

**Minutes  
Regular Meeting  
August 10<sup>th</sup>, 2021**

The Village of Capitan Board of Trustees met in a Regular Meeting on Tuesday, August 10<sup>th</sup>, 2021 at the Village Hall in Capitan, New Mexico at 6:00 PM.

Mayor Lowrance asked for a moment of silence and led the assembly in the Pledge of Allegiance.

Mayor Lowrance called the meeting to order at 6:01 PM.

**Roll Call:** Mayor Lowrance – present, Trustee Shearer – present, Trustee Kearns – present, Trustee Fraley – present, Trustee Johnson – not present. Stephanie Bason – Village Clerk, Grace Centrella – Finance Officer, Randy Spear – Police Chief, J. Leinneweber – Administrative Assistant, Angela Autrey – Court Clerk/Human Resources Clerk, Steve Osborn – Water Utilities Supervisor, Kerry Hair – Water Utility Department, Johnathan LaMay – Street Department Supervisor, Kevin Kennedy – Fire Chief and Zach Cook – Village Attorney, were also present. A list of others in attendance is attached.

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**Item #1 on the Agenda: Approval of the Agenda.**

Trustee Shearer made a motion to Approve the Agenda. Trustee Kearns seconded the motion. All were in favor, motion carried.

**Item #2 on the Agenda: Public Input. (Agenda Items Only).**

A Member of the public made a comment on Item #22 on the Agenda. She said if the Board decides to meet on the second Thursday at 6:00PM of the month there is a conflict, the Women's Club meets on the same day and at the same time. The Mayor made a note of it.

**Item #3 on the Agenda: Mayor and Trustee Comments.**

**Trustee Shearer** had no comments at this time.

**Trustee Kearns** had no comments at this time.

**Trustee Fraley** had no comments at this time.

**Mayor Lowrance** asked Stephanie to address the Board regarding Covid-19 testing. Stephanie advised the Board that the County has been offering testing, there have been purple Curative Vans around the County where free Covid-19 tests have been offered. The vans had stopped coming to Capitan because the turn outs were so low Curative determined it was a waste of funding. The County had stopped sending the Vans out to other outlying communities like Corona for the same reason. The Clerk in Corona has asked Curative to start sending the Vans again since school has started again. But since Corona anticipated that only 2 to 5 people would be turning up per day Curative determined that this would not be a financial benefit. Stephanie said since the Village of Capitan is similar to Corona in the anticipated turn out numbers, she hasn't asked Curative to send the testing vans to Capitan. Currently there is no testing available in Capitan. The Capitan Clinic is sending individuals who want to be tested to Ruidoso but it is uncertain whether the testing is free of charge.

**Item #3 on the Agenda: Mayor and Trustee Comments. (Continued)**

Trustee Kearns asked to find out if the testing is free or if there is a charge and then get the word out to the community via the Village website.

**Item #4 on the Agenda: Consent Agenda:**

- a. Approval of the Minutes: Regular Meeting – July 13<sup>th</sup>, 2021
- b. Approval of the Minutes: Special Meeting – July 22<sup>nd</sup>, 2021

Trustee Shearer moved to Approve the Consent Agenda. Trustee Fraley seconded the motion.

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #5 on the Agenda: Discussion/Action – Approval of Bills Paid for July 2021.**

Trustee Fraley made a motion to Approve the Bills Paid for June 2021. Trustee Shearer seconded the motion.

**Discussion:** No Discussion

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #6 on the Agenda: Discussion/Action- Approval of Negotiated Bid for Main Road Phase III – Over Budget.**

Trustee Shearer made a motion to Approve the Negotiated Bid for Main Road Phase III – Over Budget. Trustee Kearns seconded the motion.

**Discussion:** Trustee Shearer confirmed that there were no bids the first round and that the current bid is \$8,667.08 over budget. The Mayor said this is due to the current increase in costs. Trustee Shearer observed a Budget Adjustment Resolution will have to be made.

