

**Minutes of the Regular Meeting of the Gallup City Council, City of Gallup, New Mexico held in the Council Chambers at Gallup City Hall, 110 West Aztec Avenue at 6:00 p.m. on Tuesday, September 13, 2022**

**The meeting was called to order by Mayor Pro Tem Linda Garcia. Upon roll call, the following were present:**

<b>Mayor Pro Tem:</b>	<b>Linda Garcia</b>
<b>Councilors:</b>	<b>Michael Schaaf Sarah Piano Fran Palochak</b>
<b>Absent:</b>	<b>Louie Bonaguidi, Mayor (Excused)</b>
<b>Also present:</b>	<b>Jon DeYoung, Assistant City Manager Curtis Hayes, City Attorney</b>

**Mayor Pro Tem Garcia stated Mayor Bonaguidi was away on travel.**

**Presented to the Mayor and Councilors were the following Consent Agenda Items:**

- 1. Approval of Minutes from the Special Meeting on August 2, 2022 and the Regular Meeting on August 9, 2022**
- 2. Request for Street Closures for the Miyamura High School Homecoming Parade to be held on Friday, September 23, 2022**
- 3. Request for Street Closures for the Gallup High School Homecoming Parade to held on Friday, September 30, 2022**
- 4. Budget Adjustment to Cover Increased Costs for Capital Projects-Vehicles**
- 5. Approval of Resolution R2022-35 for a Water Trust Board Application Submission**
- 6. Acceptance of NMDOT Aviation Division Airport Maintenance Grant #GUP-23-01**
- 7. Resolution No. R2022-33; Approval of Local Liquor Excise Tax Distributions and Budget Adjustment**
- 8. Approval of Resolution R2022-34; Approval of Funding Agreement and Sub-Award Agreement and Related Budget**

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 2

9. Approval of Resolution R2022-36; Accepting State of New Mexico Department of Finance and Administration Fund 89200 Capital Appropriation Project Grant Agreement No. 22-G2905 to Purchase New Police Vehicles

10. Approval of Resolution No. R2022-37; Accepting State of New Mexico Department of Finance and Administration Fund 89200 Capital Appropriation Project Grant Agreement No. 22-3075 for Playground of Dreams Park

Councilor Piano requested Items 7 and 9 be pulled from the Consent Agenda for additional discussion.

Councilor Schaaf made the motion to approve items 1 through 6, item 8 and item 10 of the Consent Agenda. Seconded by Councilor Palochak. Roll call: Councilors Schaaf, Palochak, Piano and Mayor Pro Tem Garcia all voted yes.

7. Resolution No. R2022-33; Approval of Local Liquor Excise Tax Distributions and Budget Adjustment – Curtis Hayes, City Attorney

Councilor Piano thanked the high school students for their attendance at the meeting. Regarding the proposed resolution, she requested clarification regarding the funding amounts and usage requirements.

Mr. Hayes said the City of Gallup and McKinley County are the only local option districts qualified for Local Liquor Excise Tax, briefly explained the language of the statute and initial concerns during its establishment regarding the continued funding of the Gallup Detox Center and the use of funding for treatment and prevention with money left over.

Councilor Schaaf made the motion to approve Resolution No. R2022-33; approval of Local Liquor Excise Tax Distributions, as presented. Seconded by Councilor Palochak. Roll call: Councilors Schaaf, Palochak, Piano and Mayor Pro Tem Garcia all voted yes.

9. Approval of Resolution R2022-36; Accepting State of New Mexico Department of Finance and Administration Fund 89200 Capital Appropriation Project Grant Agreement No. 22-G2905 to Purchase New Police Vehicles – C.B. Strain, Planning and Development Director

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 3

Discussion followed regarding the intention to purchase two police panel vans for the Public Service Officer Program, which is extremely delayed due to parts, plans to turnover at least ten vehicles with the exception of the PSO panel vans annually and delays in procuring marked police vehicles due to a driver shortage from the distributors.

Councilor Palochak made the motion to approve Resolution No. R2022-36. Seconded by Councilor Schaaf. Roll call: Councilors Palochak, Schaaf, Piano and Mayor Pro Tem Garcia all voted yes.

Presented to the Mayor and Councilors were the following Discussion / Action Topics:

1. Approval of Special Warranty Deed with Covenant of Conservation Related to the G-22 Application to Appropriate Groundwater – George Kozeliski, Former City Attorney

Mr. Kozeliski provided background information regarding major protestors to the City's G-22 application for a permit from the Office of the State Engineer to appropriate ground water; including Tri-State Generation, Western Refinery, Department of Defense and Zuni Pueblo. He explained as part of the settlement with Zuni Pueblo, the City purchased property located in the Zuni Mountains at the water headquarters of Rio Nutria. He said the City's intent was to transfer the property to a third party and include the specific development restrictions; however, efforts made by him, Jim Brockman of Stein & Brockman and Mr. Hayes have been unsuccessful; therefore, the decision was made to retain the property from the City to the City in a deed that contains the necessary covenants.

Discussion followed regarding assumptions the Department of Game and Fish would take the land; however, certain exigencies eliminated that option and clarification the City's retention of the land until it can be transferred to a third party with the necessary restrictions.

