

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
CITY COUNCIL CHAMBERS
REGULAR MEETING
NOVEMBER 9, 2009

The Council of the City of Ruidoso Downs met in regular session on November 9, 2009. Mayor Armstrong called the meeting to order at 5:30 p.m. and asked Steve Dunigan to lead the Pledge of Allegiance. Mayor Armstrong asked Carol Virden, City Clerk/Treasurer to take roll call. The following were present:

Councilor Hood	Councilor Williams
Councilor Holman	Councilor Olivo

Carol Virden, City Clerk/Treasurer informed Mayor Armstrong there was a quorum.

Also present:

Carol Virden, City Clerk/Treasurer
Jay Smith, Museum Director
Steve Dunigan, Planning & Zoning Director
Cleatus Richards, Public Works Director
A.C. Ortiz, Chief of Police
Justin Shaw, Fire Chief
H. John Underwood, City Attorney

APPROVAL OF AGENDA

Mayor Armstrong stated next item on the agenda was approval of the agenda.

Mayor Armstrong entertained a motion to approve the agenda.

Councilor Williams moved to approve the agenda. Seconded by Councilor Hood.

Councilor Williams said he would like to discuss Item A and Item C under New Business. He said they have an item to consider approving CMC Consulting to provide services to LCT on a month-to-month. He said he remembered that they approved the contract with CMC in September and he said he was asking if they need to approve them again for another contract.

Mayor Armstrong said no, that Mickie has refused to sign that on the request of her attorney.

Councilor Williams said the final authority for authorizing whether it be for approval of ordinances, resolutions, agreements, and contracts, and when it comes to the council it's in a final form, is that correct? When we approve it, it becomes a legal document.

Carol Virden, City Clerk/Treasurer said that was correct.

Councilor Williams said in this reference here if she didn't approve it then there was no agreement before we approved it so there is no agreement and that contract shouldn't have been brought forth to the council.

Carol Virden, City Clerk/Treasurer said on September 28th the councilors unanimously approved the CMC Consulting contract as written by, and I'm guessing Cliff and Mickie and or Mickie and her attorney with the stipulation that a Hold Harmless Clause be inserted in her contract. What happened was she did come in and sign that one and her husband brought the contract with additional language and a Hold Harmless Clause that was prepared and inserted by her attorney. The contract that the council approved on September 28th was a different one that Mickie brought in and signed. Therefore, Mrs. Compton emailed the mayor and all the councilors that she was under the advice of her attorney would not sign the contract

Councilor Williams said as a council when they make a decision and it's approved by council that it's a final draft and that's it, it becomes a legal document. Is that not accurate? Any kind of adjustments or modifications to that would have then been brought back to the council for discussion for additional approval if needed.

Mayor Armstrong said Mickie did not sign it.

Mickie Compton said that was because they inserted the Hold Harmless Clause as they wrote it without her prior approval. She said she never saw it. They had that contract approved with that Hold Harmless Clause already inserted without her prior knowledge.

Carol Virden, City Clerk/Treasurer said to Councilor Williams, to pull, that Item A and Item C were not, you are approving the agenda for the discussion of A and B.

Councilor Williams said that was to get some information. He said they have approval of a contract with CMC and obviously there is some kind of disagreement that became of that agreement but if that had been so it should have been done prior to being brought to the council. He said they approved a contract that wasn't agreeable to both parties at the time. He said he didn't see how they could consider this contract for approval on a month-to-month basis when they still have a concern over the original contract being valid even though it was approved by council.

Mayor Armstrong said Mickie had come back with her lawyer's agreement to the Hold Harmless Clause and that everything is still on the table and Mickie would be the first to say that she has been working for the transit and needed to be paid for it and this is what we have at this stage.

Councilor Williams said he would modify his motion for Consider Approving Agenda and that he would like to remove Item A and Item C under New Business until they get everything in order and cleared before they continue on. Councilor Hood said he would modify his second.