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item#7 on the Agenda: Discussion/Action – Approve Offering Public Employees Retirement Association (PERA) to Non-Police Department Employees.**

Trustee Kearns made a motion to discuss to Approve Offering Public Employees Retirement Association (PERA) to Non-Police Department Employees. Trustee Fraley seconded the motion.

**Discussion:** Trustee Kearns asked if an employee just couldn't hold on to their PERA contributions to date while participating in the 457b plan? Trustee Shearer explained that unless the employee has been contributing to PERA long enough to be fully vested they would lose the Employer contribution portion of their PERA funds. It was determined that the two existing employees who fall in this category would be able to leave their contributed funds in PERA and draw interest but would not receive the Employer contribution they had earned in the past and not have enough to draw at retirement. Trustee Shearer said to make things fair the Board could increase the Employer contribution to the 457b plan to match the required employer contribution to PERA.

A member of the public asked to make a comment, she asked why should the Village offer two different retirement plans? When someone takes a new job, the employer may not offer retirement at all or it may be a different type of retirement plan, and that's the chance one takes. Trustee Shearer responded "that's if the employer chooses to do it that way", that the Board may think it's in the Village's best interest for employee retainment to offer both plans. She went on to say that "it's not a huge cost difference" about \$9,000 per year.

**Item #7 on the Agenda: Discussion/Action – Approve Offering Public Employees Retirement Association (PERA) to Non-Police Department Employees. (Continued)**

Trustee Kearns made motion to postpone to Approve Offering Public Employees Retirement Association (PERA) to Non-Police Department Employees to give the Board more time to research this and take it up at the next meeting. Trustee Shearer seconded the motion.

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #8 on the Agenda: Discussion/Action – Approve Insurance for the Village of Capitan Volunteer Fire Department at a cost of \$11,700.**

Trustee Shearer made a motion to Approve Insurance for the Village of Capitan Volunteer Fire Department at a cost of \$8,016. Trustee Fraley seconded the motion.

**Discussion:** The Mayor advised the Board that “it’s been since 2010 since we’ve had insurance on ‘em, we’ve been lucky.”

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #9 on the Agenda: Discussion/Possible Action – Hiring an Auditor for Fiscal Year 2020-2021.**

Trustee Shearer made a motion to discuss to Approve Hiring an Auditor for Fiscal Year 2020-2021. Trustee Fraley seconded the motion.

**Discussion:** Trustee Shearer asked if there was any background available about the two firms submitting their proposals? What their reputation is? Were these the only proposals submitted to the Village? Stephanie advised the Board that the Village “solicited to 22 of the firms that were approved by the Office of the State Auditor.” Stephanie said these “were the only two we received back.” There were two others that responded that they were “full for the Year.”

Trustee Kearns observed that “there is a significant difference in their fees.” The Mayor responded that while the Rice firm is not small, its not a large firm either and that they are out of Albuquerque.

Trustee Fraley observed that both contracts were for three years and was told that three years is a typical length of time.

Trustee Shearer said that keeping an auditor for three years is a requirement.

The Mayor said that our last auditor “dropped us.” Stephanie explained that the Office of the State Auditor “put a cap on the number of his audits”, and he was unable to continue. The Mayor said “he got behind and we were at the bottom of his list. That’s my opinion.”

The Mayor said the Rice firm is a husband and wife with three others. The Mayor said he asked the Mayor of Jal if he had any experience with either of the two firms and the Mayor of Jal said he’d choose the Rice Firm and based on this so would Mayor Lowrance.

Trustee Kearns said that the firm has be certified by the State and that was all the Board has to go on right now.

Trustee Shearer said she would rather just approve the Rice proposal “and get our audit started” it’s coming due in mid-December. Trustee Kearns agreed, they’ve worked for Jal, they’ve been certified and to take the lower bid.

Trustee Shearer made a motion to adopt, take the lower bid from Rice & Associates, CPA as Auditor for Fiscal Year 2020-2021. Trustee Kearns seconded the motion.

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #10 on the Agenda: Discussion/Possible Action – Viability of Creating a Part Time or Full Time Grant/Projects Administrator and Posting of the Position.**

Trustee Shearer made a motion to Discuss the Viability of Creating a Part Time or Full Time Grant/Projects Administrator and Posting of the Position. Trustee Kearns seconded the motion.

