CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, March 10, 2009
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, March 10, 2009 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. Steve Green, 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, and indicated they have one change and that the City Manager is asking they remove (H) #7, and stated that contract with Chris Holland is incomplete at this time.

"Commissioner Renfro moved approval of the Agenda with the deletion of (H) #7."

Seconded by Commissioner Torres.
Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT: None.

COMMENTS FROM THE PUBLIC: Mr. Charlie Kuhne spokesperson for the Sierra County Senior Citizens came before the Commission to congratulate Commissioner Stagner.

Mr. Jim Jacobs came before the Commission and stated he lives at
209 S. Pine which is a half of block from the Ralph Edwards Park, with concerns of the speeding traffic in that area, and suggested that the Commission consider speed bumps.

Ms. Annette Garcia came before the Commission and stated she represents softball and the co-organizer for coed and handed out letters with signatures, and indicated this is from parents, families, and players who utilize the Louis Armijo Park with concerns of the lighting at the park, and they would like the Commission to look into replacing the lighting at the park.

Mr. Ronald Fenn came before the Commission and read a letter, and stated that he would respectfully urge this body to vacate its January 24th 2009 decision to accept the flawed bid for the Municipal Court Commercial Building, and went on to read the rationale for this request. (Complete copy attached hereto and made a part hereof.)

Ms. Brenda Robinson came before the Commission and also spoke on the lighting at the Louis Armijo base ball fields.

Ms. Sophia Perron came before the Commission and spoke on several different issues.

Mr. Jessie Robinson came before the Commission to also speak on the lighting system at the Louis Armijo Park.

CONSENT CALENDAR: Mayor Montgomery stated they have several items under the Consent Calendar – Minutes of the Regular City Commission Meeting – February 24, 2009, LDWI Grant Reimbursement - February 2009, Accounts Payable – February 2009.

“Commissioner Stagner moved approval of the Consent Calendar as presented.”

Seconded by Commissioner Green.
Motion carried unanimously.

DRAFT MINUTES: Mayor Montgomery stated the following are draft minutes from various boards provided to the Commission for their information, and are non-action items.

BOARD COMMITTEE REPORTS: None.

PUBLIC HEARINGS: None.

ESTABLISH PROCESS FOR BOARD APPOINTMENTS City Manager Aguilera stated this issue has been discussed several times, and at their last meeting he presented a resolution for their review, and it was the consensus of the Commission to look at all the boards, members and their expiration terms, and to come to a conclusion as to which of the boards would be subject to being interviewed on a board per board basis. And provided for the Commission is a list of all the board members and their terms, and the ordinance enabling their appointments.

Mayor Montgomery stated this Commission has done a good job about accepting the recommendations of each board, and stated she would like for them to consider being of importance for
Tuesday, March 10, 2009

TorC City Commission;

Dear Commissioners,

I respectfully urge this body to vacate its Jan 24th 2009 decision to accept the flawed bid for a Municipal Court Commercial Building. IFB: 08-09-1203-0112-805

Rationale for this request:

1. The fact that this bid is seriously flawed, for the reasons previously presented to the commission. (Read into the Commission Minutes.)
2. The funding for this building, will come from the NMFA loan, which includes, architectural services to design a cover for the Municipal Swimming Pool, it should also provide Architectural services to design a proper, purpose built, structure to house the Municipal Court, which should be an equally important community asset.
3. The bid specifications are not for a complete modular building, leaving open the costs of finishing, as a series of “change orders” for which no specifications have been provided.
4. The sole bidder, Anderson Homes is dealing with a homebuilder, (Redman Homes) not a commercial modular building provider such as ModSpace, which has locations in both Albuquerque and El Paso. It would appear that Mr. Aguilara has not done sufficient research in this matter. Why spend the taxpayers’ money in such haste, with lack of clear thought?
5. Commissioner Torres, who made the motion to accept the bid, says, “we have plenty of money”, then why not do this project with the same care as the Swimming pool or the Senior Center, that is on tonight’s agenda?
6. Commissioner Green’s vote for this project is flawed and unfortunate. Besides his avowed position for use of an existing local building, his stated concern for the health hazard involving the current location is perplexing. If, there is sufficient evidence of a health risk in the current location, why has the City not moved to find a safe temporary location for the Court personnel until a new permanent one is prepared? It appears that, either the City does not believe that health risks exist, or that the City has callously allowed the Court Staff and its clients to be exposed to these risks since their discovery.
7. The proposed building is oversized, to accommodate community growth, but there is already an abundance of hours for court sessions that could be scheduled, in place of a larger less efficient building. The building proposal does not address any long-term cost saving features, such as solar lighting, which would seem ideal, as the building will only be used in daylight hours. Why not build a structure that our city will be proud to own for the next hundred years?

Please be advised, that your non-action on this matter will force an Appeal through the Legal System and a call for investigation by the appropriate agencies.

Ronald Fenn

Concerned Citizen
interviewing individuals would be those boards that are directly appointed from this Commission that would report back to them...for example...the Hospital Governing Board, and indicated that the governing board does not make recommendations to them for individuals who sit on that board, and stated those recommendations come directly to them from the public, and they look at those and make decisions on that board...per say.

She stated the Planning & Zoning...because they are a quasi judicial board that makes decisions and recommendations to this Commission, but however something like the Recreation Board...when there is a vacancy on that board...individuals apply and that board looks at those individuals and makes the decision based on that...and suggest they take a look at interview processes based on some type of criteria, and stated she would hate to override boards that have taken the time to volunteer and to go through the process of reviewing resumes or doing whatever process they do, and indicated it is like second guessing them, and she does not think that is respectful.

