

CITY COUNCIL
WORK SESSION/SPECIAL MEETING
TUESDAY, SEPTEMBER 26, 2023

No Work Session/Special Meeting was held this evening.

CITY COUNCIL
REGULAR MEETING
TUESDAY, SEPTEMBER 26, 2023

1. The meeting was called to order in the City Council Chambers at 7:30 p.m., with the Pledge of Allegiance. Roll Call was taken and the following Councilmembers were present: Mayor Rachel Medina, Mayor Pro-tem Arlina Yazzie, Lydia DeHaven, Robert Dobry, Matthew Keefauver, David Rainey, and Dennis Spruell. Staff present included: Chief of Police Vernon Knuckles, Finance Director Kelly Koskie, Community and Economic Development Director Rachael Marchbanks, Community and Economic Development Specialist Helen West, Contract City Planner Nancy Dossdall, Director of Public Works Brian Peckins, Airport Operations Foreman Gary Ordway, City Engineer George Tripp, Court Clerk/Administrator Carla Odell, Library Director Isabella Sharpsteen, Airport Manager Jeremy Patton, Human Resources Director Matt Cashner, Director of General Services Rick Smith, Deputy City Clerk Donna Murphy, City Clerk Linda Smith, City Manager Drew Sanders, and City Attorney Patrick Coleman. There were approximately 58 people present in the audience.

Councilmember DeHaven moved that the agenda of September 26, 2023 be approved. Councilmember Dobry seconded the motion and the vote was as follows:

DeHaven	Dobry	Keefauver	Medina	Rainey	Spruell	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

2. The Consent Agenda items acted upon by Council were as follows:
 - a. Approval of the Council Worksession and Agenda Minutes for September 12, 2023.
 - b. Approval of the Expenditure List for September 26, 2023.
 - c. Approval of a renewal Tavern Liquor License for Purple Sage Rib Company & Saloon, LLC, DBA Purple Sage Rib Company, located at 2591 East Main Street, Cortez.
 - d. Approval of a Special Event Permit application for Crow Canyon Archaeological Center to host a special event on Thursday, October 12, 2023, and Friday, October 13, 2023, from 4:00 to 10:00 p.m., on the premises of Montezuma County Senior Center Annex, located at 107 North Chestnut Street, Cortez.
 - e. Approval of Three Special Event Permits for The Good Samaritan Center to host fundraiser events on September 27, October 25, and November 29, 2023, at Buffalo Bob's, located at 90 North Mildred Road, Cortez.

Councilmember Dobry moved that the Consent Agenda be approved as presented. Councilmember Keefauver seconded the motion, and the vote was as follows:

DeHaven	Dobry	Keefauver	Medina	Rainey	Spruell	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

3. PUBLIC PARTICIPATION

a. John Lund and Collin Rader, Durango, stated that they are realtors and work in the area and wanted to know where the City was at in opting in to Proposition 123 which offers grant funding for affordable housing. City Manager Sanders asked that Ms. Rader and Mr. Lund speak with the City's Economic Development (Planning) Department about affordable housing in Cortez.

b. James Mischke, North Street, Cortez, spoke about noise and the health hazards from high decibel levels. He suggested that the City establish a baseline at several locations throughout the City and devise a plan that would help with noise issues. He asks that Council stay in touch with the community and ask for their help.

4. PRESENTATIONS

a. Swear in Jeremy Patton as Airport Director. Jeremy Patton took his Oath of Office as Airport Director. Council congratulated Mr. Patton for all his hard work at the Airport and welcomed his family which were present for a photo.

b. 2023 August Financial Statements. Director of Finance Koskie spoke about the Financial Statements noting the sales tax revenue amount through August 2023. Revenue for the 2024 proposed budget has been projected to be flat. She noted the net income (income minus expenses) for the Golf Course through August was \$106,463 which is a \$10,000 increase from the entire prior year. Also, the City Clerk budget looks like it is unusually under budget; however, the money budgeted for election expenses has not been spent this year.

