CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Monday, January 9, 2006

REGULAR MEETING

Minutes

TIME & PLACE: The Mayor and the City Commission of the City of Truth or Consequences in the County of Sierra and State of New Mexico met in Regular Session in full conformity with the law and ordinances of said Commission in the Commission Chambers of said City, on Monday, January 9, 2006 at 7:00 P.M.

PRESIDING OFFICER: The meeting was called to order by Mayor Rainey who presided and Mary B. Penner, City Clerk acted as Secretary of the meeting.

ATTENDANCE: Upon calling the roll the following Commissioners were reported present:

Hon. Jimmy L. Rainey, Mayor
Hon. Lois Reaver-Black, Mayor Pro-tem
Hon. Lori S. Montgomery, Commissioner
Hon. Evelyn B. Renfro, Commissioner

Absent was:

Hon. Glen Stevenson, Commissioner

Also present:

Jaime R. Aguilera, City Manager
Jay Rubin, City Attorney
Mary B. Penner, City Clerk

QUORUM: There being a quorum present the Commission proceeded with the business at hand.

CEREMONY: Mayor Rainey called for fifteen seconds of Silent Meditation.

Commissioner Montgomery called for the Pledge of Allegiance.

APPROVAL OF AGENDA: Mayor Rainey called for approval of the Agenda.

“Commissioner Black moved approval of the Agenda as presented.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT: City Manager Aguilera responded to comments from the December 27, 2005. He stated there was a comment by Mr. Dean Harvey who requested an environmental impact report for Wal-Mart.

He indicated the appropriate request would be an environmental impact statement, which is a federal process, and explained that the federal process is used if there are federal funds or properties involved, and stated in this case, there are not, so therefore there is no requirement for any EIS.
City Manager Aguilera stated there were three comments from Mr. Gerald Trumbull, a moratorium on Wal-Mart, town meetings, and a referendum.

He explained to Mr. Trumbull directly, a moratorium first of all must be justified, and explained it is justified when City’s have a lack of services to provide such as sewer or water, and which a City has to stop all building permits because they have no way to service their building needs.

City Manager Aguilera indicated it could possibly involve lack of electrical power, and stated that none of these issues is the case for Wal-Mart or any other project in the City. He explained the City is well designed and established in terms of its ability to provide water, sewer and electrical power.

He stated in any case a moratorium would have to affect all buildings in town not just a particular building, and that there must be an end result from a moratorium, and indicated the request therefore does not meet any of this criteria.

City Manager Aguilera stated in terms of a town meeting, and explained that the public has a right to assemble and discuss any issue they wish, and that they do not need nor should they ask for public permission to assemble or meet as that is up to them.

He explained if Mr. Trumbull wishes to have town meetings he could avail himself of any of the many buildings in town that can hold as many people that he wishes.

For a referendum and indicated that State law states that a referendum can occur when a public body in this case when this City Commission enacts a resolution or an ordinance that the public does not agree with in which case the public would then go through a process in which a petition would be signed with more than 20% of the people that voted at the last election, and bring it forth and put that item on hold until such time a vote is taken on the issues at hand.

City Manager Aguilera stated in this case the City Commission has not taken any action in terms of a resolution or ordinance that would be subject to a referendum, and that in 2 cases they are not possible, the moratorium or the referendum, and in the case of the town meetings he believes that Mr. Trumbull has taken steps to call a town meeting and that would be up to him.

**COMMENTS FROM THE PUBLIC:**

Mayor Rainey explained that this is a 3-minute time they allow, and for the people of the one group he would like that they pick a spokesperson and that he or she speak for that group.

He indicated for the last few meetings they have had repetitious statements, and appreciates the comments, but if they do not have anything new to say to let the spokesperson speak for them.

City Attorney Rubin stated he might be able to help on this from a legal standpoint and make a couple of observations, and he was correct from the last meeting during comments from the public section they had about 45 minutes worth of comments from numerous speakers each speaking about the same topic.

He stated the question that he was asked whether it is legally
required if the Commission has to do that, and he would like to make it clear that the answer is "no," and indicated one of the most common and misperceptions of the Open Meetings Act is that people think that means it is an open forum, and its not.

City Attorney Rubin explained what the Open Meetings Act means is that when the Commission meets and discusses public policy and votes on matters affecting the City they have to do that openly, but it does not require an open forum to the public.