**Discussion:** Trustee Kearns was concerned that the position strikes him as a “high qualified position” and that the Board may have trouble finding somebody to fill it especially as a “part-timer” and finding somebody who was that qualified by just posting the job here in the Village will be difficult. Trustee Kearns wondered if there was an existing Village employee who would be interested in taking on the responsibility?

Trustee Fraley asked if the position is to be posted, the salary would have to be posted too and what would that be?

Mayor Lowrance said that Grace is going to a class once it’s approved by the Finance Department. Michael Steinenger will be here helping Grace with the Grants. He went on to say “we also have the COG that we can lay a bunch of this stuff on.” “They are going to be responsible on finance authority on any grants and loans we get from here on out.”

Trustee Shearer said she is concerned about the time, emails with the State back and forth, with the State requesting copies of documents that are often off premises, that Village staff has to track down. She pointed out that the COG will not be helping with these requests and they will still have to be addressed in order not to lose tens of thousands of dollars in funding. Trustee Shearer said “...it’s unrealistic to think responsibilities of administrating the Grants can just be handed over to the COG or that Grace can add it to her duties.” She went on to say “our Village municipal government has out grown just kind of catch as catch can.” Trustee Shearer wants the Village to get out of “crises management mode.” Her goal is to get the Village out of that mode which it has been since she came on the Board and get “ahead of the game” on applying for grants and managing the Road, Water and Fire Department projects.

Trustee Kearns said that maybe the Village wouldn’t need someone that highly experience and maybe more of a bookkeeper and rely more on the COG. He asked Stephanie on her thoughts of what the Village would be looking for? Stephanie replied it would be somewhere in the middle of what Trustee Kearns just described. She went on to say that “ideally having somebody highly qualified would be very beneficial but at the same time the reality of that is... somewhat... everybody is having a hard time finding help.” She agreed with Trustee Shearer that the Village has been in crisis management mode for a long time and that “just because things have been done this way for this long doesn’t mean we need to keep doing it that way, it doesn’t make it right.”

Stephanie told the Board that they have “an absolutely phenomenal staff, not me included. You have such loyal employees that I’ve been relieved and honored to know that the Board has been willing to provide them the benefits that they should have been getting all these years.” She also said “the Mayor has been extremely supportive in seeing what the staff deals with on a daily basis.”

The Mayor said Kevin Kennedy would be interested in taking on the Grant and Projects Administration. Kevin has experience with this in his capacity as Fire Chief for the Capitan Volunteer Fire Department. Stephanie advised the Board that she may have to resign and had a meeting earlier today with her staff and they have come up with some options. There is an existing staff member that is interested in taking on the Clerks duties. Stephanie would like to stay on and assist, part-time.

Trustee Kearns observed that the Mayor will need time to review these options and personnel changes and thought it would be best to postpone deciding on this Item until the next meeting.

**Item #10 on the Agenda: Discussion/Possible Action – Viability of Creating a Part Time or Full Time Grant/Projects Administrator and Posting of the Position. (Continued)**

Trustee Kearns made a motion to postpone until the next meeting the Discussion/Possible Action - Viability of Creating a Part Time or Full Time Grant/Projects Administrator and Posting of the Position. Trustee Shearer seconded the motion.

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #11 on the Agenda: Discussion/Action – Approve Resolution 2021-12 – Adopting an Infrastructure Capital Improvement Plan (ICIP).**

Trustee Shearer made a motion to Approve Resolution 2021-12 – Adopting an Infrastructure Capital Improvement Plan (ICIP). Trustee Kearns seconded the motion.

**Discussion:** No Discussion

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #12 on the Agenda: Discussion/Action – Approve Resolution 2021-13 – Authorizing the Certification of the Village of Capitan’s 2021 Capital Asset Inventory.**

Trustee Kearns made a motion to Approve Resolution 2021-13 – Authorizing the Certification of the Village of Capitan’s 2021 Capital Asset Inventory. Trustee Shearer seconded the motion.

