

**LINKED MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF THE
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL BUILDING
ON OCTOBER 13, 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
	Annette Barrick	Deputy 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 Call Meeting to Order

0:00:10 Invocation - Pledge of Allegiance

0:01:09 1. APPROVAL OF AGENDA

0:01:15.0 Motion to approve Agenda

The motion was made by Councilman Day and seconded by Jim Grantner to approve the October 13, 2009 Agenda.

0:01:19.0 Vote

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

0:01:33.0 2. ROUTINE AND REGULAR BUSINESS

A. Minutes of Regular City Council meeting held September 22, 2009

B. City Personnel Report

C. Purchasing Matters:

1) Approval of award of Bid No. 2009-45 to First-In, Inc. for Type III, Medtec

- Ambulance in the amount of \$137,836
- 2) Approval of award of Bid No. 2009-44 for construction of the Adult Daycare and Respite Facility in the amount of \$933,594.07 to Greer Construction
- D. Contracts and Agreements:
 - 1) Approval of the four (4) year lease Agreement between the City of Carlsbad and John Deere Credit for a John Deere Z820A, Z-Trac Commercial Mower and two (2) John Deere Turf Gators with cabs for the City of Carlsbad Wastewater Department
 - 2) Approval of Agreement with Mary A. Lopez for RSVP Assistant Coordinator Services
 - 3) Approval of Agreement with Dr. Robert Pendrak and Dr. Clarence Pearson for Medical Director Services for the Carlsbad Fire and Police Departments
- E. Overnight Travel:
 - 1) Councilor Jeff Diamond to attend the DOE, NGA, Inter-governmental Meeting in New Orleans, LA on Wednesday, October 21st through Friday, October 23rd, 2009
- F. City of Carlsbad Department Monthly Reports:
 - 1) Personnel Department Report for September 2009
- G. Boards and Committee Appointments
 - 1) Charles Cable - City of Carlsbad Golf Course Advisory Board
 - 2) Joe Epstein - Veterans' Memorial Committee
 - 3) Paul Hill - Veterans' Memorial Committee
 - 4) Leland Leak - Veterans' Memorial Committee
 - 5) Jim Dickman - Veterans' Memorial Committee

Mayor Forrest pulled item 2.C.2. from the Routine and Regular Business for further discussion.

0:01:53.0 Motion

The motion was made by Councilman Elkins and seconded by Councilman Carter to approve the Routine and Regular Business with the exception of item 2.C.2. which was pulled for further discussion.

0:02:02.0 Vote:

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

0:02:19. 2.C.2. APPROVAL OF AWARD OF BID NO. 2009-44 FOR CONSTRUCTION OF THE ADULT DAYCARE AND RESPITE FACILITY IN THE AMOUNT OF \$933,594.07 TO GREER CONSTRUCTION

Mr. Wayne Hughes approached the City Council with concerns regarding the spending of funds during economically hard times. Mayor Forrest said he appreciated Mr. Hughes' comments. Harry Burgess explained the funds for the facility are a combination of four state grants obtained over the last four years. It will not require any city funds to build the new facility. Councilman Diamond said he thinks this type of facility is long overdue in Carlsbad.

0:06:03 Motion

Councilman Day made the motion and Councilman Aguilar seconded the motion to approve the award of Bid No. 2009-44 for construction of the Adult Daycare and Respite Facility in the amount of \$933,594.07 to Greer Construction.

0:06:03 Vote

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

06:37 3. CONSIDER APPROVAL OF ORDINANCE NO. 2009-16, AUTHORIZING DEEDING TO TESSENDERLO KERLEY SERVICES, INC. APPROXIMATELY 21.00 ACRES OF REAL PROPERTY IN THE CARLSBAD AIRPORT INDUSTRIAL PARK UNIT 5, REPLAT #3, PARCEL 6

- A. Public Hearing**
- B. Consider Ordinance**

06:47 Public Hearing

Stan Power, Vice President and General Manager of Tessengerlo Kerley Services, Inc. (TKS) said TKS has in been in business in Carlsbad as an Engineering Company and Fabrication Shop for the last twenty-five years. TKS is proposing an Economic Development Program to build a new Fabrication Shop to keep business in Carlsbad and expand their current business. TKS currently has eighty employees. Steve McCutcheon, President of CDOD said the entire CDOD Board supports keeping TKS in the community with the project. John Waters, Executive Director of CDOD said TKS's application is in full compliance with the Economic Development Act.

