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POPULATION 14,000

CITY COUNCIL
Special Meeting
September 27, 2013
9:00 A.M.
AGENDA

Call to Order/Pledge of Allegiance

1. Resolution Adopting an Infrastructure Capital Improvements Plan (ICIP) for the City of Deming, New Mexico
2. Public Hearing to Consider an Ordinance Approving the Lease of a Commercial Real Estate Property Owned by the City of Deming to Walgreens Co.
3. Public Hearing to Consider an Ordinance Approving the Lease of Real Estate Owned by the City of Deming to J & D Produce, Inc.
4. Public Hearing to Consider Approval of a Liquor License Location Transfer Request for Yoya's Market, LLC.
5. Meeting Adjourned

The next regularly scheduled workshop and meeting is October 14, 2013 commencing at 4:00 p.m. and 6:00 p.m.

CITY COUNCIL SPECIAL MEETING MINUTES

September 27, 2013

Council Present: Linda Franklin, Mayor Pro Tem
Joe "Butter" Milo, Councilor

David Sanchez, Councilor
Bill Shattuck, Councilor

Council Absent: Andres Z. Silva, Mayor

Staff Present: Richard F. McInturff, City Administrator
Aaron Sera, Asst. City Administrator
Glenn Chadborn, Police Captain
Jim Foy, City Attorney

Recording Secretary: Lila Jasso, Administrative Secretary/Asst. Deputy Clerk

Mayor Pro Tem Franklin called the meeting to order and led the pledge of allegiance at 9:00 a.m.

1. Resolution Adopting an Infrastructure Capital Improvements Plan (ICIP) for the City of Deming, New Mexico: Mr. McInturff presented this item to the Mayor and Council. He referenced the resolution and project summary detail, and went over the project summary as ranked in priority. He detailed the first five items of the project summary as being high priority items. They are as follows:

1. Butterfield Trail Landfill Cell Expansion
2. Effluent Reuse and Irrigation Improvements
3. Sewer Lines Replacement
4. Well Upgrades/Optimization/Conversion/SCADA
5. Deming Landfill Closure and Improvements

Mr. McInturff briefly described the lower ranking projects on the project summary list. He mentioned that there was a public hearing held on 9/9/13 to receive public input, and no one from the public was in attendance.

The resolution was read into record by Mr. McInturff and he stated that staff recommends the adoption of this resolution.

Councilor Shattuck motioned to approve the Resolution adopting an Infrastructure and Capital Improvements Plan (ICIP) as presented. The motioned was seconded by Councilor Milo and carried unanimously.

2. **Public Hearing to Consider an Ordinance Approving the Lease of a Commercial Real Estate Property Owned by the City of Deming to Walgreens Co.:** Mr. McInturff presented this ordinance and draft lease to Mayor Pro Tem Franklin and Council. Mr. McInturff referred to the most current lease dated September 13, 2013. He deferred the discussion to the City Attorney, Jim Foy.

Mr. Foy stated that it has been almost one year since the City first started negotiating a lease with Walgreens. He briefly explained that Walgreens is going to lease the real property for a long period of time. He stated that basically, the City will turn over the property to the developer and the developer has one year to build the Walgreens on the property. A concern is that the developer does not come across any environmental issues on the property during construction. Mr. Foy stated that the City would be responsible for any new environmental issues, but his perspective of this happening is low risk. Mr. McInturff stated that the City has a "cushion" of \$100,000 with Bencor, Inc. to cover any environmental issue that may come up. Mr. Foy stated that once the building is completed, it is up to Walgreens to open within three years. If this does not happen within the three year period, the City has the right to terminate the lease.

Mr. Foy summarized the remainder of the document.

Mr. McInturff asked Mr. Foy to touch on the topic of the liquor license. Mr. Foy stated that Walgreens would have to follow the normal procedure to by the New Mexico Regulation and Licensing Division/Alcohol and Gaming Division. He stated that there may be an issue with the issuance of the license due to the proposed location being in close proximity to a church.

Mr. Foy stated that there has been extensive discussion regarding the title of the property and that title insurance would be obtained. Mr. Foy noted that there would be no property tax paid on the property, but there would be taxes paid on the building which Mr. McInturff stated is to be valued at approximately \$3.5 million.

Mr. Foy and Mr. McInturff both stated that the lease is a 20-year lease with the option of a total of up to 75-year lease.

Mr. McInturff read in to record the points contained in the ordinance. He stated that the approval of this lease may be subject to referendum pursuant to Section 3-54-1D, NMSA 1978. The ordinance shall become effective forty-five days after its adoption unless a referendum election is held pursuant to Section 3-54-1H NMSA 1978 Comp.

