

**LINKED MINUTES OF A REGULAR MEETING OF THE CITY COUNCIL OF THE
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL ANNEX
BUILDING ON AUGUST 27, 2019 AT 6:00 P.M.**

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| Present: | Dale Janway | Mayor |
| | Lisa A. Anaya Flores | Councilor |
| | Edward T. Rodriguez | Councilor |
| | Leo B. Estrada | Councilor |
| | Jason O. Chavez | Councilor |
| | Jason Shirley | Councilor |
| | Judith E. Waters | Councilor |
| | Wesley A. Carter | Councilor |
| | Mark C. Walterscheid | Councilor |

Absent:

| | | |
|---------------|---------------------|--------------------------------|
| Also Present: | Michael Hernandez | City Administrator |
| | Eileen P. Riordan | City Attorney |
| | Nadine Mireles | City Clerk |
| | Ken Britt | Community Dev. Director |
| | Angie Barrios-Testa | Director of Municipal Services |
| | KC Cass | Director of Projects |
| | Ron Myers | Director of Utilities |
| | Wayne Hatfield | IT Director |
| | Brent Griffith | IT Tech II |
| | Wendy Austin | Finance Director |
| | Ken Ahrens | Fire Marshall |
| | Scot Bendixsen | HR Director |
| | Jeff Patterson | Planning Director |
| | Shane Skinner | Police Chief |
| | Terry Mathis | Public Works Deputy Director |

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:00 **Call Meeting to Order**

0:00:01 Invocation - Pledge of Allegiance

0:00:34 **Ms. Riordan** explained that Agenda Item no. 9 Consider Approval of Resolution No. 2019-41, a Resolution requiring the Removal of the Trash and Debris at 922 Franklin Street; Owner: Lorraine M. Heroux, she said staff has requested to remove

this item from the Agenda because no further action is needed. **Ms. Riordan** explained that Code Enforcement reinspected the property today and the property had been voluntarily brought into compliance by the property owners.

0:01:16 **1. APPROVAL OF AGENDA**

0:01:20 **Motion**

The motion was made by Councilor Rodriguez and seconded by Councilor Estrada to approve the Agenda

0:01:26 **Vote**

The vote was as follows: Yes - Estrada, Rodriguez, Shirley, Waters, Walterscheid, Anaya Flores, Chavez, Carter; No - None; Absent - None; the motion carried.

0:01:44 **2. ROUTINE AND REGULAR BUSINESS**

- A. Minutes of the Regular City Council Meeting held on August 13, 2019
- B. City Personnel Report
- C. Contracts and Agreements
 - 1) Consider Approval of Agreement between the City of Carlsbad and Federal Aviation Administration (FAA) for Aviation Grant for Taxi-Way B Reconstruction at the Cavern City Air Terminal
- D. Purchasing
 - 1) Consider Approval to Advertise RFP for Sale of Water from Tatum Well Fields to purchase non-potable water
 - 2) Consider Approval to Advertise RFP for Groundskeeping Maintenance for City Wide Medians, Landscapes, Gateways and Properties
 - 3) Consider Approval to Award Bid 2019-12 to the highest bidders: Wayne Ballard and Mesa Properties of Carlsbad, LLC for the sale of City-owned properties
- E. Monthly Reports
 - 1) Community Development Department July 2019
 - 2) Municipal Services Department July 2019
 - 3) Utilities Department July 2019
- F. Set the Date: October 22, 2019
 - 1) An Ordinance rezoning part of "R-2" Residential 2 District to "C-2" Commercial 2 District for an approximately 0.32 acre property, located at 109 N Walnut
 - 2) An Ordinance rezoning part of "R-R" Rural Residential District to "C-2" Commercial 2 District for an approximately 1.86 acre property located at 4214 S Spencer St
 - 3) An Ordinance rezoning part of "R-R" Rural Residential District to "R-2" Residential 2 District for an approximately 21.86 acre property located at the Northeast Corner of the intersection between Boyd Drive and Hidalgo Road

4) An Ordinance rezoning part of "R-R" Rural Residential District to "C-2" Commercial 2 District for an approximately 0.861 acre property located to the East of 4019 National Parks Hwy

0:02:06 **Mayor Janway asked Mr. Hernandez to discuss Item D.3 Consider approval to Award Bid 2019-12 to the highest bidders: Wayne Ballard and Mesa Properties of Carlsbad, LLC for the sale of City-owned properties**

Mr. Hernandez explained on May 19th the Council approved the city to go out for sealed bids on 12 different properties. He said each property received bids and Wayne Ballard was the highest bidder on 8 of the properties and Mesa Properties was the highest bidder on 4 of the properties. He said staff is requesting approval for the transfer of these properties.