Councilor Schaaf made the motion to approve the Special Warranty Deed with covenants of conservation, as presented. Seconded by Councilor Palochak. Roll call: Councilors Schaaf, Palochak, Piano and Mayor Pro Tem Garcia all voted yes.

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 4

2. Approval of Budget Adjustment for FY2023 New Mexico Municipal League Membership (NMML) Dues – Jon DeYoung, Assistant City Manager and AJ Forte, NMML Director

Mr. DeYoung introduced AJ Forte, NMML Director.

Mr. Forte presented information regarding the NMML's conception, growth and operation. He highlighted accomplishments throughout the past 4 years, including acquired funds for public safety, fire protection, roads and their goal to get funding out of the general fund and into the local funds. He said their focus is large statutory changes that benefit local governments as well as policy changes.

Discussion followed regarding the City's participation, the tiered system with regard to base fees for cities and their gross receipts tax, approximate funding amount provided to the City of Gallup specifically, the New Mexico Self Insurers Fund, benefits to first responders and the multiple training opportunities for all levels of local government.

Councilor Palochak and Councilor Garcia commented on the benefits of attending and graduating from the Municipal Officials Leadership Institute (MOLI) program and the positive impact of training opportunities offered by the NMML.

Councilor Palochak made the motion to approve the budget adjustment. Seconded by Councilor Schaaf. Roll call: Councilors Palochak, Schaaf, Piano and Mayor Pro Tem Garcia all voted yes.

3. Construction Contract Award for Construction of the John B. Arviso Department of Public Safety Facility and Municipal Courts – C.B. Strain, Planning and Development Director

Mr. Strain said the project includes construction of a new Public Safety Building and Municipal Court in addition to the demolition of the existing Public Safety Building at its present location. He explained staff solicited a Request for Proposal (RFP) on July 11, 2022, received one proposal from Murphy Builders, which was reviewed by the selected review committee and considered to be fair and reasonable. He provided the Bid Tabulation and explained after value engineering certain components of the project the

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 5

project cost proposal came in at \$25,583,712.63 including NMGRT. He said the project has accumulated \$23,132,270.76 through grant funding and bonds; however, there is a shortage of \$2,451,441.87. Mr. Strain requested acknowledgement to override policy and authorize a revenue and expenditures budget in the amount of \$2,500,000. from FY 22 General Fund to cover the shortfall.

Discussion followed regarding the decision to solicit through the RFP process, the importance of obtaining an experienced and qualified contractor, how the price is determined fair and reasonable when only one RFP is received, clarification regarding the conception of the project, significantly higher prices since COVID, constant grant funding shortfalls when it comes to projects, the original grant's reversion dates and penalties when funding is unused.

Councilor Palochak made the motion to approve the Construction Contract Award for Construction of the John B. Arviso Department of Public Safety Facility and Municipal Courts. Seconded by Councilor Schaaf. Roll call: Councilors Palochak, Schaaf, Piano and Mayor Pro Tem Garcia all voted yes.

**4. Public Hearing: An Appeal to a Planning and Zoning Commission Action Taken, Approving a Change in Zoning Designation for Certain Real Property Located South of Philipina Avenue – C.B. Strain, Planning and Development Director**

Mayor Pro Tem Garcia stated the appeal was filed by Bill and Jennifer Lee regarding a decision made by the Gallup Planning and Zoning Commission granting a request to change the zoning of two parcels of land owned by Eiad Suleiman, located on the south side of Philipina Avenue, between Strong Drive and Kit Carson Drive. Mayor Pro Tem Garcia explained the Public Hearing proceedings, instructed everyone wishing to address Council to stand, identify them self and be sworn in by Alfred Abeita, City Clerk. Mayor Pro Tem Garcia said Public Hearings are also referred to as quasi-judicial hearings because the procedures are similar to that of a trial in the Court of Law. She stated appeals from zoning decisions of the Planning and Zoning Commission are de-novo, meaning the City Council is not bound by the decision of the Planning and Zoning Commission and City Council would conduct the hearing in the same manner as the Planning and Zoning Commission conducts its hearings. She explained the order of the hearing including, City staff would testify first, present evidence concerning the

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 6

proposed zoning changes and the steps taken by City staff in reviewing the proposal, witnesses supporting the changes would testify, followed by witnesses opposed to the zoning changes. She further explained the facts of a case are presented through the testimony of witnesses who may introduce evidence such as documents, pictures, and the like, would do so at the podium and are limited to three minutes; however, time spent answering questions would not be included in the three-minute limit. Mayor Pro Tem Garcia said the Council members would be able to ask questions at any time during a witness' testimony and upon conclusion of their testimony, the landowner's representative, Ryan Stearns and the appellant, Bill or Jennifer Lee, could question the witnesses. She said this time would be used to ask questions only and not provide testimony. Mayor Pro Tem Garcia said at the conclusion of City staff's presentation, the property owner's representative would then testify, anyone else wishing to testify in support of the changes would do so after and reminded those witnesses to avoid repetitive testimony. After City Council members questioned the witnesses in support of the changes, City staff and the appellants would be provided the opportunity to question the witness. Mayor Pro Tem Garcia said upon completion of the witnesses in support of the change, she would ask the Lees to present their case in opposition to the zoning changes, anyone else wishing to provide testimony in opposition could do so after and reminded all witnesses to avoid repetitive testimony. She explained once the Council members conclude their questions, a representative of City staff and Mr. Stearns would be provided the opportunity to ask questions. Mayor Pro Tem Garcia said once all witnesses have been heard, Council could request a summary of each side's arguments, if Council determined it would be helpful. She explained Council's role to apply the law, in this case, the City's Land Development Standards, to the facts of this particular case. She stated the Land Development Standards provide that:

Acceptable grounds for amending the official zoning map are that one or more of the following criteria would be met:

- Due to changing circumstances of land use in the area, the proposed district would be better suited to the area than the existing district.
- The Land within a Rural Holding Zone district designation has become appropriate for urban development because of the availability of public utilities and services as well as the needs of the public.