He indicated the decisions is to what is actually on the agenda also only depends on the Commission, as the Commission makes the final determination is to what they are going to hear at any given meeting.

City Attorney Rubin stated what their procedure has been is the City Manager and the City Clerk prepare an agenda, and pointed out that the Commission is always free to contact the City Manager while the agenda is being prepared and state they want to hear this particular item and list it, and then when it comes to the meeting then the Commission votes to approve the entire agenda or delete something or whatever.

He stated they like to hear from the public, but would like to make it clear that the Commission has the final arbitrary as to what they are hearing during the course of the Commission meeting.

Ms. Susan Abts came before the Commission and indicated she was at the last meeting inquiring about the dog ordinance in reference to an issue that she experienced with her dog and she feels her issue was handled was not subject to the ordinance.

She stated she is still disturbed by this, and went on to explain how this was handled by the law enforcement, and that the dog that bit her dog was taken to the animal clinic and was under quarantine for a couple of days, and was brought back next door.

Ms. Abts explained that her dog was put on a 10-day quarantine, and that the law enforcement animal control people went to her door and accused her dog of defending the porch and felt if was very unfair and upsetting and caused her a lot of trauma.

She stated she felt let down by the law especially with the ordinance, and indicated she was told the wrong thing, and she feels there is a discrepancy and it is not being enforced.

A group of 4 citizens came before the Commission to speak on the issue of Wal-Mart.

Mr. Gerald Trumbull thanked City Attorney Rubin and indicated he did receive his letter. He stated as far an any EIR report is concerned it is his understanding and that they would continue to do research in this area, and is his understanding that the EIR is a State sanctioned report which must be completed for any type of "big box project" in any community and or County in the State and the EIS is federal.

He stated if they are going to call the feds in that’s fine too, but indicated as far as he knows the law an EIR report is necessary for a project such as this.

Chief Peterson came before the Commission and stated he would
like to thank the audience and the Commission. He stated it is a great pleasure to be Chief of Police where everyone’s rights are recognized and have meetings of this sort as it makes his job a lot easier whether they agree or disagree.

CONSENT CALENDAR:


“Commissioner Black moved approval of the Consent Calendar.”

Seconded by Commissioner Montgomery.
Motion carried unanimously.

BOARD COMMITTEE REPORTS: & None.

PUBLIC HEARINGS:

None.

PROPOSED ORDINANCE – PERTAINING TO TAXIMETERS & RATE MAP & SCHEDULE:

City Manager Aguilera stated at their last meeting they tentatively approved two taxicab services for the City. He stated they were tentatively approved subject to amending the Ordinance.

City Attorney Rubin explained the first Proposed Ordinance 7-349 – Pertaining to Taximeters, and stated it was identical to what they already have in the books with the exception of adding one sentence to the end of the paragraph, which reads... This section does not apply to firms that use flat rate schedules.

“Commissioner Montgomery moved they go to publication for Proposed Ordinance 7-349.”

Seconded by Commissioners Renfro/Black.
Motion carried unanimously.

City Attorney Rubin explained Proposed Ordinance 7-351 – Pertaining to Taxicab Rate Map and Schedule, and indicated this is also identical to what they already have in the book with one change in the first line, and the work may was changed to shall.

“Commissioner Renfro moved approval for publication Proposed Ordinance 7-351.”

Seconded by Commissioner Black.
Motion carried unanimously.

AGREEMENT SEWER SERVICE – TURTLEBACK GOLF COURSE:

City Manager Aguilera stated they are ready to execute a Sanitary Sewer Service Agreement between the City of Truth or Consequences and Turtleback Mountain Partners.

He indicated that he and Mr. Whitt are in agreement of said proposal.

City Manager Aguilera stated that after review by our City Attorney he brought to his attention a minor item, and in section 6, under Escrow, and referred to the middle of the page and where it talks about termination, and read the portion...Upon termination of
this agreement as provided in Section 6, the Escrow Agent will promptly pay Turtleback all funds held in Escrow, and indicated it should read... Upon joint termination of the agreement, and that it would indicate that both parties are in agreement to ending the contract.

He indicated they would include a termination clause and in the termination clause, they would create a clause by which they can step in and take over charging each of the homeowners at some point in the future if things were to go crazy.

