

December 6, 2011

The City Council of the City of Fort Morgan, Colorado, met this day in the Council Chambers of City Hall. The Honorable Mayor Terry L. McAlister called the regular meeting to order at 6:00 p.m.

The Pledge of Allegiance was given.

Roll Call: Present: Honorable Mayor Terry L. McAlister
Councilmember Scott Bryan
Councilmember Sharol Lyn Deal
Councilmember Debra J. Forstedt
Councilmember Brent M. Nation
Councilmember James A. Powers
Councilmember Ronald Shaver

The meeting was also attended by Acting City Manager/City Attorney Jeffrey Wells, Police Chief Keith Kuretich, Municipal Engineer Brad Curtis, Community Development Director David Callahan, Fire Chief Brad Parker, Fire Department 2nd Captain Mark Frasco, Golf Professional Tyler Tarpley, First Assistant Golf Professional Anna Blake and City Clerk John Brennan.

PRESENTATION AND POSSIBLE ACTION ON BIDS FOR SCBA AIR PACKS FOR THE FIRE DEPARTMENT

Fire Chief Brad Parker reviewed the bid process for this equipment, which he said would replace air packs that were beyond their 15-year life expectancy. He recommended staying with the same type of air packs the department currently has, because the firefighters are trained to use those packs and it would avoid having multiple types of equipment with different features that firefighters would have to become familiar with. Parker asked for approval to accept the bid from MES – Rocky Mountains of Denver for three air packs and three air bottles for a total of \$19,814.40.

Councilmember Debra Forstedt offered a resolution to approve the purchase as recommended, which was seconded by Councilmember Scott Bryan and approved unanimously.

Mayor Terry McAlister then announced that the next item on the agenda, a public hearing on a liquor license application for El Rancho Alegre, would be delayed until after 7:00 p.m., because the public notice posted on the property in October, before the council changed the time of its meetings to 6:00 p.m., stated the hearing would begin at 7:00. The mayor said the council would proceed to other items on the agenda until after 7:00 and then conduct that hearing. He said the council would first take up one item for which representatives of Viaero Wireless had traveled from out of town to attend.

DISCUSSION AND POSSIBLE ACTION ON VIAERO WIRELESS ECONOMIC INCENTIVES

City Attorney/Acting City Manager Jeff Wells reviewed the history of this economic incentive payment, which was owed by the city to Viaero under agreements for past years. Viaero had failed to apply for the incentives in some years, and Wells noted that the application process was somewhat cumbersome. The parties had agreed in 2010 that the payment would be budgeted and made in 2011, because money was not available in the 2010 budget.

Wells introduced Larry Warner and Lisa Hardy from Viaero, and Hardy thanked the council for the incentive payment and resolved to improve the relationship between the two parties and win back the city's business.

Councilmember James Powers then asked Wells about an issue with an overcharge by Viaero to the city when it was providing the city's cell phone service, and whether that had been resolved. Hardy said she was the person who posted the credit to the city's account and that the overcharge had been resolved.

Councilmember Brent Nation offered a resolution to approve the payment of the economic incentives to Viaero in the amount of \$13,866.55, which was seconded by Councilmember Ron Shaver and approved unanimously.

McAlister then presented a check for that amount to Warner.

PUBLIC HEARING ON A REQUEST FOR A REPLAT OF THE INDUSTRIAL PARK SUBDIVISION

Nation announced that he had a conflict because of his involvement with the property and the applicants and said he would recuse himself from this agenda item. Nation stepped down and left the room.

McAlister opened the hearing by reviewing the format and process to be followed, and confirming that proper legal notice of the hearing had been made. Community Development Director David Callahan then presented the application, which he said would correct divisions of land done in the past without the benefit of the subdivision code. Callahan reviewed the history of the land in question and how it came to be in its current state, noting that the issues with the property arose during his site plan review of a proposed 8,000 square-foot building on one of the lots, when he found the lots had not been properly platted.

