CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, February 27, 2007

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 Tuesday, February 27, 2007 at 6:00 P.M.

PRESIDING OFFICER: The meeting was called to order by Mayor Montgomery 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. Lori S. Montgomery, Mayor
Hon. Jerry Stagner, Mayor Pro-tem
Hon. Jimmy Rainey, Commissioner
Hon. Evelyn B. Renfro, Commissioner
Hon. Freddie Torres, 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 Montgomery called for fifteen seconds of Silent Meditation.

Mayor Montgomery called for the Pledge of Allegiance.

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

"Commissioner Stagner moved approval of the Agenda as presented."

Seconded by Commissioners Renfro/Rainey. Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT: None.

COMMENTS FROM THE PUBLIC: Mr. Bobby Allen and Mr. Travis Jackson came before the Commission to express their concerns with some issues at the Veteran's Memorial Park.

CONSENT CALENDAR: None.
Mayor Montgomery stated the following are draft minutes from various boards provided to the Commission and are for information only and are non-action items.

Planning & Zoning Commission & Public Utility Board –

City Manager Aguilera stated this Proposed vacation of alley by the City of T or C has been before the Planning & Zoning Commission and the Public Utility Advisory Board. He indicated that the Utility Board recommended denial of the City’s request to vacate the alley based on the belief that they needed the alley for utility purposes, however there are no utilities in the alley per say, and explained there are utility lines over head in the alley and that would only require that the City maintain an easement in order to be able to get in there if they needed to, although that possibility is very remote.

He stated the Planning & Zoning Commission also recommended denial of the request based on the issues that have occurred in the past having to do with the mud slide that occurred, and indicated their belief that the City had some obligation in making reparations and they tied that to the idea that they shouldn’t vacate the alley.

City Manager Aguilera stated that City staff has appealed those decisions to the City Commission. He explained the reasons are fairly clear, and when the mud slide occurred the City took equipment and manpower and removed all the debris behind the buildings which front on Main Street, and indicated when they submitted their bill to FEMA after they reviewed all the damage that had occurred their first question was because they saw the alley, and asked if the alley served a public purpose, and being used as an alley, and the answer was obviously, “no,” it’s a side of a hill.

He stated they disqualified them from receiving any FEMA money because it did not serve a public purpose and not being used, and the second reason is the City’s Self Insurers Fund has told them if this alley is not serving a public purpose then why do they have it, and it makes no sense to them that the City would have a piece of property that they do not need, and the request from the City is that they vacate the alley, and give it back to the original properties that it came from and maintain a utility easement for utility purposes.

City Manager Aguilera stated there is also a question of the damage that occurred and future damage that may occur, and that the City along with the property owner on top of the hill contacted an engineering company. He indicated the City contacted Engineers Inc., from Las Cruces and asked them to give the City an estimate as to what should happen in terms of stabilizing the slope and they came back with a need for a retaining wall, and stated it is an extremely expensive proposition.

He indicated the owner contacted someone else, who used a different method of stabilizing slopes, and our building inspector contacted them and went through a long process trying to get information about that, and the bottom line is they have an estimate of what they will charge to stabilize that slope, and it runs in the range of about $150,000.

City Manager Aguilera stated it is a very expensive proposition to attempt to stabilize that slope. He indicated they do not see that as being the City’s obligation, and do not see that as something that will happen again in the near future, and stated that the owner on top of the hill has taken some steps to divert the water that caused
this problem to begin with, and explained that the water came across his property from another property and down the hill and saturated the slope and eventually took it out.

He stated a lot of loose debris in that slope is now gone, and the water on top of the hill has been diverted by the property owner up on top, and explained in the future there will be less water going down that slope.

City Manager Aguilera stated these are two separate issues, and one is vacation of the alley, and the other is stabilization of that slope. He does not believe anymore action is necessary on the City's part other than to get ourselves out of the ownership of something that they do not use, and the recommendation is that they authorize the vacation of the alley, and instruct staff to get the proper paperwork filed and recorded.

City Attorney Rubin asked can they assume, and indicated he spoke to the Self Insurers Fund, and can they assume that giving the recommendation that they should vacate it they do not see any liability issues at this point.

City Manager Aguilera stated they did not speak of liability other than why would they own something that could pose a liability but that you are not using.

Commissioner Torres who owns the hill?

City Manager Aguilera it's the City at this point...as an alley.

At this time City Manager Aguilera did a simplified drawing and explained the area.

