

1 **MINUTES OF A REGULAR MEETING**
2 **OF THE GOVERNING BODY OF THE TOWN OF BERNALILLO**
3 **HELD AT THE TOWN HALL**
4 **January 12, 2015**
5

6 The Governing Body of the Town of Bernalillo met in a regular session within the law and rules
7 of the Town on January 12, 2015, at 6:30 P.M.
8

9 Upon Roll call the following members were found to be present:

10
11 **PRESENT:**

12 Councilor Dominguez
13 Councilor Prairie
14 Councilor Sisneros
15 Councilor Jaramillo
16 Mayor Torres

11 **ALSO PRESENT:**

12 Matthew Spangler David Olson
13 Chris Stoyell Ed Majka
14 Maria Rinaldi James Dominguez
15 Larry Blair Jim Pike
16 Chris Paul Tom Romero
17 Chris Stoyell Kelly Fetter
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19
20 **ABSENT:**

20 **Others Present Not Identified**
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24 **APPROVAL OF AGENDA: 4a)**

25 Councilor Prairie moved to approve the agenda as presented. The motion was seconded by
26 Councilor Dominguez and the motion carried unanimously.
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29 **PUBLIC HEARING: 5a)Discussion, Consideration and Action on Adoption of**
30 **Ordinance #286 Extending and Increasing Corporate Limits of the Town of Bernalillo New**
31 **Mexico, Pursuant to the Provisions Forth in 3-7-17 and 3-7-18 and 3-7-18 NMSA 1978, By**
32 **Annexing Thereto a Certain Tract of Land Contiguous to and Not Embraced Within the**
33 **Present Limits of the Town of Bernalillo, and Granting Initial Zoning of Such Annexed**
34 **land, and Granting a Temporary Conditional Use Permit for the Use of the Land as**
35 **Approved by the Governing Body, Presenter: Janet Cunningham-Stephens**
36

37 **ORDINANCE 286**
38

39 **AN ORDINANCE EXTENDING AND INCREASING THE CORPORATE LIMITS OF THE**
40 **TOWN OF BERNALILLO, NEW MEXICO, PURSUANT TO THE PROVISIONS SET**
41 **FORTH IN §3-7-4, §3-7-17, AND §3-7-18, NMSA 1978, BY ANNEXING THERETO A**
42 **CERTAIN TRACT OF LAND CONTIGUOUS TO AND NOT EMBRACED WITHIN THE**
43 **PRESENT LIMITS OF THE TOWN OF BERNALILLO, AND GRANTING INITIAL**
44 **ZONING OF SUCH ANNEXED LAND, AND GRANTING A TEMPORARY**
45 **CONDITIONAL USE PERMIT FOR THE USE OF THE LAND AS APPROVED BY THE**
46 **GOVERNING BODY.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF BERNALILLO:

Section 1. Intent. This ordinance approves and accepts the annexation of real property into the corporate boundaries of the Town of Bernalillo, as requested in the Fisher Sand and Gravel Annexation Petition.

Section 2. Legal Requirements Met. The Annexation Petition and Annexation Map of Fisher Sand and Gravel having been presented to the Governing Body of the Town of Bernalillo, pursuant to the petition method of annexation, in full compliance with state law as set forth in §3-7-4, §3-7-17, and §3-7-18, NMSA 1978, the Governing Body finds as follows:

A. The Annexation Petition seeks to have annexed into the corporate boundaries territory that is contiguous to the Town of Bernalillo.

B. The Annexation petition is signed by the owners of a majority of the number of acres in the contiguous territory and is accompanied by a map that shows the external boundary of the territory proposed to be annexed and the relationship of the territory proposed to be annexed to the existing boundary of the Town of Bernalillo.

C. The Annexation Petition has been presented for consideration and is recommended for approval pursuant to the standards and requirements for annexation set forth in all applicable laws and ordinances.

Section 3. Consent and Approval. The Governing Body hereby annexes the property described in the Fisher Sand and Gravel Annexation Petition and hereby consents to and approves the annexation of such contiguous territory being more particularly described in the legal description of the contiguous territory attached hereto as Exhibit A and incorporated herein by reference in its entirety.

Section 4. Zone Map Amendment. Purpose: That the property described on Exhibit A attached hereto consisting of approximately 43.4705 acres, more or less, shall be annexed into the Town of Bernalillo and zoned as follows:

A. Conditional uses as approved in the M-1 zoning district as to the entire annexed property identified on Exhibit A attached hereto.