5. PUBLIC HEARINGS

a. New Hotel and Restaurant Liquor License for El Campestre Mexican Restaurant, LLC. Deputy City Clerk Murphy stated that Alejandro Ceballos, owner of El Campestre Mexican Restaurant, LLC, has applied for a new Hotel and Restaurant Liquor License. El Campestre Mexican Restaurant will be located at 1430 East Main Street, Suite 6, Cortez. Fingerprints and an individual history record have been completed on Mr. Ceballos and is on file with the City. Chief of Police Knuckles was sworn in and presented his report concerning the issuance of a new Hotel and Restaurant Liquor License noting that public notice for the request was completed on August 8, 2023 with a property sign placed on the property and notice was also placed in the newspaper on September 13, 2023. A poll of the surrounding neighborhood showed 30 people in favor of granting the license, 6 against, and 7 with no opinion. The location complies with the Colorado Liquor Code Rules and Regulations and the location does not create any known public safety issues or endanger public health. The report from Chief Knuckles was entered into the record. Gerardo Rojas and Alejandro Ceballos, applicants for the new Hotel and Restaurant Liquor License, presented their petitions and commented that their new restaurant will be located next to the Thai Restaurant. They said they would be open soon and invited everyone to come by. Their petitions were presented to City Council. The public hearing was opened; however, no one spoke and the

hearing was closed.

Mayor Pro-tem Yazzie moved that after considering the reasonable requirements of the neighborhood, the desires of the adult inhabitants, the necessity of any restrictions on the license, the good moral character of the applicants, and compliance with all the provisions of Colorado Revised Statutes Section 44-3-301, City Council approve a new Hotel and Restaurant Liquor License for El Campestre Mexican Restaurant LLC, located at 1430 East Main Street, Suite 6, Cortez. Councilmember Keefauver seconded the motion and the vote was as follows:

DeHaven	Dobry	Keefauver	Medina	Rainey	Spruell	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

b. Resolution No. 24, Series 2023. Contract City Planner Dosdall stated that a letter has been received from the applicants asking that the review of the site development for a new office building on property located at a to-be-determined (TBD) address on North Sligo, be continued until October 24, 2023.

Councilmember Dobry moved that Council continue Resolution No. 24, Series 2023, approving the site development plan for a new office building on property located at (60 and 72 guess) TBD North Sligo, Cortez, Colorado, in the Commercial Highway (C) zone, to October 24, 2023 as requested by the applicants. Mayor Pro-tem Yazzie seconded the motion, and the vote was as follows:

DeHaven	Dobry	Keefauver	Medina	Rainey	Spruell	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

c. Ordinance No. 1322, Series 2023. City Attorney Coleman stated that two items have come up that he would like to address: one of the items is in regard to spot zoning and the other is two lawsuits from the 1980's. City Attorney Coleman noted that spot zoning occurs when a small parcel is changed to a zone clarification that is entirely different than the surrounding property, and that does not mean the immediately adjacent properties, it means the properties in the area. He stated that one of the items that courts look at for spot zoning is the size of the parcel, and the proposed property for Independent Log Company is about 10 acres and would not be considered spot zoning as there are a number of industrial parcels in the general vicinity. He stated that he concurs with the staff report that this project is not considered spot zoning. City Attorney Coleman addressed the other issue that has received a lot of comment regarding the precedential value of two lawsuits, one in 1983 and one in 1984. He stated that the first case was an appeal of a Board of Adjustment (not City Council) decision that had revoked a building permit issued by the building official. He noted that the zoning on the property had already been approved by Council prior to the activity taking place and no one appealed the zoning. He stated that the second lawsuit was in regard to the land owner at the time seeking an injunction claiming that their constitutional rights had been violated; however, that case was dismissed on procedural grounds. It was noted that the cases were State District Court cases and there is no legally binding precedential value. Council can consider, if they chose to, to look at some of the reasoning that the Court used in upholding the revocation of the building permit as there were issues discussed; however, there was a different Land Use Code in 1983 and 1984 and the zoning on the property was IM (light industrial zoning) which the City does not have that zoning today. Also, noted there was a different Comprehensive

Plan in 1983.

Councilmember Rainey made a statement that he had attended the Planning and Zoning meeting (which was a public meeting and also live streamed) on this subject; however, he did not participate in the meeting but was there to gather facts about the project. Councilmember DeHaven stated that she had recently purchased a home located on Market Street, southeast of the subject property; however, she does not believe that her home ownership creates a conflict-of-interest or otherwise requires her to recuse herself from voting on the land use applications related to the subject property.