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 7

- The social, economic or environmental interests of the public good would be better served by the proposed district than the existing one.

She explained the Council's decision must be based solely on whether the evidence presented during the hearing showed the proposed zoning changes were justified by one or more of the criteria in the Land Development Standards and clarified Council members should not participate in the matter if their impartiality might reasonably be questioned, would be generally biased or prejudice, have made public comment that appears to show the member intended to vote a particular way, would personally benefit from the matter decided, is closely related to a party, has a connection to a party that would influence the member's decision, was a witness to events relevant to the matter or is likely to become a witness. Mayor Pro Tem Garcia asked if any Council members would like to recuse themselves or if the landowner or the appellants would like to request that a Council member recuse themselves. No Council member recused themselves or was requested to do so by either party.

Mr. Strain, duly sworn, testified any person aggrieved by the decision of the Board of Adjustment, in this case the Planning and Zoning Commission on an appeal of administration action, a variance or conditional use permit, may within ten (10) days of the decision, file with the City Clerk a notice of appeal to City Council. He stated at least fifteen (15) days after published notice of the hearing, the City Council shall hear the appeal de novo and may reverse, affirm or modify the action of the Board and explained City Council may consider the approved minutes of the Board at the meeting the action appealed from was taken and a transcript of that hearing, provided copies of each are furnished to all interested parties, which were included in Council's packets. Mr. Strain said appeals from the City Council decision may be taken to District Court as provided in New Mexico Statutes Annotated Section 3-21-9, 1978, as amended, or successor legislation. He stated Mr. and Mrs. William E. and Jennifer Lee filed an appeal for the action taken by the City of Gallup Planning and Zoning Commission. Case No. REZ2022-00600003, a request by Eian Suleiman, property owner, for a change in zoning designation from single Family Residential (SFR-A) Zone District to Mixed-Use Neighborhood (MXN) Zone District for certain described real property and from Rural Holding Zone (RHZ) Zone District to Mixed-Use Neighborhood (MXN) Zone district for certain real property. Mr. Strain provided testimony regarding Ryan D. Sterns, applicant/agent, who petitioned the Gallup Planning and Zoning Commission on behalf

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 8

of Eiad Suleiman, property owner, for a change in zoning designation from Single Family Residential Zone District to Mixed-Use Neighborhood Zone District for an up-platted tract of land containing 3.18 acres, and from Rural Holding Zone District to Mixed-Use Neighborhood Zone District for an un-platted tract of land containing 17.07 acres. Both tracts of land are generally located southeast of Philipina Avenue and Strong Drive and are more particularly described by metes and bounds description. He provided subsection 10-5-B-d-i-3a of the City of Gallup Land Development Standards, states that amendments to the official zoning map which involve a particular area of land may be made by the City Council on its own motion or upon request of the Planning and Zoning Commission, or the person or persons holding fifty-one percent (51%) or more of the ownership of the area of land may request the Planning and Zoning Commission to amend the map upon determination that there are sufficient grounds for the amendment. In this case petitioning the property owner, Eiad Suleiman, represents 100% ownership of the property proposed for rezone and as such is making the request for a zoning map amendment to the City Council. Mr. Strain explained the subject properties are currently zoned Single Family Residential Zone District and Rural Holding Zone District and is currently undeveloped. He said the property owner plans to subdivide the property at a later date and develop the properties with both single family residential and multi-family residential, further explaining Single Family Residential Zone designation does not allow for multi-family development, meaning it only allows for houses. He said the City of Gallup is in desperate need of market rate housing and in fact the Gallup City Council recently declared a "Housing Emergency" in the City of Gallup at their regular City Council meeting held on May 24, 2022. This project would move towards satisfying those housing needs. The Mixed-Use Neighborhood Zone District Allows for both single family and multi-family development within the same zone district which is the reason the property owner wishes to rezone the properties to the Mixed-Use Neighborhood Zone District, totaling 20.25 acres, negating any spot zoning concerns. He provided Section 10-5-B-di2 of the City of Gallup Land Development Standards list zoning map Amendment and Text Amendment criteria, a copy of the section as included in the agenda packet and marked Exhibit A for Council's review. He testified the Gallup Task Force reviewed the request and included a copy of their comments as well and staff's findings that a rezone is necessary in order to allow for much needed residential development, therefore meeting the grounds of approval under the following:



## MINUTES

City Council Regular Meeting – 09/13/2022

Page 9

- The social, economic or environmental interests of the public good would be better served by the proposed district than the existing one.

He stated the Gallup Planning and Zoning Commission heard this case at a special meeting held on July 28, 2022 and voted to approve the request by a four (4) affirmative to three (3) negative vote based on findings of fact and conclusions of law presented; therefore, the Gallup City Council is now being asked to reverse, affirm or modify the action of the Gallup Planning and Zoning Commission approval of the zone change.