Mayor Pro Tem Franklin asked if Council had any questions, before opening up the floor to questions from the public. There were none.

The floor was opened up to the public for questions.

Edward Khanbajian, 1721 E. Pine St., asked if Walgreens would be paying any gross receipts tax. Mr. McInturff stated that they would be paying gross receipts taxes on items sold in the store. Mr. Foy added that if they are granted a liquor license, they would pay

taxes on the liquor, as well. Mr. Khanbajian asked about liability insurance and who would be responsible. Mr. McInturff stated that Walgreens would be responsible to have liability insurance at a limit of \$2,000,000 and to name the City of Deming as additional insured. The City's tort claim exposure does not exceed \$750,000.

Mr. Khanbajian asked that since the City owns the land, would Walgreens be responsible for someone getting hurt on the land. Mr. McInturff stated that Walgreens would be responsible. Mr. Foy added that the only way the City would be responsible is if the City, in fact, was at fault.

Mr. Khanbajian asked for clarification regarding the commencing of rent. Mr. Foy stated that the rent commencement date would occur either one year after the City turned over the land to the developer, or when they receive a certificate of occupancy; whichever is earlier. Mr. McInturff added that during construction, they would not be required to pay any rent.

Mr. Khanbajian asked that if the lessee go into default, who would be responsible for the property? Mr. McInturff stated that if they go into default for not paying, the City would go through the process to get the property back; the building would belong to the City of Deming. Mr. Khanbajian asked where the rent money would go and if it would be used for a specific project. Mr. McInturff stated that the funds had not been dedicated towards any particular project and would go back into the general fund.

Mr. Khanbajian stated that he is in favor of the Walgreens project and asked who would benefit from the project. Mr. McInturff stated that both the City and the community would benefit from this project. He added that this began as a joint economic development project between the City and the County, and the whole idea was to have a 24-hour pharmacy in our community.

Mr. Khanbajian asked if the property is worth more than \$1.2 million. Mr. McInturff stated that it is worth the appraised estimates and the return-on-investment would be at 16-17% including property tax, gross receipts tax and rents.

Mr. Larry Caldwell, 711 N. Zinc, stated that he opposes this ordinance because of the comments made by the City Clerk published in the 7/21/12 Deming Headlight. Mr. Caldwell stated that Walgreens is not so optimistic about the environmental consequences, because the contract deals with environmental consequences throughout the entire contract. He objects to this lease because he feels that the obligation it puts on the City to clean up contaminants would be too costly.

Keith Harris, resident of Deming, asked if the City and County both owned the property. Mr. McInturff stated that both the City Council and County Commissioners have agreed to the sales agreement for the City to purchase the property from the County. Mr. Harris expressed his concern of the legality for the City to enter into this lease agreement. Mr. McInturff stated that once the land closes, the City will have the right to legally enter into this lease agreement.

Mayor Pro Tem Franklin asked if there were any other questions.

Councilor Shattuck noted for the record that he would be recusing himself from voting on this item.

Councilor Milo commented that new businesses in our area provide the gross receipt tax to keep Deming growing.

Mayor Pro Tem Franklin reiterated that Councilor Shattuck has recused himself from voting on this item.

Councilor Sanchez motioned to approve the ordinance which approves the lease of a commercial real estate property owned by the City of Deming, New Mexico to Walgreens Co. Councilor Milo seconded the motion and the motion was carried unanimously among the three voting members of Council, which were Council Milo, Mayor Pro Tem Franklin and Councilor Sanchez.

- 3. Public Hearing to Consider an Ordinance Approving the Lease of Real Estate Owned by the City of Deming to J & D Produce, Inc.:** Mr. McInturff presented this ordinance to Mayor Pro Tem Franklin and Council. He referred to the ordinance and lease agreement regarding the Clary Farm. He stated that the Clary farm is in close proximity to the City limits and was being considered to convert the well on this property to the City water system, but due to the fact there was a closer well, the location of a new well was changed to the Keeler Farm well. He stated that this lease is contemplated to be a five year lease with the option to renew at 2 one year extensions. He stated that the rent would be \$18,755 per year and rent could be renegotiated at time of lease extensions. He stated that approval of this lease may be subject to a referendum pursuant to Section 3-54-1D, NMSA 1978. This ordinance shall become effective forty-five days after its adoption unless a referendum election is held pursuant to Section 3-54-1H NMSA 1978 Comp.

Mayor Pro Tem Franklin asked if there were any questions from Council. There were none.

She opened the floor to the public for comment.