City Manager Aguilera stated some of the main points in the agreement, in Section 1, he indicated there is discussion two meters, and explained the reason he requested two is that flow meters are not reliable, and that they will take the two and they will charge him at the highest reading, and that the two will read differently, and the one that reads the highest is the rate they will charge and he has agreed to that.

In Section 2, there is discussion about a tanker truck, and that initially when this process begins he will be hooking up homeowners and the clubhouse and it will flow into a retention area, and that it is not going to be enough flow to cause it to be pumped into our sewer, so what he will do in the interim period he is going to have a tanker truck sucking it out and driving it to the City and dropping it into one of our designated manholes.

He stated in Section 3, and indicated this is where they change the number of gallons per day, and that they changed that to 60,000 gallons per day is what the flow will be, and that he is in agreement with that.

City Manager Aguilera stated the prior agreement did not speak of a tap fee, however he has agreed to pay $1,000 per connection fee to the City, and that the City will use this to expand the plant as needed. He stated at the end of that section there is an indication at the time that he disconnects the City would be obligated to return that tap fee to him over a period not to exceed five years.

He explained the reason they are charging him a tap fee is because he is using up their capacity and making them expand their plant, but however if he takes his capacity back and takes those 60,000 gallons per day and gives them back to the City because he is now connected to Elephant Butte then essentially he has paid for something he is not using, and they are going to refund him that money over a period not to exceed 5 years.

In Section 4, in case there is a meter malfunction the City would be able to make those repairs at his cost if his company does not repair them in time.

In Section 5, the $2.40 per thousand gallons fee that was previously agreed to which the City is currently charging their customers.

In Section 6, they talked about the termination clause, and would also like to point out the $10,000 that deposit is enough for about maximum capacity at a 60,000 gallon a day flow, and indicated that is enough for about 2 1/2 months of fees.

In Section 7 now becomes the termination section, and indicated the term of the agreement is 5 years, and the next section, notices is normal, and in section 9 which becomes 10 — Approval of plans &
specs, and felt that it was important that the City be able to approve the plans and specifications for the plant that they are building to pump to our sewer station so that if something happens that they eventually take over for some reason or repair they would know that it was built to the City's specifications.

In Section 10, now 11, Commercial development, and that that he has agreed to that, and they would review all the plans for commercial development and they would comply to City requirements, and that he was concerned possibly about a restaurant going in without a grease trap, and to make sure they conform to the City's regulations and not Elephant Butte as they may not have those regulations.

City Manager Aguilera stated from there on there is nothing new except page 4, Section 17, the City of Elephant Butte by separate agreement; the City of Elephant Butte must authorize the City to serve the wastewater needs of the subject property without fees or exactions.

He stated the City of Elephant Butte did send a letter which is included that they have agreed to allow the City to do that, and in Section 18, the New Mexico Water Company which is the water company that services Turtleback, and indicated they must agree to give the City the information regarding their meter information, and stated that is needed to double check that the meter readings they are getting in the outflow coincides with the meter readings that they are getting in the inflow.

City Manager Aguilera stated he is adding to that section that reads... said agreement must be executed prior to the execution of this agreement.

Mr. Jack Whitt came before the Commission and stated they would not be here if it was not for the City of Truth or Consequences.

He explained their project is an extensive remodeling of the Oasis Golf Course and building a first class resort development with eventually approximately 1250 residential sites, and indicated they are about 60% through the remodeling of the golf course, and that they would go to the City of Elephant Butte in May for re-platting.

Mr. Whitt stated they would not be here if it were not for the City of Truth or Consequences, and thanked the City.

Commissioner Montgomery asked about the tap fee and if the fee would be returned within a 5 year period, or is that the time limit for them to make a decision whether or not to stay on the system, or then move to Elephant Butte.

City Manager Aguilera, no when the agreement is terminated then they have 5 years after that to return the money.

Commissioner Montgomery, okay, that decision does not have to be made within that 5-year period.

City Manager Aguilera, that's correct.

Commissioner Montgomery, thank-you.

"Commissioner Renfro moved approval of the Sanitary Sewer Agreement with the City of T or C and Turtleback Mountain
Partners, LLC."

Seconded by Commissioner Montgomery.

City Attorney Rubin reminded the Commission, as per amended agreement.

"Commissioner Renfro moved approval of the Sanitary Sewer Agreement, as amended."

City Attorney Rubin pointed out in paragraph 6, they need to include... upon joint receipt from the parties, in the sentence that reads... held by the Escrow Agent hereunder upon...