No questions were posed after Mr. Strain's testimony.

Mr. Strain had no other testifying witnesses.

Mr. Stearns, duly sworn, provided testimony explaining the request to change zoning to Mixed-Use Neighborhood Zone District, allowing the property owner more variety of housing types permitted in the area and plans to start by building single family homes along Philipina Avenue going south, including duplexes and townhomes and the potential to move towards the back of Philipina Avenue to potentially build apartments in the future, adding the entire subdivision will not be completed at once. He stated the first step of the preliminary subdivision process was started; however, development cannot proceed until the zoning is amended. Mr. Stearns provided printed copies for the record and to Council depicting the proposed models and possible misconceptions with regard to their design proposals. Copies are attached hereto and made a part of these official minutes. Mr. Stearns explained the first two pages included the type and style of homes and duplex they plan to build on Philipina Avenue, stating low income duplexes are not included in the plan, however the finishes may be changed. He proceeded to page 3 describing it as brick and hard coat stucco duplexes which are intended to be the second phase back and the last page included the apartment style that would be even further back on Philipina Avenue and said they are not the run-of-the-mill, square box, cookie cutter apartment complexes and in order to build the apartments or even the duplexes, the zoning must be changed to Mixed-Use Neighborhood Zone District.

Mr. Lee said when the original Planning and Zoning Commission Meeting took place, duplexes were not mentioned and only single-family homes would be built.

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 10

Mr. Stearns clarified single family homes would be built along the first row of Philipina Avenue, however, potentially the second and third row; further south would be duplexes and townhomes and even further south would be the potential for the apartments but all is dependent on the market and what best suits the community. He added, apartments would be the last resort because there is no interest in property management but rather property sales.

Councilor Piano asked for clarification regarding the picture of the duplex because of the visual similarity to a single family home. She questioned if the backs of the homes would be visible from Philipina Avenue and if the access street would be Strong.

Mr. Stearns said the City requested no driveway access along Philipina Avenue, therefore plans were changed so the backs of the homes would sit along the street and displayed an original subdivision, depicting the layout of access streets including Strong Avenue and Philipina Avenue. Mr. Stearns stated the subdivision is only about two-thirds of the property and explained that due to the high dollar amount of infrastructure and roads, the development will be completed in steps.

Councilor Piano referenced notes from the Planning and Zoning Commission meeting regarding the Multi-Family Residential Low Density, which cuts out the commercial and how it effects Multi-Family or town homes.

Mr. Strain explained low, medium and high density as the number of units allowed for a certain piece of property and is dependent on certain criteria based on the Land Development Standards, such as minimum lot size.

Councilor Piano questioned if the property could be zoned at a different density to allow for single and multi-family, while eliminating commercial use.

Mr. Strain said the only way to make that change would be to rewrite the code because they are specific to their uses and the reason Mixed-Use Neighborhood Zone District (MXN) is an option.

Mr. Stearns said Mixed-Use Neighborhood Zone District (MXN) is the best option for this type of development because it requires more green space for more park areas,

## **MINUTES**

**City Council Regular Meeting – 09/13/2022**

**Page 11**

potential commercial development is limited to 3,000 square feet and mentioned residential properties already operating as a commercial business; therefore, it would not be a new concept.

Councilor Piano clarified the developer and owner's intent to have homes, duplexes, possibly apartments and parks but questioned plans of having commercial spaces.

Mr. Stearns explained there is no intent on building commercial structures, however the space will be subdivided and there would be no way to prevent someone else from doing so. He also elaborated on the newer generation, who work from home, utilizing the parks and bicycles for transportation.

Councilor Palochak asked if a Mixed-Use Neighborhood Zone District (MXN) would allow for commercial use only, should the owner decide to.

Mr. Strain explained certain commercial use would be permitted under the code however, a recorded final subdivision requires the developer to plat the lots, run all infrastructure, including water, sewer, electric and further explained the difficulty one would have to retrofit commercial use and the additional requirements, like off-street parking, landscaping, minimum size, etc.; although not impossible.

Councilor Palochak questioned the authority to prohibit the development of Section 8 Housing.

Mr. Strain said the code does not dictate the housing type, only the use, and exemplified apartments are considered multi-family; however, should they be turned into Section 8 Housing in the future, the City would not be authorized to prohibit or limit that.

Councilor Palochak questioned the City's authority in ensuring the developer to construct homes that are aesthetically pleasing and in accordance with the houses already in the area.