0:11:23 Motion

The Motion was made by Councilman Grantner and seconded by Councilman Carter to approve Ordinance No. 2009-16, authorizing deeding to Tessengerlo Kerly Services, Inc. approximately 21.00 acres of real property in the Carlsbad Airport Industrial Park Unit 5, Replat #3, Parcel 6.

0:11:28 Vote

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

0:11:47 4. CONSIDER APPROVAL OF ECONOMIC DEVELOPMENT PROJECT PARTICIPATION AGREEMENT WITH TESSENDERLO KERLEY SERVICES, INC.

Mayor Forrest said approval of an Economic Development Project Participation Agreement with Tessengerlo Kerley Services, Inc. will complete the request.

0:11:58 Motion

The motion was made by Councilman Aguilar and seconded by Councilman Salcido to approve the Economic Development Project Participation Agreement with Tessengerlo Kerley Services, Inc.

0:12:06 **Vote**

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

0:14:50 **5. DISCUSSION REGARDING THE CREATION OF TWO NEW COMMITTEES**

A. DISABILITY AWARENESS COMMITTEE

B. RECYCLING-SOLID WASTE COMMITTEE

Mayor Forrest asked Jeff Diamond to speak regarding the Disability Awareness Committee. Councilman Diamond said in August, the City co-sponsored with NMSU-Carlsbad a program on the Governor's Commission for the Disabled. He said the program educated public employees about the challenges disabled citizens are facing.

0:18:54 Discussion by several citizens about the needs of the disabled citizens in the community.

The following citizens said they would like to serve on the committee Eric West, Tom Kirby, Fern Lawson, Deborah Pinching and Rebecca Sanchez.

Mayor Forrest said there are many issues to address and a Committee could make a start. He said there are businesses in the community that need help to make changes to comply with the laws.

0:24:51 Mayor Forrest asked Councilman Grantner to speak on the Recycling Committee. Councilman Grantner said he has served on the Solid Waste Committee for several years. He said he feels there is a need for curbside recycling. Mayor Forrest said he is concerned with preserving the landfill. Councilman Day suggested having joint Committee meetings between the Solid Waste Committee and a Recycling Committee. Councilman Grantner said he is requesting a Committee to give the issue full attention. Councilman Grantner said since he is on the Solid Waste Committee, he is willing to be a liaison.

Mayor Forrest said he feels the Disability and Recycling Committees are needed. He said he would like to see them move forward. All Councilors agreed.

0:32:29 **6. CONSIDER APPROVAL OF GRANTING AUTHORITY TO THE MAYOR AND THE CITY ADMINISTRATOR TO PURCHASE THE SUNSET GARDENS CEMETERY**

Mayor Forrest said there are many people present to speak regarding the Sunset Gardens Cemetery.

Mayor Forrest presented financial information regarding the funding of the Cemetery.
\$195,000 from State for Capital Improvements
\$150,000 to purchase the Cemetery

\$200,000 from Eddy County for Capital Outlay
\$100,000 from Eddy County for a one time, operational expenses
\$60,000 from Aubrey Lewis for operations
\$150,000 from the State for perpetual funds
Total of \$855,000 for the purchase of the Cemetery.

The net amount of \$694,000 for improvements.

Mayor Forrest said the County returned \$195,000 and \$150,000. to the State. It is important to make a decision because tonight because there is a Special Legislative Session this weekend in Santa Fe. He said he does not want the City to loose the County funds.

0:35:28 Lynn Barker explained the importance of the City's purchase of the Sunset Gardens Cemetery. She explained the deterioration of the property.

0:39:41 Louise Tracy asked for City support based on respect for the dead.

0:40:33 Allen Wood said in the future the City of Carlsbad will need additional property for Cemetery use. The Carlsbad Cemetery will be at full capacity in ten to fifteen years. He said he understands the debt and obligations that will come with the property. He said there is a moral obligation as well.

0:43:29 Louise Jackson said her family contributed to the City when they were living. She said she is willing work with the City and donate time to maintain and care for the Cemetery.