City Planner Dossdall stated that Ordinance No. 1322, Series 2023, would amend the City of Cortez Zoning Map for a 9.64-acre parcel located at 1050 Lebanon Road, Cortez, Colorado, to change the zoning on the parcel from C, Commercial Highway to I, Industrial District. A presentation was made on the location of the property and the surrounding properties which include residential, commercial, Carpenter Natural Area, commercial/industrial properties and a mix of uses in the County. Also, the City's Industrial Park is located north of the property. The owners/applicants, who are doing business as Independent Log Company, also own the parcel located at 1107 Lebanon Road directly west of the subject property, and are already using the property for equipment and material storage for the business. The request, if approved, would partially bring the property into conformance with the Land Use Code. The application was reviewed in regard to the request from the applicants to operate and maintain equipment which is used for wildfire response including trucks, trailers, water trucks, earth moving equipment, and chain saws. According to the applicants, for the most part, the equipment is off-site at wildfire events during the wildfire season and returns for storage during the winter months. In addition to wildfire response, the company conducts wildfire mitigation services which primarily include tree cutting and thinning services. The cut trees are then brought to their properties, prepared and used in several ways, depending on the quality and size of the product, including log home construction, wood furniture construction, fence materials and firewood. These uses would most likely be considered "manufacturing" in that the proposed application does not anticipate retail sales of products from the site. It was noted that contractor storage or equipment yards and manufacturing, wood products are similar uses that are listed as Conditional Uses in the "C" zone and permitted uses in the "I" zone, indicating that rezoning is not required, and a Conditional Use Permit would be the only approval required for those proposed uses. However, Section 5.07(j) of the Land Use Code states that "No open storage of materials or commodities shall be permitted in any district except as an accessory use to a main use located in a building in an I or PUD industrial district. No open storage operation shall be located in front of a main building." Staff determined that Section 5.07(j) of the Land Use Code requires a rezoning of the property to the I, Industrial zone, since open storage of commodities is a component of the proposed operation. Land Use Code Section 6.02 (a-h) establishes the criteria for a rezoning amendment. Staff reviewed the findings for the rezone criteria and noted the portions of the Comprehensive Plan that support the rezone and other parts of the Comprehensive Plan that do not support the rezoning. City Planner Dossdall commented that the Planning Commission reviewed the application on July 18, 2023, and failed to pass a motion due to the lack of a majority vote in favor or denial of the rezone on a 2-2 vote – a tie vote means denial. The sample motions for Council to consider for either approving or denying the rezone application were reviewed.

The applicants, Mary Lancaster and Anthony Moore, made statements as to what they would like to

do with the property and commented that there is precedent for the use of the property as the Lively Logging Company is located directly next to their property which has operated since 1973. Ms. Lancaster read a letter from Skip Simmons, Forest Fire Operations Risk Management Specialist, regarding his experience with Anthony Moore and the Independent Log Company. Mr. Moore spoke about his background and his experience as a fire fighter (first responder) and logger. He stated that he wants to be a good neighbor and runs his business with his heart and soul. He shared information that he had completed on noise surrounding his property and presented Council with a noise level decibel chart which he had completed. He stated that he is a resource that is needed in this community and the nation and spoke of the forest fires that he has been involved with over the past few years. He commented that he has been looking for property all over the area and there is not much commercial/industrial property available. He shared information on the properties which he has bought and spoke about the fire fighter academy he wants to bring to the area. Ms. Lancaster spoke about the process that they have been through with the City, which began in May 2020, and shared a timeline that she has kept since her original contact with the City staff. She commented that the residential subdivision on the hill was developed in the 1980's and was aware of all the development below the hill that was commercial/industrial. Also, the Carpenter Natural Area was donated to the City in 1993. She commented that everyone in the area is doing the same thing with their property as Independent Log is requesting to do. Ms. Lancaster spoke about the six properties they have bought in Cortez and what they have done with the properties and intend to do in the future and that Independent Log will do what is needed and will be an asset to Cortez.