Mr. Strain said the City can only enforce what is in the law, which has minimum design standards and explained how the houses look and are maintained would be handled by a Home Owner's Association (HOA) who could develop covenants on properties. The

## **MINUTES**

**City Council Regular Meeting – 09/13/2022**

**Page 12**

**City would not get involved or enforce covenants and would strictly be between the HOA and the developer.**

**Councilor Schaaf clarified the area could be utilized for commercial use.**

**Mr. Strain further explained the mixing commercial-use with residential would have to be done upfront and when subdividing the property because the requirements of commercial-use and mentioned everything the developer has presented thus far, has been for residential.**

**Councilor Schaaf asked Mr. Stearns if they planned on building all the buildings on that lot and if all will look like what was presented.**

**Mr. Stearns said there will be variations and different finishes, all houses may have the same shingles and things that can be bought in volume but it will not be the same thing over and over again. He also mentioned the first house built will belong to the owner of the project.**

**Mr. Strain said the final subdivision of the property will have to go through three (3) Public Hearings held by the Planning and Zoning Commission.**

**Councilor Schaaf asked how many single family homes and duplexes does the developer plan to build.**

**Mr. Stearns said the plan is to build 9 homes and 13 to 16 duplexes but intentions are to start with the first two rows by paving the entrance off of Philipina while working their way back. He testified this project has been in planning for over two years with no mention of commercial and no desire to build commercial.**

**Councilor Garcia asked about the potential to make it a gated community.**

**Mr. Stearns said the intention is to create affordable housing and not a gated community nor Section 8 Housing.**

**Councilor Palochak asked what the approximate price range would be for one house.**

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 13

Mr. Stearns said on average of \$250,000 to \$300,000; however, the first house would be \$350,000 to \$400,000 because it will belong to the project owner.

Councilor Piano inquired on a market rate study and the intended construction area of only single family homes versus a myriad of duplexes mixed with single family homes.

Mr. Stearns stated the hope is single family homes; however, the interest rates will change and the project itself will take time to build.

Councilor Piano also asked if the intent would be to rent or buy the duplex and commented on the concept of apartments.

Mr. Stearns said the duplexes would be considered more of a townhome that would be sold but have two separate addresses, adding apartments would be the last phase of the plans and have not been plotted, as of yet. He explained the area intended for apartments is the hardest area to work with due to the rocks and explained apartments will allow for a more unique design making the area more usable.

Councilor Schaaf asked Mr. Strain if any other complainants came forward in addition to Mr. and Mrs. Lee.

Mr. Strain said there were about 4 or 5 more; however, he could not remember the exact number, who attended the Planning and Zoning Commission Meeting but were not in attendance tonight.

Jason Valentine, duly sworn, of Coldwell Banker's High Desert Realty, provided a booklet labeled Exhibit #1 through Exhibit #11. He testified his observation over the last several years of a housing shortage in Gallup, New Mexico and an annual Housing Summit he holds. He highlighted a breakthrough this year in the City of Gallup and McKinley County's Declarations of a Housing Emergency and noted this as being the first challenge of the intent to uphold that commitment made to the community by approving Resolution No. R2022-13. He expressed the validity of concerns to rezone the area by those in opposition and said it will likely not be the first time a citizen addresses their concerns; however, the concept of mixed-use development and in this case Mixed-Use Neighborhood Zone District (MXN), is somewhat different than many

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 14

are used to and in light of that his hopes to inform rather than challenge, to educate and help finalize the decision for the rezoning on Philipina Avenue and Strong Drive. He proceeded to Exhibit #1 titled, "Current Available Inventory as of May 9, 2022 Source: NMMLS," explaining when the Housing Emergency was declared there were 17 units available in the City of Gallup, all neighborhoods, ranging from \$64,000 to \$520,000. Mr. Valentine said Exhibit #2, revealed 13 available units as of September 13, 2022, ranging from \$100,000 to \$329,900, proving the situation has not improved. Mr. Valentine said there's a video available of the opposition supporting him on the housing effort in March 2022, while preparing for the Housing Summit. He said the opposition also agreed that no other subdivision had been built since Mentmore in the 1990's, which Mr. Valentines said, is a problem. He stressed the importance of getting builders here, by making it friendly to build and the economic prosperity in housing. He said Mr. Lee also believes in the initiative of bringing housing to Gallup. Mr. Valentine conveyed the importance of staying persistent in the effort of development by making changes, even incremental ones. He directed everyone to Exhibit #7, highlighting a project in Santa Fe that includes, 47 single-family homes; 13 condominiums, offering affordable housing; 22 mixed-use units to meet design needs of local entrepreneurs and at-home business owners and 2 commercial buildings where, "local small businesses will provide a great amenity to residents and surrounding neighbors." Mr. Valentine moved on to Exhibit #8, an article highlighting a multi-use project in Albuquerque, New Mexico along Silver Avenue, where a parking lot is being changed to mixed-use for the purpose of constructing an apartment complex that will include 111 units, community gathering spaces, storage options, dog walk stations, an internet café, fitness center and described it as an ideal space for millennials and their grandparents, indicating the current market for these generations and the types of properties they are looking for.

Councilor Pro Tem Garcia called the three-minute time limit on Mr. Valentine's testimony.

Mr. Valentine said exhibit #10 indicates what a mixed-use area looks like.

Councilor Piano said she appreciated all the work he put into the presentation, stated she reviewed the photos prior to the meeting and questioned if anything is comparable to the size of Gallup.

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 15

Mr. Valentine stated Exhibit #9 highlights mixed-used development in Acoma, Pueblo, a development of affordable housing units intermixed with community buildings that include meeting rooms and offices located in a central area. Mr. Valentine further explained Exhibit #10 as what a mixed-use neighborhood would look like and his belief that any, "Gallupian" would love to live in a mixed-use neighborhood, which was taken by him, on a visit he took to Corpus Christi, Texas.

Councilor Piano asked if he noticed a lot of commercial use within his research of mixed-use neighborhoods, such as restaurants.