B. In addition to the uses M-1 zoning designation approved in Paragraph A above, the existing gravel mining operation on the annexed property is hereby granted a conditional use permit and shall be allowed to continue on the entire annexed property subject to the following limitations:

1. All gravel mining on the annexed property shall cease seven

(7) years after the date of this Ordinance; provided that, all gravel mining on the portion of the annexed property identified as Phase 1 on Exhibit B attached hereto shall cease two (2) years after the date of this Ordinance. For the purpose of this ordinance, gravel mining means the excavation, removal, processing (grinding, separating and washing) and marketing operations with regard to sand and gravel. Sales of sand and gravel mined from the annexed property may continue under the conditional use permit for 2 years after mining operations have ceased.

2. There shall be no asphalt batch plant on the annexed property.
3. Hours of operation shall be limited to 7:00 am through 5:00 pm, Monday through Friday.
4. The mining operation on the annexed property shall comply with any applicable environmental regulations.
5. Within one (1) year after mining has ceased upon the annexed property, the then landowner shall reclaim the annexed property in accordance with the Reclamation Plan for the annexed property attached hereto as Exhibit C. Within ninety (90) days after the date of this Ordinance, the applicant shall deliver to the Town of Bernalillo a Reclamation Performance Bond in a form acceptable to the Mayor or his designee securing the completion of the reclamation work required by the Reclamation Plan and this Ordinance.
6. If the amount of water purchased from the Town of Bernalillo for the mining operation in any calendar year exceeds the maximum amount allowed by Section 22(D) of Town's Subdivision Regulations, then the landowner shall compensate the Town for the cost to prepare a water budget pursuant to, and in compliance with, the applicable provisions of the said Section 22(D).
7. The Town of Bernalillo shall not be responsible for the cost of extending water or wastewater infrastructure, as they relate to Town of Bernalillo design standards, to the annexed property.

Section 5. Findings. The following are the findings for Annexation and Zoning approval:

- A. All state statutory requirements for approval of annexation have been met.
- B. The zoning designation and uses approved for the annexed property as stated in Section 4 hereinabove are in conformance with the Town of

Bernalillo Comprehensive Plan and with all applicable Town zoning ordinances.

Section 6. Severability Clause. If any section, paragraph, clause or provision of this Ordinance, or any section, paragraph, clause or provision of any regulation promulgated hereunder shall for any reason be held to be invalid, unlawful or unenforceable, the invalidity, illegality or unenforceability of such section, paragraph, clause or provision shall not affect the validity of the remaining portions of this Ordinance or the regulation so challenged.

Section 7. Compiling Clause. This Ordinance shall be incorporated in and compiled as part of the Revised Ordinances of the Town of Bernalillo.

Section 8. Effective Date. This Ordinance becomes effective ten days after adoption.

ADOPTED THIS 12th DAY OF JANUARY, 2015.

Mayor Torres swore in those wishing to speak against the project.

Janet Cunningham-Stephens Planning and Zoning Director Presented the following:

January 12, 2015 (see December 22, 2014 – tabled for readvertising due to change in ordinance to add zoning/conditional use permit)

Subject: Fisher Sand and Gravel Annexation

Property Address: 30A Frontage Road East

Applicant/s: Fisher Sand and Gravel

The applicant is requesting the annexation, initial zoning, and a conditional use permit on the subject property containing 43.4705 acres, more or less. This meeting follows several others that have been held for this same purpose. During the discussion of the case at the hearing on February 24, 2014, the Town Council had several comments/requirements. They were:

1. How is the operation being defined? Is it mining or grading?
2. What is the timeframe for gravel extraction on the property?
3. What is the proposed zoning of the property?
4. The Town needs a Reclamation Plan for the property.
5. The Town needs a Reclamation Performance Bond for the property.

A proposed Ordinance has been prepared by the Town's legal counsel and the applicant's legal counsel and is included in the packet as Ordinance 286.

I would like to turn the presentation over now to the applicant and their agent, Lastrapes, Spangler and Pacheco.