**Discussion:** No Discussion

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item # 13 on the Agenda: Discussion/Action – Approve Resolution 2021-14 – Ratify and Approve the Agreement Between Southeastern NM Economic Development District/COG and the Village of Capitan. Renew Membership at a cost of \$1,000.00.**

Trustee Kearns made a motion to Approve Resolution 2021-14 – Ratify and Approve the Agreement Between Southeastern NM Economic Development District/COG and the Village of Capitan. Renew Membership at a cost of \$1,000.00. Trustee Shearer seconded the motion.

**Discussion:** No Discussion

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #14 on the Agenda: Discussion/Action – Approve the Joint Powers Agreement with the New Mexico Self Insurer’s Fund.**

Trustee Shearer made a motion to Approve the Joint Powers Agreement with the New Mexico Self Insurer’s Fund. Trustee Kearns seconded the motion.

**Discussion:** No Discussion

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #15 on the Agenda: Discussion/Action – Approve the Application for Summary Review – Re-Plat/Lot Line Adjustment – 455 W. 5th St – Beverly Sills.**

Trustee Kearns made a motion to Approve the Application for Summary Review – Re-Plat/Lot Line Adjustment – 455 W. 5th St – Beverly Sills. Trustee Shearer seconded the motion.

**Discussion:** Trustee Shearer would like a review of the Land Use Ordinance on the next Agenda and not require a survey for some of the installations for the properties.

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes



**Item #16 on the Agenda: Discussion/Action – Approve the Application for New Construction Church Building at 455 W. 5th Street – Beverly Sills.**

Trustee Shearer made a motion to Approve the Application for New Construction Church Building at 455 W. 5th Street – Beverly Sills. Trustee Kearns seconded the motion.

**Discussion:** No Discussion

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #17 on the Agenda: Approve – The Resignation of Steve Osborn from the Village of Capitan Water Advisory Board.**

Trustee Kearns made a motion to Approve – The Resignation of Steve Osborn from the Village of Capitan Water Advisory Board. Trustee Shearer seconded the motion.

**Discussion:** Steve Osborn will be available to the Water Board in an advisory capacity. He said he feels it's more appropriate to have citizens on the Board.

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #18 on the Agenda: Discussion/Action – 112 Promise Lane Water Tap for Armstrong – Cost of Water Connection.**

Trustee Shearer made a motion to discuss 112 Promise Lane Water Tap for Armstrong – Cost of Water Connection. Trustee Fraley seconded the motion.

**Discussion:** Trustee Shearer said the Village has a long history of charging for things that it shouldn't be. In 1991 she served on the Planning Board and back then it was decided, due to anticipated growth and burden on the water supply, by the Board of Trustees that no subdivision of property would be allowed. She said these policies have encouraged undesirable types of homes both to the homeowner and the Village in the core. These policies have over the course of 30 years slowed the growth of property values. Also, an automatic annual increase in the cost of water has since been adopted, they repealed some restrictions but didn't build out the water system. She feels its time to serve the Village and put a stop to decreasing property values. She feels "as a council it's for us to fix it."

Trustee Kearns agreed. He was concerned about the response the prior property owners, that had to pay for waterline extensions of the main to their property, would have. Trustee Shearer pointed out that the Board can't change the past but could only move forward.

The Mayor said the current Ordinances can be and are interpreted different ways and that a review of and change to the Ordinances is in order. He said the Ordinances should reflect the needs of the Village of Capitan and not be adopted from other municipality's ordinances as was done in the past.

Zach Cook, the Village's attorney advised the Board that it is the Village's duty to interpret its own Ordinances and historically has been interpreting this Ordinance one way but now that the Board has had another look they may have a different interpretation. He went on to say that whatever interpretation the Board agrees on, going forward the Village must enforce the Ordinance based on the agreed interpretation.

Trustee Shearer said in regards to this property the issue has been resolved, the property owner has agreed to pay for the water main extensions to their property. She wants a public hearing scheduled so needed amendments can be made to the Ordinances including what she said is an unconstitutional Ordinance requiring the automatic annual increase in water rates.