0:45:36 Aubrey Lewis thanked the Mayor for his attention to the issues at the Cemetery. He said for two decades the owners of the Sunset Gardens Cemetery ignored the Cemetery and the Court's decisions. Mr. Lewis said if the City does nothing it is a declaration of approval of the pain and aguish of the families. Mr. Lewis said the final foreclosure option is October 30, 2009. It is the last chance to take care of the cemetery.

0:52:17 Reed McCloskey thanked Aubrey Lewis for his efforts.

0:53:12 Dr. Jere Reid said his family experienced problems with the management of Sunset Gardens. He said some families consider exhuming the bodies of their loved ones to move them into a perpetual care cemetery. He encouraged the purchase of the property.

0:55:43 Councilman Elkins said he agrees that we have a moral obligation to our families, friends and loved ones that are interred in the Sunset Gardens Cemetery but, we also have an obligation to the living, the people of the community. He said he can't agree with the passing of the continual cost on to the future generations of this community. He added that in about two years, the money obligated to the Sunset Gardens Cemetery now, will be gone and the care and up-keep will be the sole responsibility of the City.

01:06:18 Motion

The motion was made by Councilman Diamond and seconded by Councilman Grantner to purchase the Sunset Gardens Cemetery.

01:06:27 Vote

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

01:09:45 **7. CONSIDER MATTERS RELATING TO GRANT AGREEMENTS FROM THE STATE OF NEW MEXICO FINANCE AND ADMINISTRATION, LOCAL GOVERNMENT DIVISION FOR THE SUNSET GARDENS CEMETERY**

A. PURCHASE, PLAN, DESIGN, CONSTRUCT AND EQUIPMENT IMPROVEMENTS TO SUNSET GARDENS CEMETERY IN THE AMOUNT OF \$198,000 (GRANT NO. 08-L-G-4299)

B. PURCHASE, PLAN, DESIGN, CONSTRUCT AND EQUIPMENT IMPROVEMENTS TO SUNSET GARDENS CEMETERY IN THE AMOUNT OF \$150,000 (GRANT NO. 07-L-G-5245)

Mayor Forrest said the Grant Agreements from the State of New Mexico are for the Sunset Gardens Cemetery for the purchase, design, construction and equipment improvements in the amount of \$198,000 and \$150,000

01:10:13.0 Motion

The motion was made by Councilman Grantner and seconded by Councilman Diamond to approve Grant Agreements No. 08-L-G-4299 and 07-L-G-5245

01:10:21.0 Vote

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

01:12:43 **8. CONSIDER APPROVAL OF REPORT FROM THE WALTER GERRELLS PERFORMING ARTS AND EXHIBITION CENTRE ADVISORY BOARD**

Randy Milligan, Chairman of the Board presented the report prepared by the Walter Gerrells Performing Arts and Exhibition Centre Advisory Board. He said the Board voted to recommend exercising the one year option of the Management Contract with Guy Lutman Enterprises to allow Mr. Lutman the chance to complete the current contract before it is put out to bid next year.

He said concerns were raised regarding set rental fees, returning of those fees to the City, and Fee negotiation options. He said the current contract is not clear on those issues. Rather than making those changes now, the Board suggests allowing Mr. Lutman time to make those changes. He said many feel Mr. Lutman has made the facility successful. He said some Board members feel there is a conflict of interest with Mr. Lutman's role as promoter of the facility.

1:16:12 Councilman Aguilar said this issue was tabled 4 to 6 weeks ago to address these issues and it has not been done.

1:16:55 Discussion by Councilman Diamond and Harry Burgess regarding the structure and role of the Advisory Board

01:21:46 **9. 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**

01:21:43 **A. REMOVE FROM TABLE**

1:22:11 **Motion**

The motion was made by Councilman Carter and seconded by Councilman Elkins to remove the 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 Center from the table.

1:22:21 **Vote**

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

1:22:36 **B. CONSIDER APPROVAL OF AGREEMENT**

1:23:05 Councilman Day clarified the Agreement is for three years with an option of a one year extension of the current contract. He said there have been questions regarding the issues listed in the report since September of 2008. He said the contract terminates in November of 2009. Councilman Day said he has concerns that all contract requirements have not been met.

1:30:03 **Discussion**

Councilman Diamond and Harry Burgess discussed the RFP procedure.

1:30:34 Mayor Forrest said the Council is not trying to get rid of Guy Lutman but he thinks that Mr. Lutman has an obligation to the contract.

