

Minutes of the Regular Meeting of the Gallup City Council, City of Gallup, New Mexico, held in the Council Chambers at City Hall, 110 West Aztec, at 7:00 p.m. on Tuesday, January 12, 2010.

The meeting was called to order by Mayor Harry Mendoza.

Upon roll call, the following were present:

Mayor: Harry Mendoza

Councilors: John J. Azua  
Mike Enfield  
Allan Landavazo  
E. Bryan Wall

Also present: Gerald J. Herrera, City Manager  
R. David Pederson, City Attorney

Discussion continued from the previous Work Session concerning the following item:

2. Presentation by Miziker Entertainment Group Regarding Potential Theme Park Development at Red Rock Park – Robert Singer

Mayor Mendoza asked about the payment descriptions on page 9 of the proposal submitted by Miziker Entertainment Group. Ron Miziker, Creative Director/Partner of the Miziker Entertainment Group, said the \$750,000 is the cost for the associated service fees for the Concept and Master Plan Design. Mayor Mendoza asked if there were private investors interested in funding the feasibility study. Frank Budick, Project Affiliate, said there are a few groups and organizations interested in a "funding effort" for the project and would like to form a partnership or a long term lease agreement with the City concerning the project. Mr. Budick recommended the creation of an LLC corporation which would allow investors to buy stock and would provide seed money for the start-up costs of the project. Mr. Budick said he would like to turn the Park into a money making enterprise by drawing tourists to the Gallup area as the City is currently losing money in operating the Park every year. Mayor Mendoza said he believes the proposal is a great idea; however, there may be a problem in utilizing the land as collateral for the feasibility study. Mr. Miziker said the land value for the financing would be required for the second phase of the project. Mayor Mendoza said another \$1 million would be needed by investors for funding the development phase of the project. Mr. Miziker said the process is typical for most all of the projects conducted by their company as a governmental or civic organization normally provides the funding to get the project to the money market.

Mayor Mendoza asked Mr. Pederson to explain the legal issues involving the land at Red Rock Park. Mr. Pederson said there are restrictions on the City's title to the land which emanate from different sources. When Red Rock Park was originally constructed, the City received federal land and water conservation funds to create the

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recreational vehicle facility at the Park. Unfortunately, the City does not possess all of the documents concerning the transactions that took place over the years; however, since the City has used federal land and water conservation funds, there are restrictions concerning the use of the land at Red Rock Park that require the land be maintained as an outdoor recreational facility or a conservation area in perpetuity. Both federal and state officials are searching their archives for documents pertaining to the transactions concerning the land Red Rock Park. There may be an escape clause where the City may be able to submit a request to the Secretary of the Interior to either modify the grant restrictions or to have the grant restrictions completely waived. An official at the State Parks Division has suggested that all or part of the restrictions may no longer apply since the original agreement between the City and the State expired in 2001. There is language in the 1989 quitclaim deed from the State to the City that unless the City maintains Red Rock Park as an outdoor recreational facility the land would revert back to the State. When the City was planning to deed the Park back to the State in 2004, the language in the agreement between the State and City also contained similar reversionary language. When the Park was originally acquired, the land was purchased from a private land holder with money that belonged to the Inter-Tribal Indian Ceremonial and the City of Gallup. The Ceremonial and the City formed the Joint Powers Development Commission and entered into a joint powers agreement to lease the Park from the State in 1976 for a term of 25 years. The State had title to the Park; however, the State granted the City the authority to operate the Park pursuant to the lease. Prior to 1996, the Ceremonial was a private corporation and a State agency for a number of years. When the Ceremonial was abolished as a State agency in 1996, the joint powers agreement ended since the agreement could only be valid between governmental entities. When the State deeded the Park back to the City in 1989 there was no mention of the original joint powers agreement or the original lease. From 1989 until the discussions held with the State in 2004, title to the Park remains in the City's name and there was never any discussion to extend or to affirmatively end the leases or the original joint powers agreement. Mr. Pederson also provided historical information concerning the proposals submitted for the Park in previous years, such as the proposed construction of a casino and racetrack, the proposed construction of an elementary school, the proposed construction of an electrical substation and the two year management agreement that was executed between the City and Global Entertainment.