Motion carried unanimously.

City Manager Aguilera stated that Joanne Harper, Finance Director is here to go over mid-year budget adjustments and approval of Resolution #16-05/06.

Joanne came before the Commission and indicated that revenues are up $178,255, and expenses are also up $99,789, and stated they are still under their original budget.

She stated they are under $88,000 in expenses and over $106,000 in revenues.

Ms. Harper explained the major changes, and indicated they are going to buy the sanitation truck out right, and stated the City Manager decided to do that. She stated they do have the money to do it, and pointed they would be saving a lot of interest.

She stated another major change is an increase on our power cost, and referred to the City Manager to explain this.

City Manager Aguilera explained that the City purchases power from two sources, WAPA and Sierra Electric Company. He stated the WAPA consortium has been selling us less and less power over time. He stated he thinks they looked at the figures last year and they were selling us over fifty percent of our power. He stated Sierra power is more expensive than WAPA, so some of the expenses have gone to higher power cost.

He stated they expect WAPA to continue to reduce their allocation to the City because of their obligations to provide power in the Utah area, so we will be relying more and more on Sierra power, which is more expensive power. He stated the agreement with Sierra comes up in December of this year so we have already begun the process to look into possibly finding another source, which he is not very optimistic that they will, another source which is cheaper than Sierra, because they actually give us a pretty good rate. He stated they will do that in-between now and the end of the year, they will look into buying power from a different source and then extending the contract, probably with Sierra, which we will need anyway even if we did find another source of power.

Ms. Harper stated another increase was at the Airport. She stated they had to do some repairs to the Airport fuel system, which was about $6,000.00 that they weren’t expecting they would have to spend.

City Manager Aguilera stated this had to do with a State Inspectors
finding some violations that had been hanging around for a while. He stated when he first arrived here the Airport Manager told him that we had to get these done or we were liable to be fined, so we had him go ahead and spend the money, and those repairs have been done.

Ms. Harper stated those are the major issues. She stated we have had some comings and going in different departments, we have saved some money on payroll and things like that.

City Manager Aguilera stated that the other item was in Sanitation, we had projected that the revenues in Sanitation would come earlier, and actually they didn’t go into effect until November.

Ms. Harper stated that was right and she did a survey on Sanitation from last year at this time to this year, and we’re up 6%.

City Manager Aguilera stated revenues are up already. He stated that hopefully they are doing some reorganization there; they have already cut two positions in that department, and moved one of the supervisors into a working supervisor situation, so he’s not driving a truck instead of hiring another one to replace him, so there will be some savings there to make up also for this lack of revenue.

Mayor Rainey stated that as he went through this he still never found out where they came up with the money to buy that truck.

Commissioner Montgomery stated it was allocated.

Ms. Harper stated that the gross receipts keep going into the sanitation account and they have never spent it, it just keeps going in there and going in there and going in there, and they’ve never spent it, so that’s where we got the money.

City Manager Aguilera stated it a subsidy that goes from the General Fund to Sanitation, we’ve been subsidizing Sanitation with that amount, and we’re projecting that next year we won’t have to subsidize it at all given the increases that we’ve had.

He stated that we also, depending on how things go in the reorganization, we may want to come back to the Commission and reduce some of those increases that we have plugged in over the five-year period. That’s where the money was sitting that we paid for the trash truck and we saved about thirty thousand dollars in interest.

Commissioner Montgomery stated that on the Solid Waste, she assumes that’s what they are talking about, because there’s a ninety-seven thousand dollar difference. She stated that they had looked at some changes and there may be some different expenses over the end so is there a possibility of that going down before the end of the fiscal year, or does this look like a pretty accurate projection through the end of the fiscal year?

Ms. Harper stated she thinks that’s pretty accurate.

City Manager Aguilera stated he thinks whatever changes they make will probably not really affect us until the next time they prepare the budget.

Ms. Harper stated they still have approximately seventy thousand dollars in our 1/12th in the General Fund, which is above what we
had in the original budget, and they are in good shape.

"Commissioner Black made a motion to approve Resolution No. 16-05/06 Budgetary Adjustments and Revision."

Seconded by Commissioners Renfro/Montgomery
Motion carried unanimously.