Commissioner Torres asked what could they do to help them, and surely they're not going to just walk away from it and let them worry about it. He stated those people live here in T or C and are our citizens and business people, and that they need to work with them and help them in some way and then give it back to them, but I don't think they should just cut and run.

City Manager Aguilera once again mentioned that the cost is about $150,000, and even then they were told that does not guarantee that the slope will hold.

Commissioner Torres asked how they were going to fix it.

City Manager Aguilera stated the gentleman at the top has already taken the action so the water does not run down, and runs backwards and has put in trenches to take the water...there is another slope to take the water over to the side slope.

He indicated the condition that existed and created by the homeowner from an engineer's point of view...and that the condition was created by the property owner allowing the water to drain off the side, and stated that is changed, and the water direction has now gone backwards so the amount of water that came down this slope the last time is not going to happen again, and explained the only water that will come down the slope is whatever drops on it directly.

Commissioner Stagner...if this is deeded half to each one of those owner's how do they fit in with FEMA at that point, if this happens
again, and are they still in the same position.

City Manager Aguilera stated if it happens again...if it were to happen again it is private property, and if they got flooded out then they would have recourse with FEMA to get assistance, and not the City.

Commissioner Torres stated they need to make sure the problem is taken care of before you know...before we vacate it, I think.

Mayor Montgomery did the engineer look at what the property owner had done?

Commissioner Torres...I would make a motion to table this, and look into it before they make any kind of decision...so fast.

Commissioner Stagner I think that's right...we're only responsible for those two dotted lines, not below and above...they need the engineer to tell them what is going to happen in the future...and who's responsible for that washing down...maybe they need to talk to the Municipal League...I know what our responsibilities are with that angle.

Mayor Montgomery I think part of the answer to that is, the question that they keep coming back to them...is why do they own something that they are not using. She stated they are putting themselves at risk for having a piece of something...

Commissioner Stagner stated he agrees and there needs to be some kind of solution to this, and he thinks they need more information and let the engineer look at...

Mayor Montgomery stated that is what she would like to see...if the engineer could come back and take a look at what the property owner has done...they're not going to tell them yes this is going to cure it and will never happen again...of course they're not going to say that, but may say the steps that he has taken...will help in the future, or not have it in such a severe shape...

Commissioner Torres...let's do something rather than do nothing.

Mayor Montgomery, I politely disagree with you...I don't think the City should...if the engineer is saying that the $150,000...I don't think the City should jump into that boat either.

Commissioner Rainey just a little back history on this particular problem...if you went up and looked at it the only portion ever used by the City as an alley is about maybe 100 ft. from Foch coming in, and that was to service to get the lines up to the houses that were built behind the theatre.

He stated the Main Street property down below in 1932-1934 dug that out and changed the natural slope of the hillside, and that whole area was excavated by the owners of the property, and the portion of the alley that they are talking about has never been used by the City for anything, and he thinks they should vacate that alley.

Mayor Montgomery stated she had a question for City Attorney Rubin, in the last scenario where a portion of the City's property went down below, and according to an engineer was caused by property that was above the City's property would the Municipal
League or anybody like that advise the City to recoup their costs from the property owner that was possibly at fault for causing any damage...what would the attorney...

City Attorney Rubin, I think that is hitting it on the head...probably at fault, I would have to look at it...I could contact the Municipal League if they would like him to...but if you can prove fault then certainly there would be a claim.

City Manager Aguilera I want to irradiate what Commissioner Rainey said which I think is important and I don’t want to loose that fact...if there was liability on the City’s part it already happened and they would already be responsible for that if they were to be found liable if something had happened. He stated what they don’t want is to be found liable for something that happens tomorrow because they didn’t vacate the alley, so vacating the alley now makes sense...removes them from the picture from any future happenings.

He stated if the Commission wants a report from an engineer they can bring that back, and if they want to spend some money on this slope they can still do that because they are acting on something that happened before.

“Commissioner Torres moved to table the vacation of alley.”

Seconded by Commissioner Stagner.
Commissioners Stagner/Torres/Renfro voted for
Motion carried 3-2.

Mayor Montgomery asked if there was anything they wanted the City Attorney or City Manager to bring back, and Commissioner Torres indicated the engineers report.

City Manager Aguilera would like to clarify that they may not be able to get an engineers report by the next meeting.

PUBLIC HEARINGS:

City Manager Aguilera stated this is an ordinance that is routinely adopted by cities in order to apply for CDBG funds.

Mayor Montgomery opened the Public Hearing and asked if there was anyone who wanted to speak for or against the final adoption of Ordinance #568 – Fair Housing Ordinance. No comments were received and the Public Hearing was closed.