**Item #18 on the Agenda: Discussion/Action – 112 Promise Lane Water Tap for Armstrong – Cost of Water Connection. (Continued)**

Stephanie offered to send the Trustees copies of information gathered by Charlene in what was common practice of other municipalities in regards to charging for additional pipe needed to extend their main water lines to properties when required.

Trustee Fraley made a motion to postpone Action – 112 Promise Lane Water Tap for Armstrong – Cost of Water Connection. Trustee Shearer seconded the motion.

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #19 on the Agenda: Discussion – Amendments to the Water Utilities Ordinance.**

Trustee Shearer made a motion to Discuss Amendments to the Water Utilities Ordinance. Trustee Fraley seconded the motion.

**Discussion:** Trustee Shearer said she would rather overhaul the entire Village code, not just a few items at a time. The Board agreed.

The Mayor said packets will be sent to the Board of the suggested changes made by each department for their review and contribution.

The Mayor wanted to be sure that all the Trustees had a copy of the Code and asked that former Trustee Jill Schmidt be contacted and a request be made for the return of the e-Code book she received from the Village. He also asked that former Trustee Kohlby McInnes return his book but was advised that Mr. McInnes had not received a book from the Village but had printed and compiled his own.

An Ordinance Review Workshop was scheduled for Wednesday, September 8<sup>th</sup> at 6:00 PM.

**Item #20 on the Agenda: Discussion/Action – Repeal the Village of Capitan's Marijuana Possession; Drug Paraphernalia Ordinance §160-23.**

Trustee Fraley made a motion to Repeal the Village of Capitan's Marijuana Possession; Drug Paraphernalia Ordinance §160-23. Trustee Kearns seconded the motion.

**Discussion:** Trustee Fraley asked for Chief Spear's input. Chief Spear advised the Board that the Ordinance is now obsolete due to the passing of the legal sale of recreational marijuana by the State Legislature. Trustee Fraley asked how that affects the possession of other substances and paraphernalia? The Chief explained that a Municipal Court, like the Village of Capitan's cannot hear a High Court Misdemeanor which these offences fall under. They have to be heard in Magistrate Court so the Repeal of this Ordinance would not affect their prosecution.

The Mayor said as far as the Village Ordinance's for the sale of Recreational Marijuana the Village could use Zoning to regulate it. Chief Spear said the State has still not informed him of how they will implement the new law. He went on to say this will be addressed at the Association Meeting.

Trustee Shearer said the Municipal League is also putting something together.

The Mayor said the NM Regulation License Bureau's website has a timeline on the stages of implementation on the sale of marijuana.

J. advised the Board that in a meeting she attended it was made clear there can be no discrimination against the sale of marijuana and that the regulations closely follow the current Alcohol Licensing Regulations.

**Item #20 on the Agenda: Discussion/Action – Repeal the Village of Capitan’s Marijuana Possession; Drug Paraphernalia Ordinance §160-23. (Continued)**

Trustee Shearer said she thought it can also be managed through Zoning. Stephanie agreed and said even though the Village doesn’t have Zoning the Village does have Planning and can use what the Village already has in place to manage this.

**Roll Call:** Trustee Shearer – yes, Trustee Kearns – yes, Trustee Fraley – yes

**Item #21 on the Agenda: Discussion –New Cannabis Ordinance for Cannabis Sales Venues.**

**Discussion:** Trustee Fraley asked if the Village could pass an Ordinance that differs from the State’s. The Mayor informed him that the State would supersede the Village’s Ordinance. J. advised the Board that in her meeting they frequently warned that the recreational marijuana sales community is a very litigious group.

**Item #22 on the Agenda: Discussion – Amendments to the Board of Trustees Meetings Ordinance.**

**Discussion:** The Mayor said that this Item will be addressed at the upcoming Ordinance Review Workshop on September 8<sup>th</sup>.

**CORRESPONDENCE**

No Discussion Regarding Correspondence

**ADJOURNMENT**

Mayor Lowrance Adjourned the meeting at 7:16 PM

  
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Ron Lowrance, Mayor, Village of Capitan

**Attest:**

  
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Stephanie Bason, Village Clerk



6:00 PM

[illegible]