H. John Underwood, City Attorney said his concern said the concern was signing this agreement over the language in the Hold Harmless Clause. He said he wasn't at the meeting that contract

was approved or the renewal of the contract was approved but his understanding was that it was subject to a Hold Harmless agreement being added to the existing contract because the existing contract doesn't have a Hold Harmless agreement. He said he has the agreement here in from of him and the Hold Harmless agreement as prepared by us as the attorneys for the City of Ruidoso Downs is what he would call an omnibus Hold Harmless agreement. It holds the City harmless for all acts of the independent contractor, be they negligent or otherwise. The Hold Harmless agreement proposed by the independent contractor holds us harmless only for a negligent act. So if you are sued simply because they are driving down the street and if you are the employer of that independent contractor and you have to hire legal council to defend you or you incur cost in doing that then the Hold Harmless agreement as proposed by Ms. Compton of CMC would not protect the City whereas the Hold Harmless agreement as proposed by your legal counsel would protect the City in all matters. He said they are happy to do whatever the City council desires them to do. Their overall desire is to draft a Hold Harmless Clause that protects the City in any sort of matter. He said he knows that Ms. Compton and Mr. Cook has had discussions about this. He said they, as attorneys don't set policy and if this council wants to approve the Hold Harmless agreement as proposed by Ms. Compton and her attorney as opposed by the Hold Harmless agreement proposed by your attorney you are free to do that, just make a record of that.

Councilor Williams said they were presented with that Hold Harmless agreement at the meeting that night.

H. John Underwood, City Attorney asked which one?

Councilor Williams said the one that was put in by us. Had this been presented to CMC before the meeting?

H. John Underwood, City Attorney said his understanding was no. It was accepted or approved with the Hold Harmless added. He said he didn't believe that CMC had reviewed it prior to that time. He said the other side to the contract always has the right to look at that contract and say 'there's no way I'm going to agree to that Hold Harmless Clause.' If that's the case I understand their position but said he couldn't change his advice to the City as to what protects the City. He said there were a couple of other changes to the contract that they brought back but he didn't think they were significant. He said his problem with the difference of opinion is that the Hold Harmless Clause as drafted by us covers the City in any situation and would keep the City free of any cost in any lawsuit that was caused by the negligence or non-negligence of the independent contractor. He said as he interpreted her Hold Harmless Clause is that hers is not nearly as protective of the City as ours is.

Councilor Williams asked how it affects this contract if they are going to approve a contract on a month-to-month basis. How does it affect the other contract they already approved?

H. John Underwood said they had written an email through Ms. Mosley saying because Ms. Compton said that it was unacceptable to her and she was going to resign. He said her contract that is currently in effect terminated at the end of September. He said what they thought would be the proper thing to do in order to continue to provide service to the public would be to continue the old contract on a month-to-month basis and subject to either party terminating that contract

with 10 days written notice. In the meantime what Item C is about is that then they would have the opportunity to go in if the council approves it is to create a position within the City to provide this service. He said if you take all of this off the table then they don't have the opportunity to conduct an ongoing contract with Ms. Compton while this is being negotiated. He said if the council's desire is to go back and renegotiate the Hold Harmless Clause he would be happy to fulfill that desire.

Councilor Williams said the DOT and their funding requirements and stimulus money which has provided the vans is sitting out there waiting for us to make a decision. He said they didn't have anything in their booklet concerning the contract. He asked how they could approve it without an understanding of what the contract is?

H. John Underwood said when you go under the terms of the month-to-month contract you continue the terms of the last existing contract on a month-to-month basis until the parties either terminate it or agree to a new contract.

Councilor Williams asked if they would be going on the contract they signed last year including the Hold Harmless Clause.

Carol Virden, City Clerk/Treasurer and H. John Underwood said there is no Hold Harmless Clause.

Councilor Williams said he might seem confused but he wanted a clear understanding because he didn't want to approve something again that they would have to go back again and say it wasn't completed before they started the process.