Since the project could be confined to an outdoor recreational project, Mayor Mendoza asked if there is any way to proceed with the Concept and Master Plan Design of the project. By proceeding with the Concept and Master Plan Design, Mr. Pederson said the City will find out in time whether it can proceed with the project without any risk of losing the land. Mr. Miziker said there is no difference between a recreational park and a theme park since many other cities have converted their parks into theme or amusement parks. Councilor Enfield said the issue centers on the term "character of

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the park.” Mr. Pederson said it also depends on the federal government’s interpretation of their regulations which are very strict. Mr. Pederson said there are provisions for transferring value from one City park to another; however, the provisions require the transfer of value to a similar park with a similar function in a nearby area, which currently does not exist. Mr. Miziker said if they were able to develop the theme park they would save everything that is currently there and would build onto the land. Councilor Enfield said he was involved at length a few years ago regarding the land at the Park and he remembered when the Navajo Tribe could not construct a fire station on the eastern portion of the land.

Councilor Wall asked if it was possible to give the federal government quit title of the Park. Mr. Pederson said quit title actions only address questions of ownership and defects in the title. Mr. Pederson said a reversionary clause could not be removed in a predecessor deed with a quit title action and the federal land and water conservation grant restrictions do not affect the title but affects the use of the land. Councilor Wall asked if the City could involve its United States Senators, Congressmen and the Governor in expediting and resolving this matter. Mr. Pederson said the City may pursue this option as the Secretary of the Interior has the authority to modify or waive the reversionary restrictions. Mr. Pederson also recommended obtaining a better understanding of the original and subsequent documentation concerning the land at Red Rock Park prior to approaching the Secretary of the Interior regarding the City’s request. Provided that the Mayor and Councilors are in agreement, Councilor Wall asked Mr. Miziker if he was willing to proceed with the project even though there are items that need to be addressed. Mr. Miziker said it would depend on the investors of the project.

Councilor Landavazo asked if the land at Red Rock Park will be utilized as collateral in obtaining the financing needed for the project. Mr. Miziker said using the land as collateral would be helpful; however, the financing of the project would be the second phase of the proposed plan. Councilor Landavazo said if a lease is formulated with the investment group for 50 years, the group would not own the property and would not have the collateral to put against the financing required for the project. Councilor Landavazo asked about the financial alternatives for the project. Robert Singer, Attorney for the Miziker Entertainment Group, said there will be different types of financing required for the project, including bonds, grants and private institutional financing. Regarding the property itself, Mr. Singer said it will have to be clear enough in the law that the land belongs to the City and the City has the authority to do as it sees fit with the land. If matters concerning the City’s ownership or authority of the land are not resolved, the investment group will not invest in this venture as title insurance will be required for the project. Mr. Singer recommended requesting a waiver from the Secretary of the Interior in order to revolve the matter. Councilor Landavazo asked Mr.

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Miziker how much he believes in the project and if he would be willing to be an investor of the project. Mr. Miziker said he would invest in the project if he could and the project would be an excellent opportunity to create a regional attraction in a beautiful location that possesses historical culture and many things to work with in developing the theme park.

Councilor Azua said the project is a brilliant idea with economic opportunities for the local area. He asked if an entity in the four corners area have expressed an interest in a similar project. Mr. Miziker said he unaware of anyone else expressing such an interest. Councilor Azua asked if the project would be considered an industry for employment. Mr. Miziker said if the enterprise is operated properly the project will contribute to the local economy.

Councilor Wall asked who would be managing the enterprise if the theme park is built. Mr. Miziker recommended that the park be operated by a theme park management company. Councilor Wall asked about the City's liability should the theme park fail. Mr. Miziker said the failure of a theme park is very rare since the history of taking on such a enterprise is very strong.

Mayor Mendoza said the City will continue its efforts to resolve matters concerning the title of land at Red Rock Park.

The Mayor and Councilors presented commendations to the following City of Gallup retirees: Capt. Gabriel Cebada, Gallup Police Department, 16 years of service; Surendra Singh, Information Technology Director, 20 years of service; and Daryl Schmaltz, Construction Superintendent, 25 years of service.

Presented to the Mayor and Councilors for their approval were the Minutes of the Work Session and Regular Session of December 22, 2009.

Councilor Enfield made the motion to approve the aforementioned Minutes. Seconded by Councilor Wall. Roll call: Councilors Enfield, Wall, Landavazo, Azua and Mayor Mendoza all voted aye.

