

Minutes of the Special Meeting of the Gallup City Council, City of Gallup, New Mexico, held in the Council Chambers at City Hall, 110 West Aztec Avenue, at 4:00 p.m. on Tuesday, November 27, 2012.

The meeting was called to order by Mayor Jackie McKinney.

Upon roll call, the following were present:

Mayor:	Jackie McKinney
Councilors:	Mike Enfield Allan Landavazo Cecil Garcia E. Bryan Wall
Also present:	Dan Dible, City Manager George Kozeliski, City Attorney

Presented to the Mayor and Councilors was the following presentation and informational item:

1. Presentations Concerning the Proposed Quiet Zone

Mayor McKinney introduced the following presenters: Carolyn Cook, Senior Crossing and Trespass Prevention Regional Manager, Federal Railroad Administration, United States Department of Transportation (USDOT), Austin, Texas; Kamalah Minor, Manager Public Projects, Burlington Northern Santa Fe (BNSF) Railroad, Kansas City, Kansas; Richard Barnitz, Project Engineer, BNSF, Belen, New Mexico; John Whatley, Engineering Coordinator, Transit & Rail, New Mexico Department of Transportation (NMDOT), Santa Fe, New Mexico; and Abiel Carrillo, Molzen-Corbin, Consulting Engineers on the Proposed Quiet Zone Study, Albuquerque, New Mexico. Mr. Kozeliski said Ed Zendel, Risk Services Director, New Mexico Self-Insurers' Fund (NMSIF), Santa Fe, New Mexico, was available by telephone, if needed.

Ms. Cook presented a power point presentation on the proposed quiet zone to be established at the Second and Third Street railroad crossings. A copy of the power point presentation is attached hereto, marked as "Exhibit A", and made a part of these official Minutes.

Ms. Minor said she did not have a presentation to offer; however, she was present to answer any questions concerning the establishment of a quiet zone and BNSF's role in the process.

Mr. Barnitz also said he did not have a presentation to offer but was available to answer any questions regarding the technical aspects of establishing a quiet zone and BNSF's role in the process. Mayor McKinney asked if BNSF was supportive of quiet zones. Mr. Barnitz responded yes.

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Mr. Whatley said his primary function with the NMDOT is to administer the Section 130 program, which consists of the use of federal funds for safety improvements at railroad crossings. Section 130 funds may be used for the median improvements as previously described in Ms. Cook's presentation; however, the funds may not be used for quiet zone improvements. Mr. Whatley said he is working with the City's Public Works Director to install median improvements at the Mentmore and Allison railroad crossings.

Mr. Carrillo said his company conducted a feasibility study on the proposed quiet zone for Gallup. He said the study provides information on the Locomotive Horn Rule as alternatives for maintaining the existing supplemental safety measures, maintaining one-way streets with pedestrian enhancements and the implementation of way-side horns with pedestrian enhancements. Way-side horns would not be a recommended alternative since the nearby businesses would continue to experience the high decibel levels from the way-side horns at the railroad crossings. He said the primary factor that needs to be considered in all of the alternatives presented is the pedestrian activity that occurs in the vicinity of the railway. He mentioned the "grade separation" option that has been reviewed by City officials; however, the option is very costly. Pedestrian gates at the railroad crossings would be ineffective since pedestrians may easily walk around the gates.

Since Mr. Zendel was not in attendance at the meeting, Mayor McKinney made reference to a memorandum from Mr. Zendel that was disseminated to the Mayor and Councilors. A copy of Mr. Zendel's memorandum is attached hereto, marked as "Exhibit B", and made a part of these official Minutes. Mr. Kozeliski said the memorandum states that from a liability standpoint, the NMSIF is concerned that the City of Gallup may be increasing its liability exposure by creating a quiet zone. Mr. Kozeliski said the NMSIF needs additional information regarding the matter to determine the additional risk the City may be exposed to and to provide a quote for liability coverage.

Councilor Wall asked if the City pays the NMSIF for insurance coverage. Mr. Kozeliski said the City pays a premium to the NMSIF for insurance coverage based on the City's risk factor. Mr. Kozeliski said the City currently has no risk factor or liability for trains; however, if the City establishes a quiet zone, the NMSIF will need to establish a risk factor for the City to determine the City's insurance premium for coverage. In order to determine the risk factor for the quiet zone, Mr. Kozeliski said the NMSIF will need to know the safety enhancements that will be implemented at the railroad crossings. Mr. Dible said the NMSIF may not be able to provide liability coverage for the quiet zone at all.