Callahan recommended conditional approval of the Request for a Third Replat of the Fort Morgan Industrial Park Subdivision, subject to the conditions outlined in his staff memo to the council, which included revising the plat to add provisions for storm water and electrical line easements, proper dedication of Moseley Road Street right of way and a signature block on the plat for the city as owner of Lot D; and that the extension of Industry Drive was not essential and the applicants would not be required to participate in any proportionate share of the costs to extend that street.

No public comments were received, and a motion by Forstedt to close the public hearing was seconded by Shaver and approved unanimously. City Attorney/Acting City Manager Jeff Wells then advised the council of its options for action on the request.

Shaver then offered a resolution to approve the request with the conditions recommended by Callahan, which was seconded by Powers and approved on a vote of 6-0, with Nation stepping down.

Nation then rejoined the meeting.

PRESENTATION AND POSSIBLE ACTION ON A RESOLUTION DELEGATING REPRESENTATION FOR ANNUAL MEETINGS OF WATER AND DITCH COMPANIES

Wells explained that this was a housekeeping resolution that is done annually, and the ditch companies in which the city holds shares require designation of specific individuals to have the authority to vote those shares. The resolution designated Nation as the city's representative and Wells to serve in that role in Nation's absence.

Shaver offered a resolution to approve the resolution as presented, which was seconded by Councilmember Lyn Deal and approved unanimously.

PRESENTATION AND POSSIBLE ACTION ON RE-APPOINTMENT OF MEMBERS TO THE AIRPORT ADVISORY BOARD

McAlister said the airport board had two vacancies but the two people whose terms were expiring at the end of 2011 had re-applied, and he was recommending their re-appointment. Nation made a motion to approve the re-appointments of Vernon Tryon and Dave Oldemeyer, which was seconded by Shaver and approved unanimously.

DISCUSSION AND POSSIBLE ACTION ON RE-NAMING THE FORT MORGAN GOLF COURSE

Golf Professional Tyler Tarpley noted that several members of the golf course advisory board were present to support the proposal to change the course name, which Tarpley said was considered a way to increase the marketability of the course and increase use and revenues. He said the intent was to “brand” the course with a more appealing name and draw attention to the many improvements made at the course in recent years, and that few municipal golf courses use only the name of their locality. He said the name Quail Dunes had been proposed, and would lend itself to an attractive new logo that could also be used to brand merchandise in the pro shop.

Discussion followed on the proposed name, with the council generally supporting the change to help marketing efforts. Wells said the golf advisory board was recommending a new course name, and if the council wished to give the board the authority to decide on the name it could do so. Forstedt made a motion to allow the golf course advisory board to rename the golf course to whatever name that board chose. The motion was seconded by Shaver and approved unanimously.

PRESENTATION AND POSSIBLE ACTION ON A REQUEST FOR PROPOSALS FOR STORM SEWER PIPELINE CONSTRUCTION

Municipal Engineer Brad Curtis reminded the council that the materials for this project had already been approved, and this proposal was for the trenching for the project because the city did not have the equipment to dig 15 feet or more deep.

Curtis said four bids had been received, three from local companies and one from Denver, and he was recommending approval of the lowest local bid from Ransom Boone Excavating at a cost of \$155 per linear foot. Nation offered a resolution to accept the bid from Ransom Boone, which was seconded by Bryan and approved unanimously.

PRESENTATION AND POSSIBLE ACTION ON HISTORIC PRESERVATION BOARD BYLAWS AND CRITERIA, AND TERMS FOR BOARD MEMBERS

Callahan said the council was not required to approve the bylaws under the ordinance that established this board, but he wanted to keep the council advised of the progress of the board and allow the council to review the criteria the board had established and its work on a façade improvement program. He also wanted council approval of the terms assigned to the board members, which were not started until August 2011 although the ordinance creating the board was approved in late 2009. Callahan said this was because the board did not become fully functional until August 2011 and he thought it fair to make that the start date of the board members’ terms.