0:02:56 **Motion**

The motion was made by Councilor Shirley and seconded by Councilor Waters to approve Routine and Regular Business

0:03:03 **Vote**

The vote was as follows: Yes - Estrada, Rodriguez, Shirley, Waters, Walterscheid, Anaya Flores, Chavez, Carter; No - None; Absent - None; the motion carried.

0:03:24 **3. CONSIDER APPROVAL OF REQUEST TO ALLOW GUADALUPE BREWING COMPANY TO HOST A BEER GARDEN AT THE 2019 CHILI COOK-OFF AT THE BEACH BANDSHELL ON NOVEMBER 9, 2019**

Mr. Patterson explained this is a request to allow Guadalupe Brewing Company to host a beer garden during the 2019 Chili Cook-off on November 9, 2019 at the Beach Bandshell. He explained the Beer Garden will be cordoned off from the rest of the festival with a controlled entrance and security.

Mr. Flores added there will be a sports theme to the cook-off this year and he is requesting approval for beer sales.

0:06:14 **Motion**

The motion was made by Councilor Carter and seconded by Councilor Rodriguez to approve Request to allow Guadalupe Brewing Company to host a Beer Garden at the 2019 Chili Cook-off at the Beach Bandshell on November 9, 2019

0:06:18 **Vote**

The vote was as follows: Yes - Estrada, Rodriguez, Shirley, Waters, Walterscheid, Anaya Flores, Chavez, Carter; No - None; Absent - None; the motion carried.

0:06:38 **4. CONSIDER APPROVAL AND AUTHORIZATION OF THE SALE OF APPROXIMATELY 0.626 ACRES OF CITY OF CARLSBAD OWNED**

PROPERTY AT THE CASCADES DEVELOPMENT TO OXBOW INVESTMENTS, LLC.

Mr. Patterson explained this item is for the approval and authorization to sale approximately 0.626 acres of city owned property to Oxbow Investments, LLC. He said the applicant plans to build a housing and commercial development on the property. He added staff is recommending approval of the sale.

0:08:23 **Motion**

The motion was made by Councilor Shirley and seconded by Councilor Walterscheid to approve the approval and authorization of the sale of approximately 0.626 acres of City of Carlsbad owned property at the Cascades Development to Oxbow Investments, LLC.

0:08:30 **Vote**

The vote was as follows: Yes - Estrada, Shirley, Waters, Walterscheid, Anaya Flores, Chavez, Carter; No - None; Absent - None; Abstain - Rodriguez; the motion carried.

0:08:51 **5. CONSIDER APPROVAL OF AN APPEAL OF THE CERTIFIED FLOODPLAIN MANAGER'S DENIAL OF A FLOODPLAIN DEVELOPMENT PERMIT AND REQUEST FOR A VARIANCE FROM THE CITY'S FLOOD DAMAGE PREVENTION ORDINANCE FOR PROPERTY LOCATED AT 200 CASCADES DR. APPELLANT: OXBOW INVESTMENTS**

Mr. Patterson explained this is a request from Oxbow Investments, LLC., for a variance from the City's Flood Damage Prevention Ordinance. He explained the applicant is proposing to build a new commercial and residential structure at the subject property with a bottom floor elevation of 3108.8 feet, resulting in a variance request of +/- 3 feet. He explained the City's Ordinance states that the city is prohibited from allowing development in those areas to be built below base flood elevation. He added there is an option for the developer to pursue and it is to flood proof the ground floor of commercial establishments. He said if the developer is in agreement with the condition to flood proof the ground floor, the Planning staff would recommend approval.

Councilor Walterscheid asked if the other buildings at the Cascades received variances. **Mr. Patterson** said he is not sure but he assumes that they did receive a variance.

Councilor Chavez said it states in the packet that once the ground is packed the variance will be 1 foot. He asked if 1 foot would make a big difference. **Mr. Patterson** said on the applicants Flood Plain Development Permit; he put the base flood elevation at 3109. He said either way 1 foot can matter and added everything that is built below Base Flood Elevation matters to FEMA.

Mr. Scot Goodale, a managing member of Oxbow, explained that the property will be below the flood plain. He explained a concrete deck and a concrete second floor with sealed structures will be installed to support any issues. He explained water proofing up to five feet above violates the covenants of the CDOD. He said the residences built

will have elevation certificates way above the flood plain elevation. **Mr. Goodale** explained that the ground floors only limitation would be insurance. He explained Oxbow is self-insured and self-owned with no lien on the property so they do not feel obtaining insurance on the property will be a major issue.