Councilor Enfield said the most efficient, cost effective way to address the situation may

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be to close the railroad crossings. Councilor Enfield asked Mr. Whatley if the construction of a pedestrian overpass could be funded with Section 130 federal funds. Mr. Whatley said a pedestrian overpass could be considered a luxury as there are other safety funds available through the State that could be applied for and obtained for a pedestrian overpass. Mr. Whatley said there are insufficient funds in the Section 130 program for an overhead pedestrian crossing which would cost about \$2 million to \$5 million. For about \$10 million, Mr. Whatley said the City could construct an underpass at Second Street, transform Second Street from a one-way to a two-way street and close the Third Street railroad crossing. Mr. Whatley said the problem is not with the railroad crossings but with the pedestrians trespassing along the railroad right-of-way. He said unless Gallup finds a way to solve the pedestrian trespassing problem, there will always be a train horn sounding in Gallup.

Councilor Landavazo asked Ms. Cook if train horns are required to be sounded due to the foot traffic and the work being done within the train yard west of Third Street. Ms. Cook said the train yard could always be the reason for the sounding of train horns twenty-four hours a day. Councilor Landavazo said if the City closes the Second and Third Street crossings, will the train horns continue to be sounded due to the work being done within the train yard west of Third Street. Ms. Cook said the train horns will not be sounded if the railroad crossings are closed; however, the sounding of the horns in the yards fall under BNSF's operating rules. Mr. Barnitz said most of the signal indications for the switch work that is being done in the yard are currently being done by radio rather than by sounding the train horns. Mr. Barnitz said all train horns will be sounded when maintenance workers are working on the railway. Councilor Landavazo said he wanted to make sure everyone understood that a quiet zone is not a "quiet" zone as train horns would continue to be sounded for safety reasons. Councilor Landavazo also said a determination needs to be made to see if the sounding of the train horns will be reduced enough to warrant the major expenses of implementing the changes required for the quiet zone. In addition to the sounding of train horns during the switch work being done at the train yard and to alert maintenance workers working along the railway, Mr. Barnitz said trespassing pedestrians will always be the issue in Gallup as train horns will always be sounded to warn pedestrians near the railway.

Councilor Garcia asked if train horns are required to be sounded 15-20 seconds prior to reaching a railroad crossing. Ms. Cook concurred. Councilor Garcia said when there is no pedestrian or vehicle traffic train horns will be sounded 15 to 20 times beginning one-quarter of a mile away. Councilor Garcia expressed concerns with businesses losing customers due to the abusive sounding of the train horns and asked if there were laws governing the sounding of horns by train engineers. Ms. Cook reiterated the federal rule from her earlier presentation and said the railroad company may have their own rules for sounding train horns. Mr. Barnitz said federal law and the operating practices

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of the railroad requires the sounding of train horns at each individual crossing as well as any trespassing pedestrians or maintenance workers working along the railway. Mr. Barnitz said it may seem excessive when there are crossings at Allison Road, Second Street, Third Street and a private crossing near Baskin Robbins.

Councilor Landavazo asked if there were a certain number of horn blast required at each crossing. Mr. Barnitz said the usual horn pattern for a railroad crossing is two short blasts, one long blast and one short blast; however, he was uncertain of how many cycles of the horn pattern is sounded at each crossing.