APPROVAL FOR
REIMB. FOR
MUN. COURT
AUTO. FUND
#126:

City Manager Aguilera stated this is a reimbursement request in the amount of $1,370.50 for expenses for the court, and is a routine matter.

“Commissioner Renfro moved approval of the reimbursement request for the Municipal Court Automation Fund #126.”

Seconded by Commissioner Torres.
Motion carried unanimously.

MUN. COURT FOR
AUTOMATION PURCHASES:

Ms. Bobbie Sanders, Court Administrator came before the Commission and explained that they have been experiencing problems with their computers. She indicated their computer analyst and programmer has advised them and recommended that they replace their computers.

She indicated she has talked to Ms. Zella Cox with the Supreme
Court Automation Program Director and she concurs. Attached is a
copy of what it will cost to replace everything including the servers,
and the cost for setting it up, and licenses for the programs for the
cost of $19,352.

Ms. Sanders stated for the automation allotment they have $16,000
left, and indicated there is $40,000 set aside for emergency
purposes that will help them with the remainder which will be a
little over $3,000. She stated the annual allotment altogether for
Municipal Court in Truth or Consequences for this year was
$20,139.

She stated they will use $3,000 from the emergency fund if this is
approved, and reminded the Commission that this is all
reimbursable to the City providing that it is processed within 60
days.

Mayor Montgomery you mentioned the “emergency fund,” and
asked who holds that emergency fund?

Ms. Sanders, replied the AOC, (Administrative Offices of the
Court.)

She stated she would get confirmation from Ms. Cox that the
additional $3,000 was going to be covered by the emergency fund,
and that she does not have that on hand, but will not move forward
with this order until she has that.

City Manager Aguilera stated recommendation by staff would be…approval subject to getting confirmation that the $3,000 will be
covered.

“Commissioner Renfro moved approval the request by Municipal
Court for Court Automation Purchases contingent upon receipt of
confirmation from the AOC.”

Seconded by Commissioner Torres.
Motion carried unanimously.

Mayor Montgomery stated they held a Public Hearing for final
adoption of Ordinance #568 – Fair Housing Ordinance, and no
comments were received.

“Commissioner Stagner moved approval Final Adoption of
Ordinance #568 – Fair Housing Ordinance.”

Seconded by Commissioner Torres.

City Attorney Rubin stated he would like to make a comment, and
that he was asked at the previous meeting about the issue of age
discrimination, and he checked and compared with the State, and
the Federal Statue and the issue of age discrimination is not
addressed in the Federal Statue, and the ordinance tracks the
language almost word for word of the Federal Statue.

Motion carried unanimously.

City Manager Aguilera stated the Commission approved the
creation of the Capital Improvement Advisory Committee, and
advertised for applicants to serve on this committee.

He indicated the requirements that there be 5 members, 3 of which
have to be from the construction or real estate community, and the other 2 at large, and they have met that by the ones listed.

City Manager Aguilera stated that Mr. Howell is a Planning & Zoning Commissioner, however since this committee will initially meet about 5 times a year, and then only once a year, and has agreed to serve on this committee.

"Commissioner Rainey moved approval of the five volunteers as submitted to serve on the Capital Improvement Advisory Committee."

Seconded by Commissioner Stagner. Motion carried unanimously.

City Manager Aguilera stated when the City Commission approved the transfer of $86,000 to the Civic Center from Lodgers Tax, he indicated there were certain items that had to be upgraded or repaired.

He stated they were under orders from the Fire Marshal to remove the curtains, upgrade the electrical system and sprinkler system, and that there were other items that needed to be done and would come back to this Commission for approval.

City Manager Aguilera stated he has provided them with a list, and that they are not in any type of order other than the ones completed or partially completed. He indicated the seat upgrade is now 100% completed as of today, and they are working on the exit and emergency lights and should be completed by tomorrow.

He reported on the back drop curtains and they were hoping to have them before this week-end because they have a magic show, but explained they have a back up plan which are to put up 4x8 sheets of plywood, and the gentleman putting on the show is satisfied that will work.

City Manager Aguilera stated on the sprinkler system they are waiting on a response from the company for about $6,000. He stated if they have any comments or do not want anything done he would welcome any suggestions.

Commissioner Rainey for item #15, fix the fountain in front of the building, and he thought that was just completed a few months ago.

City Manager Aguilera stated the pump has gone out.

Commissioner Renfro, table and chairs upgrade does that mean order some.