Mayor Medina opened the public comment portion of the public hearing. Support for the proposal included 14 citizens with comments including how the company would be an asset to the community; the good character and hard work ethic of the applicants; the use of the property would be similar to what is already being done in the area; support for the family owned business; good jobs that will be available to the community; employees that work for the company and are thankful for their jobs; and the opportunity to diversify the tax base in Cortez.

Citizens that spoke against the proposal were 17 total and their comments included the non-compatibility of an industrial zone with the residents and the park/natural area; concern for noise, light and dust pollution; loss of wildlife in the area; concern for property values of the residential homes; spot zoning; goals of the Comprehensive Plan and Land Use Code requirements not being met; and concern for the core values of the City. The public comment period was closed.

Mr. Moore stated that the noise level decibel chart that was provided to Council was not done by a phone but was completed by a decibel meter. He stated that he would be a good neighbor and would be as quiet as possible. He again emphasized that the highway noise is more an issue than his business would be. Ms. Lancaster spoke about a property on North Market Street that is now listed for more than when it was originally purchased in 2020. She stated that she feels the sale of the property for more than it was originally bought is an indication that Independent Log is not a problem for property values in the area.

Discussion was held on what would be allowed as a permitted use in a Commercial zone. Contract City Planner Dosdall stated that the wildland trucks and equipment would appear to be a permitted use; however, that would need to be reviewed by staff to confirm. Council agreed that the company has a good reputation, is family owned, and offers jobs to people in the community.

Concerns for rezoning the property is about the perception/precedent and what that would mean for the future. Councilmember Keefauver noted that there is a lot of commercial property in the City and a precedent could be set that the City would allow for a commercial property to be rezoned to industrial. He stated that he does not feel the development would affect wildlife as there is wildlife all around the community. He supports the idea of the business but does not feel the property should be rezoned. He stated that he hopes property that is owned by Independent Log that was recently rezoned to industrial would work to accomplish the company's needs that would not be allowed to be done on the commercial lot. Ms. Lancaster stated that Council reviews each project on a case-by-case basis and that Council could decide if a property fits a rezone request or not when presented with the information that would come into play at that time. Councilmember Spruell stated that the character of the applicants is not in question and that he believes the applicants would be good stewards of the land and the surrounding property; however, he is concerned about the future and if the property were sold, what would be allowed on the property if it was zoned Industrial. Ms. Lancaster stated that this is a generational company and will be passed down to the family which she noted the youngest son is in his 20's and asked that Council have confidence in their company which she said is here to stay. Mr. Moore stated that he has contracts with the forest service and is a first responder and award-winning wild fire officer. He stated that he supplies firewood to the tribe as well as community members and that the only thing he has been told he can't do on the property is the open storage of the firewood with the Commercial zone. He stated that if he messes up, the City has the power to revoke his conditional use permit.

Mayor Medina commented that there are available lots in the Industrial zoned area and it is not extremely pressing that the City needs another Industrial parcel at this time. She noted that even if the rezoning is denied it does not mean that nothing can happen on the property as there are many permitted uses for the property and a conditional use permit could be requested for the Commercial property. She noted the permitted uses that would be allowed on the property should it be rezoned to Industrial could include a batch plant, electrical station, and other uses that would not be compatible to the area. She commented that she feels the Commercial use is a good buffer for the area. Councilmember Rainey stated that Council supports the business as the City could use the good jobs; however, the Council wants to do what is right for all of the community. Ms. Lancaster stated that the information on the project was advertised throughout the community and every person that wanted to speak on the issue is here. In answer to a question from Mayor Pro-tem Yazzie, City Attorney Coleman stated that Council is deciding if the use is allowed in a particular rezoning district and if the uses are compatible with the property. He stated that if the zoning is changed it changes the permitted uses and if the zone is changed it becomes permanent unless someone asks for a different zone. Councilmember Dobry referenced the three criteria to be considered for rezoning and stated that he does not feel the proposal meets the criteria; however, he feels the project proposed can meet the criteria through the permitted and conditional uses as a Commercial property. He stated that he feels the property is zoned correctly and serves as a buffer for the residential property. Mayor Medina noted that Council did re-zone a parcel of land recently for Mr. Moore that fit the re-zoning conditions.