0:15:57 **Motion**

The motion was made by Councilor Carter and seconded by Councilor Shirley to approve an Appeal of the Certified Floodplain Manager's Denial of a Floodplain Development Permit and Request for a Variance from the City's Flood Damage Prevention Ordinance for property located at 200 Cascades Dr. Appellant: Osbow Investments

0:16:06 **Vote**

The vote was as follows: Yes - Estrada, Shirley, Waters, Walterscheid, Chavez, Carter; No - Anaya Flores; Absent - None; Abstain - Rodriguez; the motion carried.

0:16:37 **6. CONSIDER APPROVAL OF AN APPEAL OF THE DECISION BY THE PLANNING AND ZONING COMMISSION TO DENY A VARIANCE REQUEST FOR THE PLACEMENT OF A STRUCTURE WITHIN THE REQUIRED 5' SIDE SETBACK AT 215 & 217 N. 4TH STREET ZONED "R-1" RESIDENTIAL 1 DISTRICT APPELLANT: MITCHELL FRANSEN**

Mr. Patterson explained the appellant wishes to replat his property at 215 & 217 N. 4th Street. He said the Appellant would like to create two new lots by dividing the lots down the center of a carport structure that is on the property. He explained the carport is one structure at this time. **Mr. Patterson** said the Planning Department recommended denial to the Planning and Zoning Commission due to the fact the Planning Department did not feel it was proper to have a property line running through an existing structure. He explained the denial prompted the applicant to seek a welding shop to separate the structure into two separate structures, and was told it could be separated. **Mr. Patterson** said with the separation of the carport the Planning Department does not have a problem with Council granting the appeal and overturning the decision of the Planning and Zoning Commission.

0:19:35 **A. Remove from Table**

0:19:36 **Motion to Remove from Table**

The motion was made by Councilor Shirley and seconded by Councilor Anaya Flores to remove from table

0:19:44 **Vote**

The vote was as follows: Yes - Estrada, Rodriguez, Shirley, Waters, Walterscheid, Anaya Flores, Chavez, Carter; No - None; Absent - None; the motion carried.

0:20:14 **Councilor Walterscheid** asked if it is permissible to have a structure on the property line. **Mr. Patterson** explained the setback standards are primarily to provide emergency access around residential structures in town and to keep a fire separation between structures. He said in this case he does not see an issue with the variance.

Councilor Chavez asked if the property owners would be sharing the driveway. **Mr. Patterson** said yes, with the structure being separated the property owners could build a wall/fence in between the two driveways.

Councilor Rodriguez asked if the vote would be on this structure. **Mr. Patterson explained** Council has the authority to add conditions such as the structure must be separated.

0:22:45 **Mayor Janway** asked if anyone would like to speak regarding the Ordinance. No one appeared and the Mayor declared the public hearing closed and reconvened the Council into regular session

0:23:02 **Consider Variance Appeal**

Ms. Riordan explained the decision from the Planning and Zoning Commission was to deny the variance. She said if you vote to uphold the decision of the Planning and Zoning Commission, it is a denial of the variance, and if you vote to overturn the decision of the Planning and Zoning Commission, that would grant the variance to the Appellant.

0:23:47 **Motion**

The motion was made by Councilor Shirley and seconded by Councilor Carter to approve the appeal of the decision by the Planning and Zoning Commission to deny a variance request for the placement of a structure within the required 5' side setback at 215 & 217 N. 4th Street zoned "R-1" Residential 1 District, with the condition of the structure being separated, Appellant: Mitchell Fransen

Ms. Riordan explained that as stated a vote in favor of the motion would be a vote to grant the variance and a vote against this motion would deny the variance.

0:24:44 **Vote**

The vote was as follows: Yes - Estrada, Rodriguez, Shirley, Waters, Walterscheid, Anaya Flores, Chavez, Carter; No - None; Absent - None; the motion carried.

0:25:25 **7. CONSIDER APPROVAL OF RESOLUTION 2019-39, A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION TO THE NEW MEXICO DEPARTMENT OF TRANSPORTATION 5311 PROGRAM FOR FUNDING ASSISTANCE FOR FY 2021-22 FOR MUNICIPAL TRANSIT SYSTEM**

Mr. Moore explained this is an annual Grant that assists the Municipal Transit System with operating and administrative funding. He said this grant is for FY21 in the amount of \$1,073,458.08.