Wells said the council would need to decide if the historic preservation board bylaws could be changed by a majority vote of that board, because most boards require council approval of

bylaws. Nation said he would like to stay consistent with other city boards and commissions, and other council members agreed.

Nation made a motion to accept the bylaws as presented, with a change to the section on amendments to the bylaws to add that council approval would be required as with other boards. That motion was seconded by Shaver and approved unanimously.

Nation then made another motion to accept the board terms as presented, which was seconded by Powers and approved unanimously.

With the time being 7:04 p.m., McAlister announced that the council would now take up the liquor license public hearing delayed earlier in the meeting.

COUNCIL ACTING AS THE LOCAL LICENSING AUTHORITY – PUBLIC HEARING ON AN APPLICATION FOR A NEW TAVERN LIQUOR LICENSE FOR EL RANCHO ALEGRE AT 129 W. KIOWA AVENUE

Mayor McAlister opened the public hearing at 7:04 p.m. by reviewing the process and procedure that would be followed during the hearing. City Clerk/PIO John Brennan confirmed that proper notice of the hearing had been published in the Fort Morgan Times, and Police Chief Keith Kuretich stated that notice of the hearing had been posted on the property since late October.

Brennan reviewed the history of the application, which was submitted after city officials had made contact with El Rancho Alegre owner Ruben Escorza in September upon learning that he had leased the restaurant portion of the establishment to another party, thereby violating liquor regulations by changing the licensed premises without following the proper procedure and failing to meet the meal requirements of his hotel and restaurant liquor license. It was determined through discussions with Escorza, city staff and the state liquor enforcement division that he should apply for a new tavern license.

Brennan pointed out several inadequacies in the paperwork submitted with the new application, including insufficient proof of Escorza's possession of the property, for which he later submitted copies of two leases. Brennan also noted that petitions Escorza submitted to demonstrate the needs and desires of the neighborhood for the granting of the license, something the applicant has the burden to prove, were deemed insufficient because most of the signers did not indicate whether they supported or opposed the application and many were not residents or business owners in the city. Escorza was given the opportunity to submit new petitions but had not done so, Brennan said.

Kuretich then reviewed his department's investigation related to the application, and said he wanted to present evidence of facts and concerns he had shared with the applicant on two previous occasions during the application process. Kuretich said the number of calls for service to El Rancho Alegre was excessive during the preceding eight months, and there appeared to be a pattern of underage consumption, visibly intoxicated patrons at closing time and open containers of alcohol leaving the premises. Kuretich asked several FMPD officers to testify to these facts and concerns. Brennan swore in all parties who subsequently testified during the hearing, including Escorza.

Detective Steve Vosburg reviewed his overall investigation and referred to three specific incidents that he said appeared to show ongoing violations. He said he and Kuretich had discussed these incidents and their concerns with Escorza so he was fully aware of the concerns. In answer to council questions, Vosburg testified that when police do not proactively perform bar checks and show a presence in areas where concerns such as these exist, criminal activity can spread to the surrounding area. He also said the improper activities around the El Rancho Alegre bar seemed to be more frequent than neighboring bars and that the situation seemed to be escalating.

FMPD officer Joshua Kaber then testified about a second-degree assault case with serious bodily injury that police later learned had originated at El Rancho Alegre, where the victim was “jumped,” and said police had never been notified of the original fight at El Rancho.

FMPD Sgt. Doug Schossow testified about the amount of time the officers on his shift spend at El Rancho during closing time, with all officers on the shift often spending from 1:30 to 2:15 a.m. in the area trying to keep the peace. He related how he had seen a fight start outside El Rancho on the preceding Saturday night, and as he called for support from other officers another fight spread from the bar to the area outside. He said officers did not usually get help from the establishment, with El Rancho bouncers taking individuals outside for police to deal with.

Kuretich said his intent was not to shut down El Rancho but to keep the public safe, including the employees and patrons of the bar and the police. He said the recent history of the establishment was becoming a constant concern and draining the resources of the police department’s patrol.