H. John Underwood, City Attorney said they currently have a verbal agreement to provide service on a month-to-month basis under the terms of the old contract. He said his suggestion whether they choose to continue to negotiate with Ms. Compton's contract or an in-house position they need something in the interim to base ongoing contracts. He said it was possible to approve Item A and to discuss Item C.

Carol Virden, City Clerk/Treasurer said there is a job description included.

Councilor Williams said it doesn't state if they are going to be a City employee or if we are going to be paying the salary and benefits so that they could make a decision and whether it was going to affect our budget.

Carol Virden, City Clerk/Treasurer said that because they are currently paying CMC \$35,000 a year and it's an 80/20 under the grant of 5311 so if council chooses to approve Item C the creation of the position of Lincoln County Transit it would be a position within the City and taking whatever amount the councilors at the time allocate to that position would still fall under that 80/20 under the grant 5311.

Councilor Williams asked if that position would become an employee? Carol Virden said yes.

Councilor Williams said his recommendation is that they follow through on this even though it is verbal at this time. He said as long as they were going to reassure him that everything was going to be legitimate because nothing is in writing right now. He said he would modify again his motion that they approve the agenda as is with Item A and Item C. Seconded by Councilor Hood.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

APPROVAL OF CONSENT AGENDA

Mayor Armstrong stated next item on the agenda was approval of the Consent Agenda.

Mayor Armstrong entertained a motion to approve the Consent Agenda.

Councilor Williams moved to approve the Consent Agenda. Seconded by Councilor Olivo.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

APPROVAL OF MINUTES OF REGULAR MEETING OF OCTOBER 26, 2009.

Motion was made by Councilor Williams to approve the Minutes of Regular Meeting of October 26, 2009 and seconded by Councilor Olivo.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

APPROVAL OF ACCOUNTS PAYABLES

Motion was made by Councilor Williams and seconded by Councilor Olivo to approve Accounts Payables.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

UNFINISHED BUSINESS

Mayor Armstrong stated next item on the agenda was to Unfinished Business.

There was no Unfinished Business.

OTHER BUSINESS (items are for discussion only-no action will be taken)

Mayor Armstrong stated next item on the agenda was Other Business and no action would be taken.

Mayor Armstrong said the next item was the City of Ruidoso Downs Proclaiming November 15, 2009 as America Recycles Day 2009.

Mayor Armstrong read:

PROCLAMATION

AMERICA RECYCLE DAY 2009

WHEREAS, each year, Americans generate nearly 230 million tons of municipal solid waste. That's more than 4.5 pounds per person per day. While the nation has reached an overall recycling rate of 33 percent, much more can be done, especially in closing the loop and purchasing products made with recycled content;

WHEREAS, to focus the nation's attention on the importance of recycling and closing the loop, businesses, industries, government agencies, nonprofit organizations, and individuals have joined together to celebrate America Recycles Day and are encouraging their employers, staff, customers, membership, and all citizens to pledge to buy more recycled products starting on November 15;

WHEREAS, participating in America Recycles Day 2009 is one-way citizens can help raise awareness about the need to reduce waste by reusing, recycling, and buying recycled products;

WHEREAS, the theme of America Recycles Day is *"It All Comes Back to You"*;

WHEREAS, state and community leaders need to spread the word about the excellent recycling programs they have established, the growth of markets for recyclable materials, the importance of buying recycled products;

NOW, THEREFORE I, Tom Armstrong, Mayor of the City of Ruidoso Downs, do hereby proclaim November 15, 2009 as:

RECYCLE DAY IN THE CITY OF RUIDOSO DOWNS

PROCLAIMED this 9th day of November 2009 in Ruidoso Downs, New Mexico.