City Manager Aguilera stated that SCEDO bought 10 tables and donated them, and explained they need additional tables for the break-out rooms that they need to purchase.

Mayor Montgomery stated the only other thing she would like for them to take a look at is the phone system for the conference rooms, if there might be any use for computer access in those rooms.

City Manager Aguilera stated the building has wireless communication so anyone with a wireless card can access…
Mayor Montgomery stated you can not use it in the Red Room.

Commissioner Stagger stated he thinks it needs to be up-graded.

Mayor Montgomery stated maybe if there were some repeaters in those rooms.

Commissioner Renfro asked on the material for the curtains...is that going to be fire retardant.

City Manager Aguilera stated the material they purchased is fire retardant and approved by the Fire Marshal.

"Commissioner Stagger moved approval of the Civic Center Improvement list as submitted with addition of computer access."

Seconded by Commissioner Rainey.
Motion carried unanimously.

CONSIDER AMENDMENT 4
- TRANSMISSION AGREEMENT - TRI-STATE:

City Manager Aguilera stated they were provided with 2 different Amendment 4, one dated January 16, 2007 and the other one is February 15, 2007. He explained they recently reviewed the one dated January 16, 2007 which they approved with two changes, one to add an additional Whereas that indicated that Amendment No. 3 is replaced by Amendment No. 4, and the other change was that item 1.4 be amended by taking out the last part of that sentence.

He stated when he contacted Tri-State they indicated they did not have a problem with those changes, however their Attorney has asked them to make some other changes.

City Manager Aguilera stated what they did instead of modifying paragraph 1.4 they took it out completely. He indicated they added to continue to repeat the fact that to define in the WAPA contract to keep repeating that.

City Attorney Rubin stated the changes they wanted are in here, and he has no problem with it.

"Commissioner Rainey moved to accept Amendment 4 for the transmission service agreement with Tri-State."

Seconded by Commissioner Renfro.
Motion carried unanimously.

CONSIDER APPT. TO THE
NM FILM LIAISON:

Mayor Montgomery stated she is the one that brought this to the Commissions attention. She indicated she has a letter from Film New Mexico from the NM Economic Development Department regarding a community film liaison, and that Mr. Gustin came to her and at this time Cary "Jagger" Gustin came before the Commission.

Mr. Cary "Jagger" Gustin came before the Commission, and stated he is a 34-year resident of our City and enjoys volunteering. He indicated that the movie industry loves New Mexico and that film companies have been making movies here for over 100 years, and that our State Government is very pro-movie with a great incentive package which is making the movie industry flock to New Mexico.

He feels they should be looking to host movie companies here in T or C and Sierra County, and that a good way is to plug into the State Film Offices Liaison Network, and explained it has a roster of
volunteer liaisons from interested communities and that these people volunteer to work with the film office to get information about their area for the interested movie studio.

Mr. Gustin stated he acted in this capacity in years past and indicated to be a good liaison they need to be familiar with the community and good knowledge of City officials, economic development people, and Chamber of Commerce information. He stated to be a liaison for the community they now need a MOU between the liaison, the City, and the film office and explained that it guards and protects information that may be sensitive to a films production while filming in the area, and he feels with his background and prior relationship with the State Film Office he can do a good job for them, and respectfully requests that they appoint him as their film liaison to the State Film Office.

"Commissioner Torres moved to appoint Mr. Cary Gustin as the T or C Film Liaison."

Seconded by Commissioner Renfro.
Motion carried unanimously.

OUT OF STATE TRAVEL — DWI COORD.: City Manager Aguilera stated this is after the fact approval that he is asking the Commission for. He explained the policy use to state that the City Manager approve all out of state travel, and somewhere along the line the City Commission changed that to require that out of state travel be approved only by the Commission, or in case of a short deadline by the City Manager, but then the City Manager had to bring it before the Commission as soon as possible, and indicated that is what has occurred in this case.

He stated Ms. Kent found out there was a conference in Las Vegas having to do with a grant that she is interested in and believes she can get for the City, and indicated she found out about the conference 2-3 days before the conference and submitted the paperwork, and is at the conference now which was impossible to bring this before she left.

City Manager Aguilera stated he looked at her rationale as to why she was going, and the benefit which might mean some additional money for the City.

"Commissioner Stagner moved approval the Out of State Travel request for Ms. Kent."

Seconded by Commissioner Renfro.
Motion carried unanimously.

OLD BUSINESS: None.

REPORTS: CITY MANAGER –

City Manager Aguilera stated he was a little bit preempted by Bobby Allen. He stated the photograph that the Commission saw of the improvements in front of the wall at the Veterans Park is an idea that came from Ray Chavez.

He stated he is also utilizing Mr. Chavez as a grants person, and is in charge of the beautification grant, and he came up with the idea of putting these concrete boxes and filling them with red rock, and he took the picture and showed Bobby and he liked the idea.
City Manager Aguilera stated the grant is for $1,100, and explained that half of it goes for clean-up. He indicated that Mr. Chavez has contacted Bartoo for a donation of the concrete and has gotten positive feedback on that.

He previously mentioned about a conference that they applied to get the conference statewide from the Rural Economic Development, and he received an e-mail today from Mindy, and indicated she put the packets together, and that they are one of the proposals that is in the running to host the conference, and that they are coming down to look at the Civic Center.

City Manager Aguilera stated they are also working with the Tourism Board who is doing a survey of facilities such as restaurants, and hotels that are needed to host a conference. He indicated he had Mr. Chavez do a door to door survey of the hotels to get information from them such as how many rooms they have, are they willing to block rooms for a conference, discount prices, and basic information, and also mentioned that Mr. Steve Green is contacting restaurants with similar questions about being able to host conferences and so forth.

CITY ATTORNEY –

City Attorney Rubin reported that this will be his final summary of the Trumbull vs. the City of T or C lawsuit. He stated as everybody recalls the City had been sued by Mr. Trumbull and the Informed Citizen Alliance Group relating to the proposed site for Wal-Mart.

He stated when the City got sued they filed a motion to dismiss based upon the fact that jurisdiction was not filed through the proper Courts, and that Mr. Trumbull did not have a standing to sue them.

City Attorney Rubin stated the motion was granted and they were dismissed as a party from the case, and indicated as they promised the public that they would file a motion for sanctions as an attempt to recoup Attorney fees and other costs. He stated they did file a motion and had a hearing this past Friday...the Court Attorney even though they were the prevailing party in the case the Court felt the discretion was un-appropriate to award them sanctions, and indicated that is the end of the case.

He stated never the less he is glad they have established a precedent and a policy with the Commission, and the City that if the City does get sued and they prevail that they are going to be seeking to recover their costs in Attorney fees in the future.

COMMISSIONERS –

Commissioner Stagner stated he wanted to say something on the conference that City Manager Aguilera mentioned earlier, and indicted he is going to meet with them on Thursday morning for a site visit. He stated he knows the individual coming down and is hoping they can persuade him to bring the conference here.

He stated regarding the Hot Springs Motor Plex and that they are hoping to bring some of the major players out within the next few weeks for a site visit, and are excited that they are coming down to take a look.

Commissioner Rainey – No report.
Commissioner Torres asked about pot holes and the dry weeds around, and that they need to enforce this with property owners and get them cleaned up, and that the City needs to repair the pot holes, and asked if they had a pot hole crew.

Commissioner Renfro replied, "yes they do...we're suppose to."

Commissioner Torres...suppose to, but I never see them.

City Manager Aguilera stated obviously they can't be everywhere at once but he sees them out everyday, and indicated they fixed all the pot holes on Foch, and he just happened to notice as he drives that street all the time, and sees the new patches of asphalt here and there on the different streets as he drives them.

Commissioner Renfro...I notice its like hit and miss, because she has noticed on some streets there are some pot holes that are fixed and a little way down there is going to be some pot holes that aren't...so...it's not a continuous...

Commissioner Torres stated he thinks they also need to talk to the State Highway Department...Date Street & 3rd Street is getting terrible.

Commissioner Stagner stated the overlay that they did 2-3 years ago is coming apart...is the State going to do anything...on Date & Main...Broadway & Main are coming apart.

City Manager Aguilera stated as far as the weeds they are continuing to abate weeds, and reported today they were out on private property abating weeds. He stated that is a situation where the property has been abandon for a long time, and they send City crews in to clean-up, and place a lien on the property to recoup their costs.

Commissioner Torres also reported in the area where they had a recent fire in the Caballo Road area there are properties that need cleaned up.

Commissioner Renfro stated she would like to congratulate two employees, Merced Baca with the Street Department for 10 years with the City, and Adam Fuentes with the Solid Waste Department for 15 years.

Mayor Montgomery – No report.
ATTEST:

Mary B. Penner
MARY B. PENNER
CITY CLERK

Lori S. Montgomery, Jerry Stagner
MAYOR pro-tem