Mayor McKinney said he previously worked at a business located at the Second Street crossing. He said when the railroad performs its switch work, the crossings at Second and Third Streets are blocked by the railroad for 30 to 45 minutes at a time. Unfortunately, Mayor McKinney has witnessed many pedestrian accidents and deaths as a result of impatient pedestrians climbing over or under the trains to get to the other side of the tracks. He asked BNSF officials to address the problem with blocking the railroad crossings for an excessive amount of time, especially during the noon and one o'clock hours every day. By shortening the time of blocking the railroad crossings, Mayor McKinney believes it would resolve about 75% of the pedestrian accidents. He has also heard of train engineers sounding their horns to let their wives know they are passing through town. Mayor McKinney also asked BNSF officials to instruct their engineers on the proper use of sounding train horns. Ms. Minor said the railroad crossing should not be blocked longer than ten minutes and she encouraged residents to call the toll free number to contact BNSF regarding potential problems. Ms. Minor also recommended holding a public meeting to discuss community issues with the railroad. Ms. Cook said there are no federal rules regarding the trains blocking railroad crossings. Discussion followed concerning whether BNSF's ten minute rule applied to non-moving trains blocking the crossing for more than ten minutes or for railroad traffic blocking the railroad crossing for a period of ten minutes. Ms. Minor confirmed that the ten minute rule applied to vehicles being stopped and blocked at a crossing for a period of ten minutes; however, a longer time period is required for the switching of railroad cars. Mayor McKinney asked BNSF officials to conduct their company's switch work during the evenings when traffic volumes are down. Mr. Barnitz said he does not have the authority to alter the local operations of BNSF; however, he will inform BNSF's Gallup operations concerning Mayor McKinney's requests. Mayor McKinney said he would like to meet with representatives from BNSF's Gallup operations to discuss issues concerning the railroad crossings.

Councilor Wall said when he owned a nursery, he and his cousin used to install an underground electric wire along a new lawn they installed to keep animals off the grass. Although the animals would receive a warning shock, the shock would not harm the

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animals. Since the matter with railroad is a safety issue, Councilor Wall recommended installing an electric wire that would give pedestrians a harmless warning shock to prevent them from crossing the tracks when the arms of the gates come down. Councilor Wall asked if the proposed quiet zone would be joint venture between the City and the County. Mr. Kozeliski said the proposed quiet zone would not include the County; however, he discovered earlier in the day that Second Street is a State highway and Third Street is a City street. Mr. Kozeliski said if a quiet zone is to be implemented the State will need to request the quiet zone for the Second Street crossing and the City will need to request the quiet zone for the Third Street crossing. Councilor Wall presented varying cost estimates and alternatives for implementing a quiet zone, which ranged from \$70,000 to \$270,000. The cost estimates and alternatives were prepared by Molzen-Corbin originated from the material that was distributed at previous meetings. Councilor Wall said he does not believe the costs for implementing a quiet zone is outrageous and the City should move forward with the project since it has excess funds in reserve that could be used for the project. Councilor Wall said he believes the City has \$75 million or \$84 million in reserve, but was uncertain of the exact amount of funds since he has not received the information he requested from the City Manager five weeks ago. Councilor Wall said questions need to be answered concerning the City's liability exposure if a pedestrian is harmed a certain distance from a railroad crossing. Mayor McKinney said the City does not have \$75 million or \$84 million in cash reserves and directed Mr. Dible to meet with Councilor Wall concerning the City's cash reserves and financial status. Mr. Dible said he would like to inform the representatives of the state and federal agencies present that the majority of the City's cash reserves is dedicated to the City's utility funds. Councilor Wall asked about the amount of cash reserves in the City's utility funds as well as funds in savings accounts, bonds and other investments. Mr. Dible said he will respond to Councilor Wall in writing.

Mayor McKinney recognized State Senator George Munoz who was present in the audience.

Mayor McKinney opened the floor for public comments and questions.

Mary Ann Armijo, former City Councilor, said she is married to an engineer and understands the issues concerning the railroad. She said the pedestrian problem needs to be addressed and remembers a time when four pedestrians were killed during a period of 1 ½ weeks. One of the four fatalities that occurred involved Ms. Armijo's husband as the train's engineer. She said her husband currently operates a switch engine and has witnessed the daily traffic and pedestrians at the railroad crossings. She conveyed her husband recommendations to close the railroad crossings and to construct a pedestrian bridge over the railway.