Tom Armstrong, Mayor

Councilor Williams said he had a letter from Judy Miller and she was not able to make the meeting tonight but she wanted him to pass on to remind everyone that the e-Waste recycling occurred this Saturday was a big success at Sierra Mall. There was quite a turn out. Judy wanted him to mention that KRDB asked to have the event and date put on the water bills that went out on October 30th and I am here tonight to also make you aware of the importance of these goals for recycling in our community. The committee recently purchased a Recycling Bin from Lincoln County Solid Waste and it was placed in All American Park. In doing so we met our goal for "Recycling" as an affiliate and as required in our grant agreement. KRDB will provide teachers at Nob Hill Early Childhood Center this week with handouts and activity pages about recycling for their students. This will meet the "Educational" goals of the committee as an affiliate. Councilor Williams said Keep Ruidoso Downs Beautiful is working alongside the recycling committees and the other municipalities in the county toward that goal of 100% recycling.

Mayor Armstrong said that was a very good deal for the citizens of Ruidoso Downs and for the whole area everyone should get involved.

Mayor Armstrong stated the next item on the agenda was Update on Joint Use Board Meeting of Friday, October 30, 2009.

Mayor Armstrong said that was a very good meeting with the other JUB members. They all had different ideas on what should happen with the JUB and they have come a long way and everyone made their points. He said they broke good ground. On November 12th they were going to have another meeting for the RFP's for the attorney. Carol Virden, City Clerk/Treasurer said it was for Professional Services. Mayor Armstrong said they had three options. One of them was for us to be a customer. One was to go back and look at the authority as being separate from each of the entities. The other one was to keep the JUB as it was and look at the Bylaws because there was none. That was the option that the JUB voted was to keep it intact and to look at Bylaws. Ned Kendricks is the person that was looking at all the issues that both councils had and wrote letters about what they thought the way the JUB should be handled. He took all of that information and came up with the three options. He said he felt it was a good meeting with keeping the JUB intact with looking at the Bylaws for that.

Mayor Armstrong stated next item on the agenda was Update on Certification of PERA Election Results.

Carol Virden, City Clerk/Treasurer said Mary Frederickson the Deputy Director of Member Services for PERA informed us at the October 29, 2009 meeting of the PERA Board had certified the election tally adopting the Municipal General Membership Coverage Plan II and the certification of the election tally adopting the Municipal Fire

Membership Coverage Plan. She said the plan changes will become effective the first full pay period in November of 2009.

Mayor Armstrong said he had one other item to discuss. He said they were reimbursed for the \$200,000 for the Riverside Well and they have received that. He wanted everyone to know that they got the money back for the Riverside Well and the pipelines that extended from that.

NEW BUSINESS

Mayor Armstrong stated next item on the agenda was New Business-Consider Approving CMC Consulting to Provide Managerial Services to Lincoln County Transit on a Month-to-Month Basis Until Such Time.

Councilor Williams moved to approve CMC Consulting to provide managerial services to Lincoln County Transit on a month-to-month basis until such time. Seconded by Councilor Olivo.

Councilor Williams asked if they needed any information from Mickie?

Mayor Armstrong asked Mickie if she had any input?

Mickie Compton said she would like to share a few things. She said for those who were present when Lincoln County Transit originated and they got the grant, it was made clear that she wasn't in the market for a second career and that she was retired. She said they had received the grant money but they needed someone that was certified in the FTA Compliance issues. She said she agreed to manage the system with the intentions of getting someone trained to take over. Finding someone in the transitional year like the first year to train in a complex area was a lot more difficult than she expected. She said she brought in an individual and when they saw what was going to be required of them they backed off immediately. However, they did have an individual that was on board with them that was very proficient and very able. He understood the budget process and compliance issues. The best-case scenario for the transit system and operations is to actually have an on-staff manager that will be with the transit system for an extended period of time and is looking for a career in that area. The compliance issues change every year. Actually they change every month because this is federal. It is essential that become fluent in them because that is one of the biggest concerns of the DOT. The transit manager's responsibility is to make sure the system operates within federal compliance. When DOT is audited by FTA and they find the system is out of compliance the heat comes down not only on the system and the fiscal agent but DOT as well. It's a very important position. She said she would like to see someone come in, and she would like to return to retirement and train someone explicitly in compliance issues and budget issues and all the directional needs they would need to handle to maintain the transit system. This system is probably one of the best public services that Lincoln County has come to approve. DOT is very happy that the three government entities have been able to come together and provide the match money in order for the system to run. She said it has been an extreme success and their ridership has gone from 600 a month to 1800 a month in less than a year. That's with minimal capital. They have two donated vans and have purchased one. This transition needs to be done with care and consideration for the new individual that is coming into the position. She

said the month-to-month basis would be fine but she said she didn't want it to be another year to get someone.