Councilor Shirley asked if the city normally receives the full amount requested. Mr. Moore said no, he said the city usually receives about 50% of what is requested.

0:28:15 **Motion**

The motion was made by Councilor Shirley and seconded by Councilor Rodriguez to approve Resolution No. 2019-39, a Resolution authorizing the filing of an Application to the New Mexico Department of Transportation 5311 Program for funding Assistance for FY 2021-22 for Municipal Transit System

0:28:23 **Vote**

The vote was as follows: Yes - Estrada, Rodriguez, Shirley, Waters, Walterscheid, Anaya Flores, Chavez, Carter; No - None; Absent - None; the motion carried.

0:28:40 **8. CONSIDER APPROVAL OF RESOLUTION 2019-40, A RESOLUTION STATING THE REQUIREMENTS FOR NOTICE OF PUBLIC MEETINGS OF THE GOVERNING BODY, BOARDS, COMMISSIONS, COMMITTEE, AGENCIES, AUTHORITIES, OR OTHER POLICYMAKING BODIES OF THE CITY OF CARLSBAD**

Mrs. Mireles explained the Clerk's Office is required by State Statute, which governs Open Meetings, to annually adopt a Resolution stating the requirements for Notice of Public Meetings. She explained there have been no changes to the Open Meetings Act in several years; therefore there have been no changes to the Resolution.

0:29:32 **Motion**

The motion was made by Councilor Rodriguez and seconded by Councilor Waters to approve Resolution No. 2019-40, a Resolution stating the Requirements for Notice of Public Meetings of the Governing Body, Boards, Commissions, Committee, Agencies, Authorities, or other Policymaking Bodies of the City of Carlsbad

0:29:37 **Vote**

The vote was as follows: Yes - Estrada, Rodriguez, Shirley, Waters, Walterscheid, Anaya Flores, Chavez, Carter; No - None; Absent - None; the motion carried.

0:29:54 **9. CONSIDER APPROVAL OF RESOLUTION 2019-41, A RESOLUTION REQUIRING THE REMOVAL OF THE TRASH AND DEBRIS AT 922 FRANKLIN STREET OWNER: LORRAINE M. HEROUX**

This item was removed from agenda because the property was brought into compliance.

0:29:54 **10. CONSIDER APPROVAL OF RESOLUTION 2019-42, A RESOLUTION REQUIRING THE REMOVAL OF THE TRASH AND DEBRIS AT 210 E CHURCH STREET OWNER: PATRICK J. CARRILLO**

Ms. Riordan explained this property is a corner lot with a residential structure in a residential neighborhood. She said the structure is not an issue at this time and the Resolution requires the property owner remove all ruins, rubbish, wreckage, debris, and/or weeds from the property.

Mayor Janway asked if a representative of the property was present, no one appeared.

0:32:41 **Motion**

The motion was made by Councilor Rodriguez and seconded by Councilor Estrada to approve Resolution No. 2019-42, a Resolution Requiring the Removal of the Trash and Debris at 210 E. Church Street, Owner: Patrick J. Carrillo

0:32:47 **Vote**

The vote was as follows: Yes - Estrada, Rodriguez, Shirley, Waters, Walterscheid, Anaya Flores, Chavez, Carter; No - None; Absent - None; the motion carried.

0:33:05 **11. COUNCIL COMMITTEE REPORTS**

Councilor Rodriguez said he attended the statewide Census 2020 gathering in Albuquerque. He said the meeting was well attended. He mentioned there are some significant issues that are very pertinent to this area such as man camps and the transient workforce. He explained that if these individuals and their families are here for 6 months they can be counted, but getting everyone counted is the issue.

Councilor Rodriguez explained that Congresswoman Torres Small was here for a town hall meeting. He said the meeting was well attended and very well mediated by Councilor Chavez.

0:35:15 **Mayor Janway asked if anyone in the audience would like to address the Council. No one appeared**

0:35:21 **12. ADJOURN**

0:35:29 **Motion**

The motion was made by Councilor Anaya Flores and seconded by Councilor Waters to Adjourn

0:35:36 **Vote**

The vote was as follows: Yes - Estrada, Rodriguez, Shirley, Waters, Walterscheid, Anaya Flores, Chavez, Carter; No - None; Absent - None; the motion carried.

0:35:56

Adjourn

There being no further business, the meeting was adjourned at 6:35 p.m.

Dale Janway, Mayor

ATTEST:

Nadine Mireles, City Clerk

DRAFT