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Chuck Van Drunen asked Ms. Cook if it was true if Gallup would qualify for a quiet zone with the existing gates at the railroad crossings. Ms. Cook responded "technically true." Mr. Van Drunen said technically the City could have a quiet zone with no additional cost since the risk index would be significantly reduced with the current use of "SSM 14." Mr. Van Drunen said he is not proposing the implementation of a quiet zone with the existing gates due to the current problems with pedestrians. Mr. Van Drunen asked Mr. Whatley to verify the costs for constructing a foot bridge over the railway. Mr. Whatley said it would cost \$3 million to \$5 million to construct a pedestrian bridge in accordance with Americans with Disabilities Act (ADA) standards. Mr. Van Drunen expressed his concerns with the high costs for constructing a foot bridge. Regarding the option of closing the railroad crossings, he said the problem would be solved; however, there are currently 10,000 cars crossing the intersections at Second and Third Streets on a daily basis and residents would need to use either the Miyamura or the Munoz overpasses to get from one side of town to the other. Mr. Van Drunen said the overpasses already sustain 10,000 cars on a daily basis. He also said if the railroad crossings are closed it would be detrimental to the downtown business activity. Mr. Van Drunen asked Mr. Carrillo if the proposed pedestrian upgrades would be considered ASMs (Alternative Safety Measures). Mr. Carrillo said by upgrading the railroad crossings from a two gate system to a four gate system is an SSM (Supplementary Safety Measure); however, the four gate system is intended for motorists. Mr. Van Drunen said the current risk assessment at the local crossings with the train horns is 106,000. With the implementation of the safety measures, Mr. Van Drunen said the risk assessment is reduced to 31,000 thus making the railroad crossings safer by 340%. If a quiet zone was implemented, Mr. Van Drunen said the City would be liable for accidents only if the City was negligent in some capacity. Mr. Kozeliski disagreed and said he received information from BNSF concerning their success with winning lawsuits against them; however, it costs BNSF \$100,000 to \$150,000 per lawsuit which also figured into their insurance premium. Mr. Kozeliski also said the cost for defending a case is enormous which is also figured into the cost for insurance coverage. Based on his research, Mr. Van Drunen said quiet zones across the country pay \$1,000 per crossing per year for liability insurance. Mr. Van Drunen said the Village of Milan, having a risk index of 30,000, does not pay anything to the NMSIF for the added coverage for their quiet zone.

Labor Persinger, downtown business owner, said the future of Gallup depends on the decisions made by the Mayor and Councilors. Although the downtown area is very noisy, he asked the Mayor and Councilors for their help in making a "better zone", rather than a quiet zone, in the downtown area.

Mayor McKinney said the purpose of the meeting is to conduct an open forum on the proposed quiet zone. No action will be taken by the Council during the current meeting.

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Lindsay Mapes, Executive Director of the Business Improvement District, asked the Mayor and Councilors not to consider the closure of the Second Street and Third Street railroad crossings. She said closing the crossings would negatively impact the business climate in the downtown area and adversely affect gross receipts tax revenues.

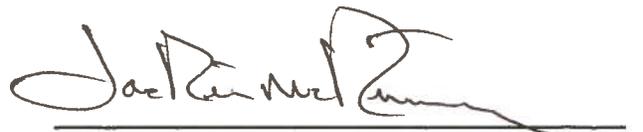
Fitz Sargent, downtown business owner, said he personally likes the train noise but does not want to compromise the future of downtown Gallup where it is difficult to do business. He said there are two benefits for resolving the issue: saving lives and giving downtown Gallup an opportunity to move ahead. He said he cannot imagine a city not spending \$400,000 or \$500,000 to save 5 lives over a ten year period and to give downtown an opportunity to move ahead.

Martin Neal thanked the Mayor and Councilors for holding the public forum. He said the matter is a business issue for downtown Gallup and a quality of life issue for local residents that have to deal with the train noise 24 hours a day, 7 days a week. Overall, the matter is not just a business issue or a resident issue, the matter is a community issue.

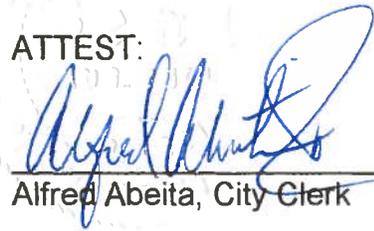
Ms. Armijo asked if a quiet zone is implemented, if all of the liability would fall on the City and not BNSF. Mr. Kozeliski said the engineers and BNSF are immune to any liability and liability is left to the courts to decide.

Mayor McKinney reiterated his request to the representatives from BNSF if they could direct the local trainmaster to meet with him to discuss community issues with the railroad and to provide a refresher course for train personnel on the proper sounding of the train horns.

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


Jackie McKinney, Mayor

ATTEST:


Alfred Abeita, City Clerk

Approved 12/11/2012