Mayor Armstrong said they are trying to do what is right also along with her recommendation because she came in saying she would give them a year and we are over that year. He said he has talked with the DOT and they are aware of how important this person is and they are too because they made that known to us. Mayor Armstrong told her thank you for a year and that he was sorry they had not gotten it done yet.

H. John Underwood, City Attorney asked if it would be alright for him to write a simple addendum to the existing contract for a month-to-month basis with a ten-day written notice of termination by either party?

Mickie Compton said that would be acceptable but she would like to read it beforehand.

H. John Underwood said he would send that to her.

Mickie Compton said that's where a lot of confusion and incidents happened because she was blindsided twice so when the last new contract was approved by City Council before she even had the chance to see what they were talking about and they already had it done she said she would admit it was an upsetting issue.

Councilor Hood said he wanted to say thank you to Mickie for the job that she has done. It is a big plus for Lincoln County and everybody that he knows that has used these services is very pleased.

Councilor Williams said regarding the van that is already in place, he asked if they were going to wait until the position of transit manager was filled or were they going to release these with the month-to-month contract?

Mickie Compton said they already have one van on location at Zia Dodge in Albuquerque and the other two will be arriving if not this afternoon. She said she has spoken with DOT and they are comfortable with the plan that has been provided to them as far as her remaining on a month-to-month basis so they could go ahead and proceed with the pick up of the vehicle. When you are dealing with federal money and capital, if for some reason anything were to happen to the transit system, any capital that is purchased with federal funds, and mainly the stimulus money, those items will have to be returned to DOT. The first vehicle that you purchase after five years or 100,000 miles they do become your property.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

Mayor Armstrong stated next item on the agenda was Consider Approving Personnel Recommendations-Positions-(2) PT VSR-Department-Hubbard Museum of the American West.

Jay Smith, Museum Director said these are not new positions but are positions being filled because they have been vacated. The two candidates they were proposing were Jeannine Isom a former administrator for Texas A & M and Connie Hernandez who is presently working for transit and wants to move on to the museum. She expressed great enthusiasm and he said he recommends they approve both candidates.

Councilor Hood moved to approve Personnel Recommendations-Positions-(2) PT VSR-Department-Hubbard Museum of the American West. Seconded by Councilor Williams.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

Mayor Armstrong stated next item on the agenda was Consider Approving Creation of Position of Lincoln County Transit Manager.

Mayor Armstrong entertained a motion to approve to create position of Lincoln County Transit Manager.

Councilor Olivo moved to approve to create position of Lincoln County Transit Manager. Seconded by Councilor Williams.

Councilor Williams said he would like to have some thought about a change or two. He said he would like the "reports to" changed to "governing body" on the job description.

Mayor Armstrong said he believed they did that on a monthly basis all the time.

Councilor Williams said on the job description it says "reports to mayor" and he would like it changed to "governing body." He said the council are the ones to approve these changes and positions and contracts.

Mayor Armstrong said he really feels it is the mayor's job for that to hear it and then if there is a problem it goes back to the council. The council's position is to do the policy and pay the bill. He said he didn't see any reason for them to come to each one of the council members. He said he felt that would be chaos.

Councilor Williams said by stating the "governing body" the governing body does include him and they would come to him. He said he would like the language changed to refer it to the governing body. He said if it said "reports to council" that wouldn't be legitimate. The governing body is what we are here and you are the head of the governing body so he would be in charge and that information would be passed down to them through email or letters or something like that. He said he didn't want him to have the sole authority and that it should be with the governing body.

Mayor Armstrong said most of the directors report to him and he didn't see this one being any different. He said he would not keep any situation from the council and he didn't see what that would help.