Escorza then testified that his establishment is the only one in town that plays Spanish, English and Somali music, and the diversity of the patrons can sometimes lead to conflict. He said he appreciated the efforts of the police department and after speaking with Kuretich he was aware of the problems and working to get more security staff to help.

City Attorney/Acting City Manager Jeff Wells asked if Escorza he had any evidence to present to support the needs and desires of the neighborhood for his license, and Escorza said he did not. He said he had had the hotel and restaurant liquor license since 2005. Asked about the insufficient paperwork and lack of follow-up on the application requirements, Escorza said he was working in Denver and sometimes was difficult to reach.

Discussion of the application and the operation of El Rancho Alegre ensued, with council members asking Escorza questions about his insurance coverage, the number of security personnel he has on staff, the training of his staff and other matters. Council members also questioned Wells about the process, what they were being asked to approve or deny and the consequences of their actions.

Council members then offered their own comments. McAlister said the fact that the bar was crowded shows that adults in the city want the establishment, and said the question was not whether there was a desire for the establishment but a question of maintaining control of the operation. Wells said another want and need of the community was for peace and safety, and the testimony of the police officers was evidence of that.

Councilmember Lyn Deal said having all of the police on duty on a given shift working at El Rancho leaves the rest of the city vulnerable to crime, and also noted concerns about all of those people driving home when the bar closes.

Councilmember Scott Bryan said he believed Escorza was distracted from running his business, which required a lot of attention, and said he was concerned that this lack of attention to the management of El Rancho was creating a safety issue for the whole community.

Councilmember James Powers said he had many concerns as well, and asked whether the council should continue the public hearing and give Escorza a chance to re-do the petitions showing the wants and needs of the neighborhood. He said he believed if El Rancho Alegre were not in business, perhaps 80 percent of his patrons would be at other bars in the city, and the whole bar fight issue could not be solved by not having this particular liquor license.

Councilmember Debra Forstedt said she had concerns that it would be irresponsible for the council to continue to expose the city’s police officers to the dangers presented by El Rancho Alegre.

Councilmember Ron Shaver then made a motion to close the public hearing, which was seconded by Forstedt and approved on a 6-1 vote with Powers voting against.

Wells outlined the process the council faced, noting that before approving the application the local licensing authority must establish the needs and desires of the neighborhood, and that the burden is on the applicant to prove this. The council had three options, Wells said: if they

believed this burden of proof had been carried by the applicant, they should approve the application; if not, they should deny and state the basis for the decision; and if they believed they needed more evidence they could still continue the hearing and direct the applicant to provide more information.

Forstedt asked what would be reasonable to ask the applicant to produce and when, and Wells said it would be up to the individual council members to decide what they needed to convince them, and how long would be reasonable. Due to council meeting schedules, he said, he would recommend a continuance of at least 30 days.

Deal asked if the council could ask neighboring property owners for their approval or opposition, and Wells said the local licensing authority should not go out and solicit testimony that is not brought to the authority. He also said the authority could not limit this approval or opposition to a specific part of the city, because the city defines the neighborhood for liquor licensing purposes as the entire city limits.

McAlister asked whether it was legal for Escorza to continue to operate with his old license, and Wells said the license cannot be taken away without due process, so denial of the new application would not automatically revoke the old license. He said staff would recommend a show cause hearing to revoke the old hotel and restaurant liquor license.

McAlister asked if the council would be authorizing him to continue operating in violation of the old license, and Wells said no, Escorza would be doing that but the city would not be endorsing it. McAlister asked whether a fourth option would be to take no action, and Wells said no action would mean the application would die, and in effect that would be a denial. Staff would then recommend a show cause hearing to revoke the old license, Wells said.

Nation then made a motion to continue the public hearing for a minimum of 30 days, or into January, and allow Escorza to present more evidence with the needs and wants of the community. Forstedt seconded that motion, and Powers asked to amend the motion to also say that Escorza provide written evidence to the council of his training with his security people on intoxicated persons and underage service. Nation accepted that amendment to his motion, which was approved on a vote of 5-2 with McAlister and Bryan voting against.