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

1. Resolution R2010-1; Annual Determination of Notice under the Open Meetings Act – R. David Pederson, City Attorney

Mr. Pederson presented the annual Resolution as required by the Open Meetings Act which provides the notice procedures for all City Council Meetings and Work Sessions. The City Council will continue to meet on the second and fourth Tuesdays of the month,

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with the Work Session beginning at 6:00 p.m. and the Regular Session at 7:00 p.m. Mr. Pederson also said there is a minor addition to the Resolution which provides language concerning the provision of auxiliary aides for the disabled.

2. Approval of Pay Estimate No. 4 (Final) and Change Order No. 1 (Final) for East Aztec Avenue Waterline Rehabilitation Project – Lance Allgood, Executive Director, Gallup Joint Utilities

Due to numerous water breaks last year, Mr. Allgood said the project consisted of the replacement of approximately 2,200 linear feet of a 14 inch water line along Church Rock Avenue. Since the emergency project is complete, he recommended approval of the final payment to Dallago Corporation in the amount of \$36,590.81.

Councilor Azua made the motion to approve Consent Agenda items 1 & 2. Seconded by Councilor Landavazo. Roll call: Councilors Azua, Landavazo, Wall, Enfield and Mayor Mendoza all voted aye.

Presented to the Mayor and Councilors was the following Discussion/Action Topic:

3. Discussion on Whether to Proceed with Designated Projects – Mayor Harry Mendoza

Based on discussions during the last Regular Session, Mayor Mendoza said staff presented four options that were proposed to address the City's capital outlay project needs. Although most of the Councilors have expressed an interest in verifying the results of any legislative action that may be taken by the State to address its current financial crisis, Mayor Mendoza said the City's problems continue to exist and recommended that the City Council move forward to address the City's needs. Mayor Mendoza said there is enough revenue to finance the projects through a bond issue or a loan from the New Mexico Finance Authority; however, he does not believe a "pay as you go" method is feasible in handling the City's projects.

Councilor Enfield said there are some projects that the City can proceed with the money it already has. Mayor Mendoza said the City is proceeding with projects from the \$1.1 million that was allocated from gross receipts tax revenues in September 2009.

Councilor Landavazo recommended to immediately move forward with the City's roofing projects. Once the State Legislature concludes its session next month, then the Mayor and Councilors may consider the City's remaining projects. Discussion followed concerning the City's available amount of funds for proceeding with some of the projects, financing the projects through a loan or a bond issue and if any of the City's revenue streams will be affected by legislative action taken by the State.

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Mr. Pederson recommended directing staff to solicit bids for the roofing projects in order to determine the actual costs for the projects. Councilor Enfield agreed.

Councilor Wall said the roof at the Northside Senior Center should have been repaired months ago when the City had the money. Mr. Herrera said the money is still available to repair the roof. Councilor Wall said the roof is beginning to bow, the walls are beginning to crack and the project will cost more than what it would have months ago. Mr. Herrera said staff is currently working on the project and expects to receive construction documents from the City's consultant in mid-February 2010.

Councilor Azua said he always felt the City should not hesitate and proceed with the projects to get as much done as possible.

It was the consensus of the Mayor and Councilors to solicit bids for the remaining roofing projects in order to obtain the actual cost for the projects.

**Comments by Public on Non-Agenda Items:**

None.

**Comments by Mayor and City Councilors:**

None.

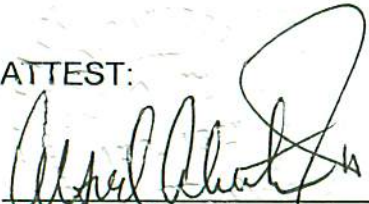
**Comments by City Manager:**

Mr. Herrera said City offices will be closed in honor of Dr. Martin Luther King, Jr. Day on Monday, January 18, 2010. There will also be a march and a celebration to honor Dr. King.

There being no further business, Councilor Landavazo made the motion to adjourn the meeting. Seconded by Councilor Azua. Roll call: Councilors Landavazo, Azua, Wall, Enfield and Mayor Mendoza all voted aye.

  
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Harry Mendoza, Mayor

ATTEST:

  
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Alfred Abeita, City Clerk

Approved 1/26/2010