CHANGE COMM. MTG DATE: Old

City Manager Aguilera stated the Mayor and himself will be attending a meeting in Santa Fe on January 23rd which is a Monday and then on Tuesday they will be meeting with the Governor and Representatives about our requested funding for this coming Legislative Session, so they would like to move the meeting to Wednesday, January 25th so they will be able to come back and still be refreshed, otherwise they will be hurrying up on Tuesday to get here for the meeting on Tuesday night.

He stated his recommendation is to move the regular meeting of the City Commission to Wednesday, January 25th at 7:00 P.M.

"Commissioner Montgomery moved to change the regular meeting of the City Commission from Monday, January 23, 2006 to Wednesday, January 25, 2006 at 7:00 P.M.

Seconded by Commissioner Black
Motion carried unanimously.

OLD BUSINESS: None.

REPORTS:

CITY MANAGER –

City Manager Aguilera stated we have some good news. He stated we have a fifteen thousand dollar check from Mr. McAfee for the lease on the Airport. He stated he has asked the Airport Board at their last meeting to begin thinking about how their going to spend that in remodeling or buying equipment or whatever it is for the Pilots Lounge, and they were happy to hear that.

He stated they also have finalized the issue with Mr. Randy Ashbaugh and the Golf Course property. He stated the letters have all been signed and sent to the Escrow Company, and title to that property is now just a matter of a few days until it gets into our hands also.

City Manager Aguilera stated that Mary has ordered the City Codes on CD so it makes it very convenient if you have a computer you can do a search like you do on any other documents. He stated if you are looking for Animal Control or something, you just plug in Animal Control and it takes you to that section so you don’t have to be leaping through that. He stated they will be giving those out to the Commissioners and will also be selling them to the public at a lower rate, and if anybody wants a copy of a section of the code we can just give them the whole CD for less than pages of copies and we will be also putting it on the website so that people can access our City Codes on the website. It’s costing us about five hundred dollars to buy the license and get all this done, but he thinks in the long run it will make life easier for all of us.

CITY ATTORNEY – None.

COMMISSIONERS –
Commissioner Black stated that after the meeting when they discussed changing their meetings to Tuesday, and she voted no, she was the only negative vote, she’s sure they all remember. But she has had some comments from the public that she would like to share with them. She stated that several of the local business people have said that’s great but there’s no way that they could ever get to a meeting at 6:00, they’re working all day and they can’t do that.

She stated she has had some comments from the general public saying they have to wait a whole week to get any news about the commission meeting and she really thinks they have a valid point and they were very upset about that and I said to them well this is going to be a great help to the people that report the meeting because then they won’t have to go back Monday night and sit up all night writing their article. She stated well that’s their job isn’t it. She stated she thought they all should know that there were a number of people that had comments.

Commissioner Renfro asked if she had an idea of how many people commented.

Commissioner Black stated she had phone calls from about 8 on that and she had two from businesses that said no way could they ever go to a meeting then.

She stated that is the input she is getting from their action.

Commissioner Montgomery – None.

Commissioner Renfro – None.

Mayor Rainey – None.

**EXECUTIVE SESSION:**

“Commissioner Black moved that the meeting be closed for Executive Session – Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8), for 1) Elite Shutters 2) Golf Course Property.”

Seconded by Commissioner Montgomery.

All 4 responded Yes to a Roll Call Vote.

Motion carried unanimously.

**OPEN MEETING:**

“Mayor Rainey stated that the Commission was now in Open Session.”

**CERTIFICATION**

“Commissioner Black certified that only matters pertaining to Purchase, Acquisition of Disposal of Real Property 10-15-1H(8), were discussed in Executive Session, and no action was taken.”

Seconded by Commissioner Montgomery.

Motion carried unanimously.

“Commissioner Montgomery moved that they instruct the City Manager to send the letter that he has drafted to Elite Shutters.”

Seconded by Commissioner Renfro.

Motion carried unanimously.

“Commissioner Montgomery moved that they instruct the City Manager to continue working on negotiations on the Golf Course
Seconded by Commissioner Renfro.
Motion carried unanimously.

ADJOURNMENT: There being no further business to come before the Commission the meeting was adjourned.

APPROVAL: PASSED AND APPROVED this 25th day of January, 2006, on motion duly made by Commissioner [signature], seconded by Commissioner [signature] and carried.

JIMMY E. RAINey
MAYoR

ATTEST:
MARY B. PENNER
CITY CLERK