CONSENT AGENDA BY RESOLUTION

Clerk Brennan presented the Consent Agenda for Council consideration, said Consent Agenda being in words, letters and figures as follows, to wit:

CONSENT AGENDA

A. Approval of the minutes of the Nov. 15, 2011 special meeting

All matters listed under the Consent Agenda are considered to be routine business by the Council and will be enacted with a single motion and a single vote by roll call. There will be no separate discussion of these items. If discussion is deemed necessary, that item should be removed from the Consent Agenda and considered separately.

Councilmember Nation offered a resolution to approve the Consent Agenda as presented, which was seconded by Deal and approved unanimously.

PASSED, APPROVED AND ADOPTED this 6th day of December 2010, the vote upon roll call being as follows: Ayes: Mayor McAlister; Councilmembers Bryan, Deal, Forstedt, Nation, Powers and Shaver. Nays: none.

PUBLIC COMMENT / AUDIENCE PARTICIPATION

None.

REPORTS BY OFFICIALS AND STAFF

Wells thanked the utility billing department for its hard work in getting the most recent bills out despite software problems, and said people should be recognizing that their bills have gone down due to the rate decrease enacted in November. Wells reminded utility customers that the gas and electric rate decreases were temporary.

Wells also thanked the city staff who helped with the Christmas Parade of Lights and the lighting of the community Christmas tree, and said staff was working to get holiday music set up to play over the downtown speaker system for the holiday shopping season.

BIDS, MEETINGS AND ANNOUNCEMENTS

Brennan announced upcoming bids and meetings, and McAlister wished Kuretich a happy 50th birthday.

EXECUTIVE SESSION

The regular meeting concluded at 8:42 p.m., and Powers then made a motion to convene the first of three scheduled executive sessions. That motion was seconded by Shaver and approved unanimously. McAlister read the publication notices for all three executive sessions before the first session was convened.

The first executive session had been published as follows:

EXECUTIVE SESSION for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e); AND THE FOLLOWING ADDITIONAL DETAILS ARE PROVIDED FOR IDENTIFICATION PURPOSES: Airport issues.

This session began at 8:55 p.m. and concluded at 9:17 p.m. It was attended by the mayor and city council members along with City Attorney/Acting City Manager Jeffrey Wells and Community Development Director David Callahan.

Following the session the council returned to the open regular meeting, where Forstedt reported that the council had discussed the scheduled topic. No motion was made.

EXECUTIVE SESSION

The council then convened the second executive session. That session had been published as follows:

EXECUTIVE SESSION for a conference with the City attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b); AND THE FOLLOWING ADDITIONAL DETAILS ARE PROVIDED FOR IDENTIFICATION PURPOSES: Riverview Commons.

This session began at 9:21 p.m. and concluded at 9:32 p.m., and was attended by the mayor and city council along with Wells. After the executive session ended, the council returned to open session where Forstedt reported that the council had met in executive session to receive legal advice on the scheduled topic. No motion was made.

EXECUTIVE SESSION

The council then convened the third executive session, That session had been published as follows:

1. **EXECUTIVE SESSION** for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e); AND THE FOLLOWING ADDITIONAL DETAILS ARE PROVIDED FOR IDENTIFICATION PURPOSES: Golf course issues.

This session began at 9:34 p.m. and concluded at 9:47 p.m., and was attended by the mayor, council and Wells. After the session ended the council returned to open session, where Forstedt reported that the council had met in executive session to discuss the scheduled topic. Forstedt then made a motion instructing negotiators to negotiate a resolution of the access issues at the golf course based upon the parameters discussed in executive session, which was seconded by Nation and approved unanimously.

Mayor McAlister adjourned the February 15, 2011 regular meeting at 9:50 p.m.

/s Terry L. McAlister
Mayor

/s/ John J. Brennan
City Clerk