Matt Spangler Agent for Fisher Sand and Gravel. Fisher is a general contractor that does business in New Mexico. The request is for the property to be annexed of 43.4705 Acres zoned M-1 Zoning with a conditional use permit for mining 7 years on the property. We have come before previously and have been asked to provide more information and made several changes per the request of staff. We have worked with staff and the home associations of some neighbors to set some limits on the Ordinance. Hours of operation will be 7:00 a.m. to 5:00 p.m. Monday –Friday. Also, expressed that there will be no batch plant on the property which was a concern of staff. A reclamation plan has been submitted to staff which commits Fisher Sand and Gravel to return property as stated in the plan. Once the ordinance is approved our insurance company will issue the reclamation bond for the property. We will also work with staff on a water budget if the property exceeds the water usage. All this is written out in the ordinance. The location will provide industrial and commercial development that is on the east side of the freeway. It is removed from other types of development. We believe this would be a good annexation for the Town of Bernalillo. We would ask for you approval of the annexation.

Councilor Dominguez stated her concerns were on the time frame of the development.

Matt Spangler stated there have been several time limits discussed at the last meeting the time frame was 15 years we currently are requesting 7 years that is the shortest time frame the gravel can be removed from the property given the time limitation of 7:00 a.m. to 5:00 p.m.

Councilor Dominguez asked that if project is phased out will the pond be done in 3 years.

Matt Spangler stated that is correct the area that will mined is the area for the pond. It will take the full 7 years to mine the property assuming the standard use of gravel. .

Councilor Dominguez stated that she knows that when a property is developed a drainage plan is done for the property.

Matt Spangler stated that the primary usage of the pond will be for flood control for the Town of Bernalillo with will be developed by Eastern Sandoval Flood Control Authority. The drainage of the property will flow into that pond as well.

Councilor Jaramillo asked how is the Town going to monitor the water usage for the property.

Janet Cunningham-Stephens stated what is normally done is a water budget is done for the property by our water consultant. My understanding is water will be brought in by a water truck for mining.

Matt Spangler stated the use of water would be for dust abatement. The water would come from the Town of Bernalillo or other areas. If we exceed that minimum amount we would then come before the Town to obtain a water budget. We do not know right now if we will go above the amount of water required.

Mayor Torres stated that they would be treated just like any other Commercial Development that has come before the town to obtain water rights.

Andy Edmondson Public Works Director stated that Fisher Sand and Gravel would be given a fire hydrant water meter to draw water from our system it would be billed monthly. This would show the water usage every month.

Councilor Sisneros asked how many acres was going to be for the ESCFCA ponding.

Matt Spangler stated 7 ½ acres.

Councilor Prairie asked if after the 7 years the mining is not complete would you come back for an extension to mine the property.

Mayor Torres stated that for the conditional use permit it is required the staff review yearly to insure compliance of the permit.

Councilor Prairie stated it was mentioned that water would be brought in from other places where would that be.

Matt Spangler stated there are wells available in Algodones and one on the property for water.

Councilor Prairie asked what if there was not a boom in construction and you are in the middle of mining the hill and the 7 years is up how are you going to return the property to the Town.

Matt Spangler stated that in the reclamation plan is how the property would be returned to the Town.

Councilor Dominguez asked where the gross receipt taxes for the sale of gravel go to.

Matt Spangler stated it is at point of sale.

Mayor Torres asked on Section B the statement “ is recognized as a pre-existing use formerly allowed by Sandoval County” should be deleted as far as the Town is concerned it is not a pre-existing use whether or not it was. I have conflicting information whether or not the County did allow mining on that property. I am concerned that is on the ordinance and it has no meaning to the Town.

Chris Perez Town Attorney stated that item can be deleted

Mayor Torres asked one item that he is concerned is the ponding area is 3 year would you change that to two years.

Dave Olson stated yes that could be possible.

Mayor Torres stated that on B1) related operations could be explained.

Matt Spangler stated that is the operation of sales, grinding, washing and separating the gravel.

Chris Peres stated that could read “for the purpose of this ordinance, gravel mining means the excavation, removal, processing (grinding, separating and washing) and marketing operations with regard to sand and gravel.

Mayor Torres stated on the next line Sales of sand and gravel mined from the annexed property may continue until such material is fully sold. I think the end date should be in there.

Matt Spangler stated M-1 designation allows sales. There will be some material that will need to be sold after the seven years.

Chris Perez stated that there is a plan to reclaim the property on the reclamation plan.