Mr. Valentine explained the provided photos depict exactly what Mr. Stearns and the landowner envision for the area, which is to encompass single-family units with townhouses and if need be, apartments based on the market. Mr. Valentine added, the longer the project is held, the more prices go up thus making single-family homes unattainable.

Councilor Palochak commented on a number of mixed-use areas in Albuquerque where buildings with multiple levels, include commercial-use on the first floor and apartments on the upper-level floors. She explained the hope for something of that nature in the downtown area of Gallup; however, the area in discussion is mostly residential and has been for a number of years.

Mr. Valentine presented Exhibit #11 depicting specific addresses including 215 Hopi Circle and 1109 S. Puerco which are town home units, 1300 Grandview and 1102 Strong are multi-units and businesses registered with the Public Regulation Commission are 1400 and 1500 Kit Carson. He explained the issues like stolen property and transients in the area because the area is undeveloped. Mr. Valentine said a review of the housing analysis signed two years ago, as well as the Master Growth Plan, the City asked developers to come and provide MXN zoning to provide housing in the City of Gallup

Mayor Pro Tem Garcia asked if anyone else, in favor of the change, would like testify.

No other witnesses testified in favor of the change.

Mayor Pro Tem Garcia welcomed Bill Lee to testify via Zoom.

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 16

Mr. Lee, duly sworn, expressed appreciation to the City for accommodating his travel on business and acknowledged some of Mr. Valentines statements including a video depicting Mr. Lee, as the opposition, advocating for housing in Gallup. Mr. Lee stated he does, like the Mayor Pro Tem and Councilors, believes there is a housing a shortage and is not opposed to building single family homes, townhomes and even nicely done apartments in that area. However, Mr. Lee said his concern is the mixed-used definition and the broad definition it paints, not only for this area but also the rest of community. He also clarified the registered businesses in the area, one located at 1400 Kit Carson belongs to himself and explained hot air balloons are not being launched from the house but is used as a business address for tax purposes. Mr. Gustafson's home address was also listed as a business in the area, which is a plumbing and heating business that does not require customers go to the home. Mr. Lee stated his belief that multi-use would not be suited for the area based on his recollection of the Land Development Standards and that mixed-use was considered a transition between residential and commercial, more comparable to the old Lowes or Cal-Mar Supermarket located on Aztec Avenue, and the downtown area where mixing residential and commercial truly serves a purpose. Mr. Lee responded to the cities Mr. Valentine exemplified, describing them as densely populated cities, with the exception of Acoma and said something like this would be best suited for those transition areas. Mr. Lee said he is also concerned with the statement, "as the market bears," which has been mentioned several times by the developer as well as the owner at tonight's meeting and at the Planning and Zoning Commission Meeting and the fact that if the market doesn't bear fruit when it comes to residential homes, duplexes or apartments, the land is rezoned; therefore, leaving the area opened for commercial development. He also pointed out other large pieces of undeveloped properties in Indian Hills, Mentmore and Mossman areas and the questions he has received regarding tonight's potential approval and the impact it would have on those neighborhoods, where landowners wish to be rezoned to mixed-use with the intent of building commercial because developers do not want to build homes. He said it would open a can of worms, while setting, what he believes to be, a dangerous precedent. He applauded the developer's efforts for wanting to build homes including single-family, duplexes or apartments as it is much needed; however, he thinks there is a better way to zone the area. He referenced a comment made by Commissioner Long at the Planning and Zoning Commission meeting regarding the multiple changes to the plans that have been made, understandably so, but once this is done it can't be undone and there is nothing to keep



## MINUTES

City Council Regular Meeting – 09/13/2022

Page 17

the project from becoming a complete commercial venture and the potential to do the project in phases, starting with the first row of single-family homes.

Mayor Pro Tem Garcia called the three-minute time limit on Mr. Lee's testimony.

Councilor Piano expressed concern with living in the what-ifs and in doing so, never moving forward. She noted the multiple changes that have been made; however, none of the changes have included commercial to her knowledge. Councilor Piano agreed, it's a great neighborhood but highlighted the presence of the KC Hall, the Pepsi Plant and the church located just down the street, indicating it is already a transition location from residential to commercial and asked Mr. Lee for his thoughts on the commercial buildings already there.

Mr. Lee said he is familiar with the area and understands they have been there for a longtime but clarified his thoughts of commercial businesses such as convenient stores or heavier commercial.

Councilor Piano acknowledged Mr. Lee's concerns with setting a precedent but emphasized this would be on a case by case basis in addition to the procedural requirements for any particular area and the importance of not living in the what-ifs.

Mr. Lee sympathized with Council and their position and illustrated that if this is approved it will be harder to say no to the next person with similar needs. He also said he does not want to come off as a, "Not In My Back Yard (NIMBY)," and clarified he is not in opposition of them building homes and should this be approved, he will quietly support the effort but also hopes the developer sticks to what they have presented and the importance of taking all things into consideration when Council makes a decision. He thanked the Planning and Zoning Commission, City Council, said there is no ill will towards those in support of the approval because there is a definite need for housing but believes there's a better way, even if it means rewriting the code.

Councilor Piano asked if the code could be rewritten to satisfy the single-use multi-family and not commercial, since it seems everyone is in agreement with the housing and the market rate.