Councilor Williams said he didn't understand what the big deal was?

Mayor Armstrong said none of the other director's report to the council in such a manner and didn't see any big deal in going the other way.

Councilor Williams said with that attitude he was not going to support this.

Mayor Armstrong said it was not an attitude; it was the normal workings of the City.

Councilor Williams said for more discussion they don't have again, information about what this position entails or what the requirements are going to be other than the skills and the knowledge factor. He asked what this employee was going to do and what this employee is going to be? He said they already discussed the possibility of \$35,000 but is it going to be \$35,000 or were they going to negotiate a lower salary and is there a benefit package in place for this? We didn't have a benefit package when it was the consulting firm but they will now because it's an employee and it ups the ante when you talk about upping the budget numbers, then the council is involved. He said they don't have the information provided. The job description is fine, it's legitimate and they have some good points in here. But, who is this employee going to be, what position is it going to be with the money involved. He said they need specifics. You can't just say you're going to create a position and just go on a job description as being that position.

Carol Virden, City Clerk/Treasurer said it is the intent of staff for the recommendation that the council create the Lincoln County Transit manager based upon the salary amount under the CMC Consulting month-to-month basis contract.

Councilor Williams said again, the salary is fine but you have to have a whole package if they are going to be an employee of the City. It is that additional cost that we're not aware of as a council member.

Carol Virden, City Clerk/Treasurer said you take that \$35,000 with an additional approximately maybe 15% of that to add with PERA and all the benefits. She said to please remember that there is an 80/20 reimbursement on that. Just as with all the employees of the Lincoln Country Transit there is an 80/20 reimbursement.

Councilor Williams said even though this is going to be a City employee?

Carol Virden said that is correct.

Councilor Williams said he objected again that they didn't have any written information.

Carol Virden said step #1 is to approve the creating of the position of Lincoln County Transit manager. She said they could come to the council with full information as far as the cost of the salary plus all the benefits and give them a picture of the return to the City based on the 80/20.

Councilor Williams said that was just a reasonable request made by him.

Councilor Williams said he would like to make one more change on the second page next to the last sentence plural knowledge of New Mexico Traffic Laws and Defensive Driving.

Councilor Hood said he would also like to have a full packet when they get this where it needs to be.

Councilor Holman said there was so much going on that he wanted it restated as to what they were voting on.

Mayor Armstrong said it was consider approving the creation of the position of the Lincoln County Transit manager with minor amendments to the job description.

Councilor Holman said so they are not voting to incorporate those at this time, we are simply leaving this open for addendum. Is that correct or were they voting to accept this as is as stated originally where this manager would report to the mayor and he said he would assume the City Clerk?

Mayor Armstrong said he believed so.

Carol Virden, City Clerk/Treasurer said the motion was for the job description, motion was made Councilor Olivo and seconded by Councilor Williams that the Lincoln County Transit manager report to the mayor. Although there was discussion by Councilor Williams to have the Lincoln County Transit manager report to the governing body.

Roll call votes: Councilor Hood, Nay; Councilor Williams, Nay; Councilor Holman, Aye; Councilor Olivo, Aye.

Carol Virden, City Clerk/Treasurer informed Mayor Armstrong there was a tie.

Mayor Armstrong said he would break the tie with a yes.

Mayor Armstrong stated next item on the agenda was Consider Approving Wastewater Treatment Plant Operating Invoice for September 2009.

Mayor Armstrong entertained a motion to approve Wastewater Treatment Plant Operating invoice for September 2009.

Councilor Hood moved to approve Wastewater Treatment Plant Operating invoice for September 2009. Seconded by Councilor Olivo.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

PUBLIC INPUT

(All concerns to be addressed only to the Governing Body as a Whole with a 3-minute Time Limit)

Mayor Armstrong stated next item on the agenda was Public Input.

Wayne Williams said he had a question for the legal department. He asked if the Lincoln County Transit manager becomes an employee of the City did that now make the City of Ruidoso Downs legally responsible for any lawsuits that would occur from anything that happens with the transit system like accidents whether it be negligence on the manager's part or the driver's part? It now makes it the City's problem does it not?