Larry Caldwell, 711 N. Zinc, opposed this ordinance because J & D Produce will not pay any property tax, due to the City owning the property, and them renting it. He stated that they would escape supporting the public schools due to them renting the property. Mr. Caldwell feels that the rent is too low for a property of this nature.

Edward Khanbajian, 1721 E. Pine St., asked who the owners of J & D Produce are. Mr. McInturff stated that the principal is out of Texas. Mr. Khanbajian asked if J & D Produce has an existing lease with the City. Mr. McInturff stated that J & D Produce currently leases the property known as the Lehman Farm. Mr. Khanbajian asked how many acres are contained in the subject property of the new lease. Mr. McInturff stated that there are 136.4 water right acres which will be leased at \$137.50/water righted acre.

Frederick Sherman expressed his concern about provision for mining the property. He explained that when onions are planted there has to be crop rotation to provide nutrients to the land. He also expressed his concern regarding the drawdown of water for irrigation of this farm.

Councilor Shattuck motioned to approve the lease of the real estate owned by the City of Deming to J & D Produce as presented by the ordinance. Councilor Sanchez seconded the motion, motioned carried unanimously.

4. **Public Hearing to Consider Approval of a Liquor License Location Transfer Request for Yoya's Market, LLC:** Mr. McInturff presented the request to Mayor Pro Tem Franklin and Council. He referred to the communication from the New Mexico Regulation and Licensing Department Alcohol and Gaming Division which included an application requesting a transfer of location. Mr. McInturff explained that the applicant currently hold a license to sell package liquor on the premises and is requesting to exercise the dispenser portion of his license for a bar on the premises. This application is a change to the use of the liquor license, which requires the public hearing. Mayor Pro Tem Franklin asked Mr. Foy to explain the process required for a request of this nature. Mr. Foy explained the requirements as set forth by the Alcohol and Gaming Division and stated that the only issue the City has to be concerned with is that the issuance would not be detrimental to the public health, safety or morals of the residents of the local opinion district.

Larry Caldwell, 711 N. Zinc, stated that he opposed the approval of this license because it would be detrimental to the public health, safety or morals. He opposes this because he feels that this location is a pivot point between Columbus and Deming and feels that this would increase the danger to those traveling on the Columbus Highway. He expressed his concern of the potential of increases of DUI and DWI violations.

Edward Khanbajian, 1721 E. Pine St., is in favor of the approval of this license. He feel he would rather compete with a private entity than a government owned establishment.

Mayor Pro Tem Franklin asked if there were any other questions. Councilor Shattuck stated that he recused himself from this item due to the fact that he is an affected party. He did state his concern of the establishment being located in a congested area where there are gas pumps and children being in the area of the carwash and the convenience store.

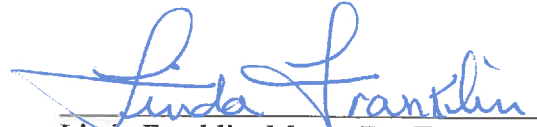
Salvador Gutierrez, the applicant, stated that he has thought out the design for the area and feels that a redesign of the traffic flow in the area would help this issue.

Councilor Milo motioned to approve the liquor license location transfer request for Yoya's Market, LLC. Councilor Sanchez seconded the motion, motion carried unanimously.

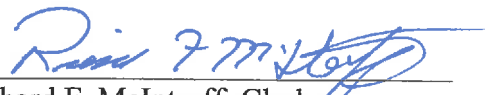
5. **Meeting Adjourned:** With no further business to discuss, Mayor Pro Tem Franklin entertained a motioned to adjourn the meeting. A motion was made by Councilor Milo to adjourn the meeting. The motion was seconded by Councilor Sanchez and motion carried unanimously. The meeting adjourned at 10:10 a.m.



CITY OF DEMING, NEW MEXICO


Linda Franklin, Mayor Pro Tem

ATTEST:


Richard F. McInturff, Clerk

RESOLUTION NO. 13-41

RESOLUTION ADOPTING AN INFRASTRUCTURE CAPITAL IMPROVEMENTS
PLAN (ICIP) FOR THE CITY OF DEMING, NEW MEXICO

WHEREAS, the municipality of Deming recognizes that the financing of public capital projects has become a major concern in New Mexico and nationally; and

WHEREAS, in times of scarce resources, it is necessary to find new financing mechanisms and maximize the use of existing resources; and

WHEREAS, systematic capital improvements planning is an effective tool for communities to define their developments needs, establish priorities and pursue concrete actions and strategies to achieve necessary project development; and

WHEREAS, this process contributes to local and regional efforts in project identification and selection in short and long range capital planning efforts.


NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPALITY OF DEMING
That:


1. The municipality has adopted the attached Infrastructure Capital Improvements Plan, and
2. It is intended that the Plan be a working document and is the first of many steps toward improving rational, long-range capital planning and budgeting for the New Mexico's infrastructure.
3. This Resolution supersedes the previous Resolution.

PASSED, APPROVED AND ADOPTED by the governing body at its meeting of
September 27, 2013.



CITY OF DEMING, NEW MEXICO


Linda Franklin, Mayor Pro Tem


Richard F. McInturff, Administrator/Clerk

ORDINANCE NO. 1240

**AN ORDINANCE APPROVING THE LEASE OF A COMMERCIAL
REAL ESTATE PROPERTY OWNED BY THE
CITY OF DEMING, NEW MEXICO TO WALGREENS CO.**

WHEREAS, the City of Deming is proposing to lease all of Block 79 of the Boles Addition except for lots 12, 13, 14, 29 and 100 feet of the south alley Right-of-Way to Walgreens Co., an Illinois Corporation.

WHEREAS, the City of Deming pursuant to section 3-54-1 and 3-17-3 NMSA 1978 Comp. has published a Notice of Proposed Ordinance Approving the Lease of Real Estate owned by the City of Deming.

NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEMING, NEW MEXICO:

1. The City of Deming, New Mexico shall lease to Walgreens Co. certain real estate in Luna County, New Mexico described in Exhibit A, attached hereto by reference.
2. The final term of the land lease is for 75 years. The lease contains a minimum initial lease price of \$5,166.00 per month and escalating approximately 10% every five years for the first 20 years. After the first 20 years, the rent will escalate 1% per year. The combined appraisal amounts of the various parcels totaled \$1,107,500. The final lease is attached as Exhibit A and incorporated by reference.
3. The City of Deming's purpose in entering into this lease with Walgreens Co. is to receive a return upon this real estate, to stimulate economic activity in the downtown area, encourage redevelopment in our core business district, enhance the City and County tax base, and add employment to the community.
4. The approval of this lease may be subject to a referendum pursuant to Section 3-54-1D, NMSA 1978. This ordinance shall become effective forty-five days after its adoption unless a referendum election is held pursuant to Section 3-54-1H NMSA 1978 Comp.

PASSED, ADOPTED AND APPROVED by the City Council, City of Deming, New Mexico, this 27th day of September, 2013.



CITY OF DEMING, NEW MEXICO

By Linda Franklin
Linda Franklin, Mayor Pro Tem

ATTEST:

Richard F. McInturff
Richard F. McInturff, Clerk

ORDINANCE NO. 1241

AN ORDINANCE APPROVING THE LEASE OF REAL ESTATE OWNED BY THE CITY OF DEMING, NEW MEXICO TO J & D PRODUCE, INC.

WHEREAS, the City of Deming is proposing to lease real estate to J & D Produce, Inc., a corporation whose address is P.O. Box 1548, Edinburg, TX 78540.

WHEREAS, J & D Produce, Inc. has requested that the City of Deming lease them the farm real property herein after referred to as "the Clary Farm" for farming operations;

WHEREAS, the City of Deming pursuant to section 3-54-1 and 3-17-3 NMSA 1978 Comp. has published a Notice of Proposed Ordinance Approving the Lease of Real Estate owned by the City of Deming.

NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEMING, NEW MEXICO:

1. The City of Deming, New Mexico shall lease to J & D Produce, Inc., certain real estate in Luna County, New Mexico described in the survey-Exhibit B, attached hereto by reference.
2. The term of the lease, the identity of the lessee and the annual lease price of eighteen thousand seven-hundred fifty-five dollars (\$18,755) are described in the lease agreement-Exhibit A and attached hereto by reference.
3. The estimated market value of the Clary Farms is three-hundred ninety thousand dollars (\$390,000).
4. The City of Deming's purpose in entering into this lease with J & D Produce, Inc. is to receive a return upon this real estate and water right investment and in order to produce general fund revenue for the City of Deming from proceeds of the lease while simultaneously putting the already purchased water rights to beneficial use in a farming operation.
5. The approval of this lease may be subject to a referendum pursuant to Section 3-54-1D, NMSA 1978. This ordinance shall become effective forty-five days after its adoption unless a referendum election is held pursuant to Section 3-54-1H NMSA 1978 Comp.

PASSED, ADOPTED AND APPROVED by the City Council, City of Deming, New Mexico, this 27th day of September, 2013.



ATTEST:

CITY OF DEMING, NEW MEXICO

By Linda Franklin
Linda Franklin, Mayor Pro Tem

Richard F. McInturff
Richard F. McInturff, Clerk