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 18

Mr. Strain said City staff will do whatever the Council requests them to do, explained staff's responsibility to enforce what the Council adopts and noted bad precedent is set when rules are changed every time someone, or a small group doesn't like the rule, stressing there will never be a land code that satisfies everyone. He said land-use law is probably one of the most litigated law in the United States because landowners are being told what they can or can't do with their own property. Mr. Strain explained the effects of trying to satisfy one person or a small group of people will bring Council back month after month to rewrite the code that was created for the betterment of the community as a whole.

Councilor Palochak commented on the need for more housing, her positive experiences with businesses located inside residential areas and the positive attributes it can provide the members of that neighborhood, even a convenience store. She said she has been trying to entice developers to come here and believes it to be a good thing that someone is willing to invest their money here and urged people to not be afraid of commercial development, especially due to the limitations listed in the code and the importance of working with the current code and the testimony provided.

Rochelle Rocco, duly sworn, provided testimony supporting the housing efforts to help get people off of the streets.

Mayor Pro Tem Garcia stated all evidence was heard and asked the Councilors if a summation of evidence was needed or if they felt a complete understanding of the issue and wished to proceed to deliberations.

All Councilors agreed to move forward to deliberation.

Mayor Pro Tem Garcia invited Mr. Stearns and Mr. Lee to provide a closing argument.

Mr. Stearns thanked the Council and expressed understanding in the difficult decision. He reminded the Council the project has been worked on for over two years, are further along than they should be, the time spent studying the code to accommodate it and said rewriting the code would only delay the project longer. He said mixed-use was an initial recommendation of the City which is why they chose this use and further explained the limited commercial use; such as apartment complexes with a community building, without commercial use the community building would have to be eliminated.

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 19

Mr. Lee thanked everyone, applauded the developers for their efforts and reiterated his appreciation for the accommodations made on his behalf to attend and provide testimony at the hearing.

Councilor Piano made the motion to discuss the matter in an open session. Seconded by Councilor Palochak. Roll call: Councilors Piano, Palochak, Schaaf and Mayor Pro Tem Garcia all voted yes.

Councilor Schaaf stated his problems with mixed-use and the fact that once approved for mixed-use the potential for commercial use would be permitted, whether it be the current property owner or future property owners. He explained his concerns with the commercial aspects within, what is already, a residential area. He added the area they are working with first and plan to build 9 single family homes is already zoned accordingly; therefore, his concern is changing the entire property to mixed-use all at once.

Councilor Piano mentioned the potential of changing only one lot, of the two, at a time.

Mr. Strain clarified a small thin strip that fronts Philipina Avenue is zoned Single Family Residential, however the 17 acres behind it is zoned Rural Holding Zone and explained in order to do the reconfiguration of the subdivision the rezone must be approved. He further explained development cannot proceed because once infrastructure is installed the layout will not be the same and according to their design, both lots have to be done at the same time.

Mr. Stearns elaborated on the small strip of property which he said is essentially unusable because during the subdivision process the City requested to eliminate any driveway access from Philipina Avenue; therefore, the property would be wasted unless the property is entirely rezoned.

Councilor Palochak provided the following permitted commercial-uses in Mixed-Use Neighborhood Zone Districts (MXN), according to the Land Development Standards:

- Dwellings
- Multi-Dwellings
- Elderly Housing

## **MINUTES**

**City Council Regular Meeting – 09/13/2022**

**Page 20**

- **Covenant or Monastery**
- **Fraternity or Sorority**
- **Community Residential Facility**
- **Emergency Protected Shelter**
- **Recovery Houses with Conditional Uses**
- **Community or Recreational Center**
- **Daycare-Conditional Uses**
- **Public Safety Substation**
- **Library or Musuem**
- **Parks or Open Space**
- **Religious Institution**
- **Community Garden**
- **Small Restaurant**
- **Medical Dental Clinic**
- **Personal Services**
- **Retail Sales**
- **Community Facility Amenities**
- **Dwellings, Dorms**
- **Accessory Structures**
- **Cannabis Home Cultivation**
- **Greenhouse – Non Commercial**
- **Home Occupation**
- **Office and sales**
- **Outdoor Recreation**
- **Vehicle Shelter**
- **Utility Storage**
- **Outdoor storage**

**Councilor Palochak stated a shopping center would not be permitted and illustrated the commercial use is limited and does not foresee multiple people going to Philipina to open doctor's offices or anything listed.**

**Councilor Schaaf said the use would be permitted if they did and most neighborhood residents do not want commercial-use in their neighborhoods.**

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 21

Councilor Palochak said the City currently has businesses located inside neighborhoods already.

Councilor Piano acknowledged the limitations for commercial-use and the changes that would be necessary to accommodate commercial use. She said that although she doesn't love the idea of commercial use inside a neighborhood, she also sees the desperate need for housing and fear of living by what could happen. She also mentioned the Declaration of a Housing Emergency that was recently signed by Council and the fact that now a developer is asking to build houses. She stated she understands that even though commercial-use would be permitted, nobody else is offering to build homes. Councilor Piano expressed her trust in the developer's intent to build housing and not commercial. She stated she sees both sides and the dilemma it creates and wishes there was a way to rezone without commercial-use but that would entail rewriting the code and at this point understands it would be a lengthy process.