H. John Underwood, City Attorney said it would be easy to give a blanket yet but basically anyone who is in the employment of the City and if they bring about a lawsuit while on City business, the City is insured by the Municipal League. The City's insurance would cover that and the City would have representation for that. It doesn't mean the City would be responsible in all situations. Sometimes an employee or a department is out there but not acting in the scope of their employment and if that were the case then the City wouldn't be responsible. Initially the City would be responsible and would be within the lawsuit and then it would be pared out whether the City was responsible for a particular act. Initially the answer to the question is yes.

Wayne Williams said the City of Ruidoso Downs would then be the first one to be sued?

H. John Underwood, City Attorney said amongst the first persons yes.

Wayne Williams said and it would be financially burdensome on the City of Ruidoso Downs to get the issues cleared up? Unless you happen to win or the Municipal League wants to pay the bill.

H. John Underwood, City Attorney said it is included in the ongoing insurance and it was his understanding that the creation of this department within the City would not increase the City's insurance cost or its exposure.

Wayne Williams said if the City has insurance then why were we so determined to get a no fault clause in the contract if they have insurance and can't be sued anyway?

H. John Underwood, City Attorney said in that situation you have an independent contractor, in the situation that we would have with CMC. It is his belief he said that when you have an independent contractor there were things that the City could be sued for that the Municipal League insurance would not cover.

Mary Garcia said the reason she was here is because the bus is very, very important for her to get back and forth to work or to go to Wal-Mart to get her medicine. She said that is what she wanted to say.

A gentleman by the name of Kenneth said he was here to express how much Lincoln County Transit has helped him and his wife and their young son. He said they don't have a car right now it has given them the ability to go back to school to get a better quality of life and Lincoln County Transit is making that possible right now. He said it has given him the chance to go to school and get a degree and get through the door for his family. It is very beneficial to them and there were several people he knows that would like to be here for this meeting but because they don't have cars couldn't. He said he was within walking distance and was able to make it to this meeting. Even a simple thing as going to Wal-Mart or the grocery store and to get your prescriptions is really important and for him especially to get back and forth to school.

EXECUTIVE SESSION

Discussion of all threatening and/or pending Litigation pursuant to Open Meetings Act; Section 10-15-1 Subparagraph (H)7; Escondido Hills Subdivision.

Mayor Armstrong entertained a motion to go into Executive Session for discussion of threatened and/or Pending Litigation Section 10-15-1 Subparagraph (H)7 Escondido Hills Subdivision.

Councilor Williams moved to go into Executive Session for discussion threatened and/or Pending Litigation pursuant to Open Meetings Act Section 10-15-1 Subparagraph (H)7 Escondido Hills Subdivision. Seconded by Councilor Hood.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

Mayor Armstrong said he hereby closed the regular meeting at 6:35 p.m. and invited John Underwood, City Attorney, Carol Virden, City Clerk and Cleatus Richards, Public Works Director and Steve Dunigan, Planning & Zoning Director and called for a five minute recess.

Mayor Armstrong entertained a motion to go back into open session.

Councilor Hood moved to go back into open session. Seconded by Councilor Williams.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

Mayor Armstrong called the regular meeting back to order at 7:12 p.m. and asked that a member of the City Council attest to the fact that the only items discussed in Executive Sessions were that of discussion of threatened and/or pending litigation Section 10-15-1 Subparagraph (H)7 Escondido Hills Subdivision.

Councilor Hood attested to the fact and no action was taken.

Councilor Hood moved to instruct the City Attorney to proceed with appropriate action on Escondido Hills Subdivision. Seconded by Councilor Olivo.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

ADJOURNMENT

There being no further business to attend to Mayor Armstrong entertained a motion to adjourn.

Councilor Williams moved to adjourn at 7:14 p.m. Seconded by Councilor Hood.

All were in favor and motion passed.

Tom E. Armstrong, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer