Lengthy discussion followed concerning the cost difference to the City between the newly proposed 50/50 split versus the previous proposal that the City and County pay 100 percent (based on a 60/40 cost share) of the incremental cost to upgrade the spine road from "collector" to "minor arterial" status. In that case, the developer would be required to finance 100 percent of the cost, subject to reimbursement per the proposed tax revenue reimbursement plan.

In response to inquiry from Mayor Standley, Mr. Silverman reported that the developer is committed to granting the City the right-of-way necessary for upgrading the spine road to "minor arterial" status if necessary. Mr. Silverman assured Councilor Sandel that the developer has every intention of including a school within the proposed development, but stated that he cannot guarantee it at this point in time.

Councilor Sharpe stated that he prefers the 60/40 City/County split of the incremental cost associated with upgrading the spine road from "collector" to "minor arterial" status.

Mr. Burnham assured Councilor Sandel that the proposed Annexation/Development Agreement ("Agreement") will not violate the Bateman Act or the associated constitutional debt limitations because the

latest version contains a provision that requires the City to create a special fund for the project. Furthermore, he stated that the developer has agreed to delete paragraph 13.2.1 of the proposed Agreement, thereby changing the nature of the document from a development agreement to an annexation/infrastructure cost-sharing agreement.

Following further discussion concerning the cost-sharing of the spine road, Councilor Sharpe stated that he is willing to meet somewhere in the middle of the proposed 50/50 split for constructing phases 1 and 2 of the spine road and the former 60/40 City/County split for upgrading the road to minor arterial status.

Councilor Sandel reiterated his concern regarding the City's ability to enter into a development agreement.

Councilor Fischer contended that the City is not following the Public Improvement District ("PID") and Tax Increment Development District ("TIDD") guidelines adopted by the Council.

Following further discussion, it was the consensus of a majority of the Council to direct staff to negotiate a 45/55 split between the City/County and the developer for the costs associated with constructing phases 1 and 2 of the spine road to include water, sewer, storm water, landscaping and the high water La Plata River crossing. The developer will be 100 percent responsible for the "dry utilities". The developer shall also front the City and County's 45 percent obligation and be reimbursed per the proposed tax revenue reimbursement plan. Following further discussion, Councilor Sharpe expressed his support for the City to reimburse the developer by paying an amount equal to 75 percent of collected gross receipts and property taxes attributable to the development.

Discussion followed concerning the interest to accrue on the City's reimbursement obligation. Mr. Silverman noted that the Agreement states that interest will begin accruing when the improvements are complete and accepted by the City and that any portion of the City's reimbursement obligation not paid in 30 years will become the developer's responsibility.

Councilor Fischer left the meeting at 12:42 p.m.

Councilor Sharpe asked that the Administrative Services Department endeavor to devise a plan for tracking and managing the gross receipts taxes attributable to the development prior to the November 24, 2009 regular City Council meeting.

Discussion followed concerning how the dedicated gross receipts tax for streets and parks will affect the 75 percent to be paid to the developer. Councilor Sandel requested that the Council be included in any correspondence concerning this matter.

Following further discussion, a motion was made by Councilor Sharpe, seconded by Councilor Darnell to table action upon Petition Nos. PD 09-02, ANX 09-01, MTP 09-01, the Annexation/Development Agreement and the La Plata Ranch Public Improvement District (application for preliminary approval) to the December 8, 2009 regular City Council meeting to afford staff the opportunity to further negotiate an agreement on the proposed Annexation/Development Agreement. The roll was called with the following result:

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

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

COUNCIL BUSINESS

Speeding on Main Street

Councilor Darnell expressed appreciation for staff's efforts in addressing the speeding issue on Main Street.

Reconsideration of Petition No. ZC 09-08

With regard to Petition No. ZC 09-08, Councilor Darnell stated that he believes that some residents affected by the zone change were not properly notified of the pending application. He requested that the Council reconsider the action that was taken on November 10, 2009 to grant a zone change from the MF-L/SMHAO, Multiple-Family Low Density Residential/Special Mobile Home Area Overlay, District to the MF-M, Multiple-Family Medium-Density Residential, District for 5 acres of land located at 1305 S. Carlton Avenue. He asked that this item be placed on the November 24, 2009 regular City Council meeting agenda for consideration.

There being no further business to come before the Council, a motion was made by Councilor Sandel, seconded by Councilor Sharpe to adjourn the meeting at 1:04 p.m. The roll was called with the following result:

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

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

APPROVED this 8th day of December, 2009.

William E. Standley, Mayor

SEAL

ATTEST:

Dianne Fuhrman, City Clerk