Mr. Valentine encouraged the Council to make their decision based on the project Mr. Stearns presented and whether it meets the current code, the community's needs and the regulations Mr. Strain explained. He said the decision should not be based on what-ifs, stressed the property owner should be able to do what he wants on his own property as long as it meets legal requirements, which Mr. Strain has indicated that he has and stressed the matter of property rights.

Mayor Pro Tem Garcia recognized the Declaration of a Housing Emergency and this as the first step towards more housing, her belief that approval would open doors to more developers finding ways for more housing and in turn bring more professionals. She emphasized the amount of conversation based off of what-ifs and the importance of making a decision based on the facts presented. She agreed she does not like the idea of commercial-use; however, her district is mixed-use and experiences some issues. She stated she recently visited a mixed-use neighborhood in Amarillo, Texas and found it to be very beautiful and that of the future.

Councilor Palochak made a motion to approve the change in zoning designation, affirming the decision by the Planning and Zoning Commission. Seconded by Councilor Piano. Roll call: Councilors Palochak, Piano and Mayor Pro Tem Garcia voted yes. Councilor Schaaf voted no. Motion carried.

## MINUTES

City Council Regular Meeting – 09/13/2022

Page 22

### **Comment by Public on Non-Agenda Items**

Mr. Valentine applauded Mr. Stearns and Mr. Suleiman for investing in the community and applauded Mr. Lee and Council for showing how much they care for the community and the courage it takes to speak out against something. He urged everyone to work together on a successful subdivision to encourage other successful subdivisions.

Laura Montoya, candidate for State Treasurer, announced her arrival to Gallup until tomorrow and invited everyone to an event at 5:00 p.m.-6:30 p.m. at the Veterans Helping Veterans Center to discuss the local government investment pool and how to better help the rural community with investment funds. She provided her business card to the Council offering to discuss the matter with them in the morning.

### **Comments by the Mayor and City Councilors**

Councilor Palochak congratulated Arlita Pablo of the Gallup Fire Department who was awarded the 2022 New Mexico Fire Code Officer of the Year at the 9<sup>th</sup> Annual New Mexico Fire and EMS Expo in Socorro last Friday. She commended Ms. Pablo for all of her effort in the community. She thanked everyone for attending the Relay for Life last Friday night, recognized the 40 survivors who participated in the walk, despite the rain and encouraged everyone to support the cause.

Councilor Schaaf said he also attended the Relay for Life event and wished more people from the city had attended. He also mentioned his attendance at the 9/11 Ceremony held on Sunday morning at the Southside Fire Station. He thanked Public Works and Street Department staff for working with the County to pave Bortot Street and thanked all City employees for all they do.

Councilor Piano mentioned her experience at Relay for Life and the significance of the event because her mother is a 5-year cancer survivor. She described the rezone issue discussed tonight as extremely tough, expressed her willingness to work with everyone involved, her intentions as a new Councilor on doing what is best for her district as well as the community and the amount of time and thought she put into this matter.

Mayor Pro Tem Garcia commented on the Relay for Life event and encouraged people to attend and to continue to support the cause. She also mentioned her attendance at the 9/11 Ceremony, her wish that more people attended, asked everyone continue to keep first responders in their prayers and thanked all first responders. She announced

**MINUTES**

**City Council Regular Meeting – 09/13/2022**

**Page 23**


the Rally for Recovery at the Courthouse Square on Saturday, September 17, 2022 from 11:00 a.m. to 3:00 p.m. to support those in recovery and help find ways to stop addiction to drugs and alcohol in the community. She also announced the Annual Preparedness and Public Safety Day, hosted by the McKinley County Office of Emergency Management in collaboration with the City of Gallup's National Night Out, which she sponsors, on Saturday, September 24, 2022 from 11:00 a.m. to 3:00 p.m. to help familiarize the community with available resources and agencies. She also announced and provided details regarding Northfest, which she also sponsors, at the Larry Brian Mitchel Center on Saturday, September 24, 2022 from 10:00 a.m. to 2:00 p.m. and is opened to all kids in the community. Last, she mentioned the conclusion of the 12<sup>th</sup> Annual Community Clean-up on September 17, 2022 of Area 8 and provided the included areas of the cleanup and commended the Solid Waste Department's efforts. She thanked everyone involved in the public hearing, acknowledged everyone's efforts and hopes this will be the beginning of more housing in the City.


Councilor Piano added the Annual Chamber of Commerce Banquet that will be held at the end of September and announced and congratulated Teri-lynn Garcia of Amigo Automotive on the grand opening of their new Dodge building in addition to their 40<sup>th</sup> Anniversary on October 1<sup>st</sup>.

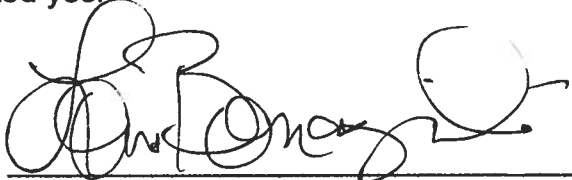
**Comments by the City Manager and City Attorney**

None

There being no further business, Councilor Schaaf made the motion to adjourn the meeting. Seconded by Councilor Palochak. Roll call: Councilors Schaaf, Palochak, Piano and Mayor Pro Tem Garcia all voted yes.



  
Alicia Palacios, Deputy City Clerk

  
Louie Bonaguidi, Mayor