Councilmember Keefauver moved that Council deny Ordinance No. 1322, Series 2023, with the following findings:

1. The existing zoning is consistent with the general area and not adopted in error.
2. The proposed industrial uses are not compatible with the open space and residential uses

in the area and may not be able to be adequately mitigated.

Councilmember DeHaven seconded the motion and the vote was as follows:

DeHaven	Dobry	Keefauver	Medina	Rainey	Spruell	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

d. Resolution No. 21, Series 2023. Contract City Planner Dosdall noted that Resolution No. 21, Series 2023, is a review of a Conditional Use Permit for an approximately 10-acre parcel located at 1050 Lebanon Road, Cortez, owned by Anthony Moore and Mary Lancaster, DBA Independent Log. She stated that the request is for a Conditional Use Permit within the Industrial Zone which was not approved during the previous discussion (5c). Staff had completed the review of the Conditional Use Permit with the assumption that the property would be Industrial and therefore the Conditional Use Permit process cannot proceed as requested. City Attorney Coleman stated that a new application would be required for a Conditional Use Permit in the Commercial zone. Contract City Planner Dosdall stated that if the applicants were to withdraw the application and reconfigure it, it would be re-noticed and reviewed again by the Planning and Zoning Commission as well as Council. She read a letter given to her from Anthony Moore and Mary Lancaster which thanked Council for their consideration and time working with Independent Log Company on the rezoning and conditional use permit of 1050 Lebanon Road. The letter continued stating that at this time, we would like to withdraw our Conditional Use application and revise the conditional use that complies with the current Commercial zoning. Independent Log Company would like to resubmit the revised Conditional Use for your review at the October meeting. Contract City Planner Dosdall stated that she would not be able to set a date for the review until the revised application is received. City Attorney Coleman stated that no motion would be required due to the withdrawal of the application.

Mayor Medina thanked the audience for attending and encouraged them to stay engaged in the process.

6. UNFINISHED BUSINESS – None.

7. NEW BUSINESS

a. Resolution No. 23, Series 2023. Contract City Planner Dosdall stated that Resolution No. 23, Series 2023, approves an application for applicants/owners, Robert and Lavona Hansen, to consolidate three existing lots located at 817 North Sligo into one lot. The parcels are identified as Lots 3, 4, and the West ½ of Lot 5, Block 2, in the Morningside Addition to the Town of Cortez. Lot 3 is currently developed with a single-family dwelling with the other two parcels are currently vacant. The parcels are zoned R-1, Residential Single Family. The results of the consolidation of the three lots would be the creation of Lot 4A with a total of 30,274 square feet. The regulations from Land Use Code Section 6.09, regarding plat amendments, was reviewed and it was noted that the request meets the relocation or vacation of one or more lot lines between one or more adjacent lots where the owner or owners of all such property join in the application for the plat amendment. Only one comment was received from the GIS Coordinator that notes all right-of-way dedications and utility easements are carried over from the original Morningside Subdivision plat. There are no concerns with this lot consolidation. 817 North Sligo Street address in use will carry over to the new lot. Staff recommends approval of Resolution No. 23, Series 2023.

Mayor Pro-tem Yazzie moved that Council approve Resolution No. 23, Series 2023, approving the Amended Plat for Lots 3, 4, and the West ½ of 5, Morningside Addition to the Town of Cortez, Colorado, creating Lot 4A, with one condition. Councilmember Dobry seconded the motion and the vote was as follows:

DeHaven	Dobry	Keefauver	Medina	Rainey	Spruell	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