1:31:26 Guy Lutman explained that when he began managing the Center, it was a transitional time for the Walter Gerrells Center.

1:39:55 Rick Serrano explained his past problems when working with Mr. Lutman.

1:43:37 Bob Scholl explained his feelings regarding the treatment of Guy Lutman.

1:46:30 Tom Mathis gave suggestions for the operation of the facility. He said he has concerns regarding equipment and fees.

1:56:33 David Gillan said his concerns are with the quality of the venue, and the time frame allowed to obtain an RFP.

2:00:46 Larry Henderson said he feels Mr. Lutman has the background to manage the facility. He understands the contract issues and he doesn't think the issues can be rectified in the time frame allowed. He suggested renewing the contract and correcting the problems.

2:08:01 **Motion**

The motion was made by Councilman Grantner and seconded by Councilwoman Nunley to renew the Agreement for one year with Guy Lutman Enterprises, LLC for Promotion and Operation of the Walter Gerrells Performing Arts and Exhibition Centre.

2:08:20 Discussion

Councilman Day and Randy Milligan discussed the Agreement options and fees. Councilman Day explained his concerns regarding the contract which include Setting Fees and Waiver of Fees, Management of Facility and Promotion of Facility and Time schedule for RFP.

2:14:16:0 Councilman Elkins said there are issues at the Center and it is not a personal attack against Guy Lutman. Everyone agrees that Mr. Lutman has done a good job but the issues need to be addressed in an RFP and a new contract. He is concerned with the timing of the RFP. This is not about Guy Lutman's performance. Mayor Forrest called for the vote.

2:17:20 Call for the vote

2:17:32 Vote

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

2:18:04 Mr. Burgess said he will get to work on the RFP in accordance with the issues presented. He thinks it could be ready for approval at the December Council meeting. There was discussion regarding the termination date in the Agreement.

2:20:58 Lucy Weston expressed her displeasure of the Councilors' decision.

2:22:21 Michael Bromka expressed his support for Guy Lutman. He thanked the Council for their hard work.

2:35:40 10. REVIEW OF STATUS OF PREVIOUSLY CONDEMNED PROPERTY LOCATED AT 1202 W. MERMOD STREET OWNED BY MR. TOM BENAVIDEZ (RES. NO. 2009-01)

2:35:47 Councilman Diamond excused himself from the meeting at 8:37 p.m.

2:36:04 Eileen Riordan explained that this property has been reviewed by the Council for about a year. Mr. Benavidez has not met all requirements imposed by the City Council. She said he has obtained some of the required permits. She said he has pulled the old underground gas tanks from the property.

2:37:49 K. C. Cass, the City Building Inspector, said he has been working with Mr. Benavidez but he needs to submit an Architect's stamped drawings.

2:39:06 Councilman Elkins said he supports an extension to complete the work but the guidelines should be clear.

2:41:34 Mr. Cass said there are some safety issues. The property is not secured.

2:42:11 Ms. Riordan said she can include that requirement when she writes Mr. Benavidez.

2:47:25 Motion

The motion was made by Ned Elkins and Councilman Salcido seconded the motion that Mr. Benavidez will be granted an extension until the first meeting of January, 2010 with the understanding that one of two things will result at that meeting. Either a demolition order will be approved or he will comply with the following specific conditions: Mr. Benavidez will provide an Architect's stamped plans for the rehabilitation of the property and the building shall be secured with locks and the installation of safety fencing around hazardous areas on the property and all work is completed.

2:47:34 Vote

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

11. COUNCIL COMMITTEE REPORTS

2:48:07 12. Closed Session Adjournment into Closed Session pursuant to Section 10-15-1-H (2) and (7), NMSA 1978 to discuss limited personnel matters and threatened litigation.

2:48:17 Motion

The motion was made by Councilman Elkins and seconded by Aguilar to adjourn into closed session.

2:48:17 Vote

The vote was as follows:

Yes - Nunley, Aguilar, Carter, Day, Elkins, Grantner, Salcido; No - None; Absent-Diamond. The motion carried.

2:48:21 Adjourn

There being no further business, the meeting was adjourned at 8:48 p.m.

_____/s/ Bob Forrest_____
Mayor

ATTEST:

_____/s/ Amanda J. Asbury_____
City Clerk