Matt Spangler stated there may be still some product left to be sold.

Mayor Torres stated he is not comfortable with an open ended date. The property needs to be reclaimed with no material on the property.

Matt Spangler stated would a two year time limit be reasonable.

Mayor Torres stated that would be agreeable.

Mayor Torres stated on section 5 if the word “substantially” could be deleted.

Matt Spangler stated yes.

Mayor Torres stated on section 7 it states the Town of Bernalillo shall not be responsible for the cost of extending water or wastewater” does it make a difference.

Matt Spangler stated that someone else may come along and develop near the property and we do not want

to be responsible for developing the infrastructure for someone else.

Mayor Torres stated that the wording also had to be reworded on item 7.

Matt Spangler stated that anything having to do with the project would be the responsibility of Fisher Sand and Gravel.

Andy Edmondson stated that it should read “as they relate to Town of Bernalillo design standards, to the annexed property.

Mayor Torres swore in those individual wishing to speak for or against Ordinance #286.

The names of the individuals that spoke and were against Ordinance #286 were Ed Majka, Chris Paul, and Mann Mandelow.

The Concerns of those that spoke were as follows;

- Impact on Gravel Pits on Residential Property Values
- Air Pollution from Dust
- Increased Traffic during commuter hours
- Violations in other communities Fisher Sand and Gravel has operated
- How will the Town regulate Fisher Sand and Gravel
- Length of Time of Operation be reduced to 5 years
- Noise Levels

James Pikes concern was from the Water and Soil Conservation and would like to know if they were going to recycle some of the water they used on the project. We will have 5 federal monitors for our water and contamination in the river there will also be fines for contamination to the river.

Kelly Fetter is in favor of Ordinance #286 his property is in the Town of Bernalillo on Hill Road has been flooded by the two box culvert that are east of MCT property. The ponding will help flooding on his property. The gentleman that spoke about the MS4 permit is correct with the monitoring and fines. The pond would help the Town comply with the regulation of permitting for the EPA regulation by having the pond on that property. There is a lot of the discussion about how long this development will take. It is important for people to be mindful that we have had three construction projects that took place on 550 to Tramway. The gravel there on the property to construct the 7 ½ acre pond would have been more than enough for those projects if they would have been allowed to progress and mined. This would not be a non-issue. John Koller was not able to attend this evening. He and I are in full support of this project and the pond and exercise their capitalist right in our county to receive some benefit from land that they own. Folks need to think if this is sold to the property owners on the South it becomes tribal land and we have

no say so. We can be shielded by the pond for the MS-4. As a resident of Placitas and a resident of Bernalillo I support it.

Larry Blair spoke in favor of Ordinance # 286 stated the pond would be on the south end of the property. It would be 45 acre feet capacity it would be significant to the run off that comes off that area. A 100 year event is 812 cubic feet of water. By building the pond it would improve the situation. Last summer two floods came through there. This would go a long way of solving that.

Chris Perez read the changes to be made to Ordinance #286

Item B strike out “recognized as a pre-existing use formerly allowed by Sandoval County is”

B1) on line 7 (grinding, separating and washing) and marketing, line 8 strike “related”, line 10 strike “until such material is fully sold” add under the conditional use permit for 2 years after mining operation have ceased.

B5) on line 3 strike “substantially”

B7) on line 2 add “as they relate to Town of Bernalillo design standards”

Councilor Jaramillo moved to adopt Ordinance #286 Extending and Increasing Corporate Limits of the Town of Bernalillo with amended changes to Ordinance #286. The Motion was seconded by Councilor Sisneros and the motion carried unanimously.

Roll Call Vote

Councilor Dominguez Yea

Councilor Jaramillo Yea

Councilor Sisneros Yea

Councilor Prairie Yea

APPROVAL OF MINUTES:6a) Regular Meeting of December 22, 2014

Councilor Dominguez moved to approve the minutes of December 22, 2014 as presented. The motion was seconded by Councilor Jaramillo and the motion carried unanimously.

NEW BUSINESS: 7a) Discussion Consideration, Action and Adoption of Resolution 1/12/15 Dissolution of Memorandum of Agreement to Host the New Mexico Wine Festival at Bernalillo. Presenter: Maria Rinaldi

RESOLUTION 1-12-2015

Dissolution of Memorandum of Agreement to Host the New Mexico Wine Festival at Bernalillo