b. Resource Central Quote for Turf Replacement Program Services. Director of Public Works Peckins stated that Public Works searched for Turf Replacement Program (TRP) development service providers in the local area as well as elsewhere in Colorado. The Colorado Water Conservation Board recognizes Resource Central as an approved partner and resource for TRP services. For TRP services comparison, Public Works contacted Resource Central, Montrose County, Plant Select, CSU Extension, EPA WaterSense, and reviewed information for the Town of Erie and the City of Lafayette. The investigation by Public Works determined that all sources provided resource information and cost comparison, but Resource Central was the only one that provided program development and administrative services. Resource Central’s proposal consisted of a one-time \$10,000 development fee and a \$3,000 participant fee for an estimated 30 applicants, as outlined in their work scope. After initial development, Resource Central’s annual cost would be around \$10,000 or less. Grant funding will cover \$5,000 and the City of Cortez would provide \$5,000 of budget or in-kind funding. Resource Central’s proposed cost of \$10,000 was the same cost Montrose County budgeted for in-house program administration. Per Resolution No. 34, Series 2001, this contract amount is below the approval level for formal bid requirements. Following citizen requests and the intent of the Water Conservation Plan, Public Works is planning to develop and implement a Turf Replacement Program (TRP). Public Works applied for and received a \$40,000 TRP grant from the Colorado Water Conservation Board for development and implementation. Since the Public Works Department has staffing limitations, Public Works conducted a TRP service provider search and chose Resource Central as the best option for that task. After some discussion on the bid process, it was recommended that a formal bid process should be completed for the Turf Replacement Program Services due to the City’s established spending authority limits.

Councilmember Dobry moved that Council not authorize the City Manager to enter into a contract with Resource Central to provide Turf Replacement Program Development and Administrative Services for a period not to exceed June 30, 2025 (TRP grant fund distribution deadline). Mayor Pro-tem Yazzie seconded the motion and the vote was as follows:

DeHaven	Dobry	Keefauver	Medina	Rainey	Spruell	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

c. City Council Representative for Mesa Verde Country. City Manager Sanders stated that Mesa Verde Country receives 80% of the collected City lodgers’ tax for promotion of tourism for the area. A member of the Cortez City Council and a City employee are designated to represent the City on the Mesa Verde Country board. Currently Mayor Rachel Medina has been serving as the City Council representative and has asked to have another Councilmember serve in her place. Staff recommends that Councilmember Robert Dobry be appointed to serve on the Mesa Verde Country

board as the City Council representative. Discussion was held on a alternate Councilmember should the authorized Councilmember not be able to attend.

Mayor Pro-tem Yazzie moved that Council appoint Councilmember Robert Dobry to serve on the board of Mesa Verde Country as the sole representative of the City Council. Councilmember Rainey seconded the motion and the vote was as follows:

DeHaven	Dobry	Keefauver	Medina	Rainey	Spruell	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

8. DRAFT RESOLUTION/ORDINANCES – None.

9. CITY ATTORNEY’S REPORT – None.

10. CITY MANAGER’S REPORT – None.

11. CITY COUNCIL COMMITTEE REPORTS

a. Mayor’s Report on Workshop. Mayor Medina stated that there was no Work Session held this evening.

b. Parks, Recreation, and Forestry Advisory Board Meeting. Councilmember Keefauver stated that a Parks, Recreation, and Forestry Advisory Board meeting was held on September 15, 2023 and discussion included tree management concerns and a tour was given of the parks system including the south softball complex. Discussion was also held on the south side pocket park playgrounds and flyers were sent out to the neighbors to inform them of the changes. Councilmember Keefauver stated that he walked door-to-door to talk to the neighbors and everyone is enthusiastic about the new playground equipment.

12. OTHER ITEMS OF BUSINESS – None.

13. PUBLIC PARTICIPATION

a. Charles Jeter spoke about findings on sprawl and urban growth boundaries from the Lexington, Kentucky Land Use Code. He stated that he would speak to the Planning Department about the information which he had obtained.

b. Councilmember Spruell stated that he had a citizen ask why the stop sign at 4th Street and Madison was still in place since Manaugh Elementary School is no longer open. He stated that he spoke to the Mayor, the Mayor spoke to the City Manager, and the City Manager spoke to staff and the sign has been removed and the street has been returned to a two-way street. He thanked staff for taking care of the issue. City Manager Sanders stated that the system is supposed to work that way and thanks for the comment.

14. ADJOURNMENT: Councilmember DeHaven moved that the regular meeting be adjourned at


11:05 p.m. Councilmember Dobry seconded the motion, and the vote was as follows:

DeHaven	Dobry	Keefauver	Medina	Rainey	Spruell	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes



Rachel B. Medina, Mayor

ATTEST:



Linda L. Smith, City Clerk