Commissioner Renfro stated she agrees.

Commissioner Torres also agrees.

Commissioner Stagner stated he also agrees, and that there has also been some talk about residency requirements, and thinks they represent everybody in the county, and thinks it is irrelevant to him if they live in the city or not.

Commissioner Green stated if the Commission has to be registered voters, and live within the city...maybe applicant’s for the Public Utility, Planning & Zoning, and Lodger’s Tax should be as well, and think it is time for a change.

City Attorney Rubin stated that they might not want to limit themselves, and in the past he has discouraged limiting participation to city residents, and he thinks it is up to the Commission to make that decision.

Mayor Montgomery stated that the Commission needs to look at the expertise that the person brings to the table, and that they need to be smart and prudent about how they make those decisions. And thinks if they change the ordinance they should not box themselves into a corner.

Commissioner Green suggested they come up with a grading system, and that residency might be a certain value, and to guarantee that the system is fair because the same questions would be asked to every single applicant and have consistency.

Mayor Montgomery stated that maybe not change the ordinance, but adopting a scoring mechanism so part of that criteria is taken into consideration when they interview individuals

“Commissioner Renfro moved that the Commission interview applicant’s for the Planning & Zoning, Hospital Governing Board and the Spaceport Board.”

Seconded by Commissioner Stagner.
Motion carried unanimously.

APPOINTMENT Mayor Montgomery stated on the appointment for the Spaceport
Mayor Montgomery stated they will schedule the interviews 1 hour prior to their next meeting.

City Manager Aguilera stated this item has been brought up several times in the past about dogs at Ralph Edwards Park. He stated in doing some research the ordinance does not say that dogs are not allowed in the park, and that it addresses the leash issue, and picking up the waste.

He stated the reason he listed this on the agenda is that he wanted to make sure the Commission did not want to go in a different direction...and not allow dogs at all, or leave the ordinance as it is and continue to enforce that.

Commissioner Renfro stated she thinks the signs should clearly state...that dogs must be on a leash, and that the person is responsible for picking up the waste.

City Manager Aguilera stated eventually they will put in some waste stations.

Commissioner Green suggested when someone purchases a dog license that they be given a card with the rules and regulations about dogs in the park.

City Manager Aguilera stated they talked about this at their last meeting, and the documents have been prepared, and indicated there were instructions given to the NMFA people that the City wanted a loan they could afford based on the amount of revenue that they take in on the quarter cent sales tax, and the discussions were 2.9 million...which was going to be the amount. He stated at the last minute they called and they informed the City the received 3.3 million, and he assumed they had in mind the yearly payment, and indicated they went through the process, and had all the documents signed, and sent them the amortization schedule, and were informed that the loan payments were higher than what they expected, and so he called them and told them they needed to revise the loan in order to bring the payments down, and it turned out to be a good thing because the interest rate went down, and the loan now is 2.9 with the yearly payments at the same amount, or near the amount that they expect to receive in revenue, and the process begins all over again, and indicated the ordinance has already been published so it can be ready for final adoption for the meeting on the 24th of March, and closing is set for April 3rd.

He stated that some of this loan will be to redo the lighting system at the Louis Armijo Park.

Mayor Montgomery stated they need to ensure that they publish that they did hear their plea, and when they receive the loan it will also be used to redo the lighting system at the park.

"Commissioner Stagner moved approval the publication of the proposed ordinance for the NMFA loan."

Secended by Commissioner Green.
Motion carried unanimously.
C/O FOR WWTP: City Manager Aguilera stated the Commission approved a contract for installing 4 valves at the WWTP, and stated as part of that project there was some savings in the project, and that there was some extra costs because when the hole was dug it took out some concrete, and stated there is another change order for $29,000 to rebuild the wet-well, and explained the wet-well is where the effluent goes into the deep well and is re-pumped into the regular or Louis Armijo pond, and indicated the well is 30 years old and the concrete is crumbling.

He stated they have money in this grant, and he made the executive decision of signing the change order, and the change order is being presented as a signed change order...approved by him prior to the work being authorized by the Commission.

“Commissioner Stagner moved approval of the change/order for the WWTP to repair the wet-well.”

Seconded by Commissioner Torres.
Motion carried unanimously.

JPA FOR SJOA: City Manager Aguilera stated they have previously heard a presentation from Patti Lester from SJOA about a new senior citizen’s center, meal center and a recreation center, and indicated Ms. Lester has made contact with an architect who has tentatively agreed to provide free architectural services, and with the assistance from the City they have asked for $100,000 for design from the State.

He called Mr. Jay Armijo to see about the status of these funds, and he indicated he didn’t think any money was going to be allocated to anybody, but would check and he will get back to him.

City Manager Aguilera stated they have identified property owned by the City...below the Veteran’s Home, and he has provided them with a map which shows the approximate location, and with this new JPA they will enter into a joint powers agreement with the SJOA for this property for a $1.00 a year in return for the services that they are going to provide to the senior citizen’s of Truth or Consequences, and they will need this in order to obtain the money in order for them to indicate they have the property.

Commissioner Renfro asked what road would be used to access the senior center.

City Manager Aguilera stated on top of the ditch there is a dike...and that it will need to be widened, and indicated it is the best place to get to it...otherwise if they come in further east they will have to cross the dike.

Commissioner Renfro stated they have main gas lines on the corner of Van Patten where the ditch is.

Ms. Lester stated they are talking about one way in and one way out.

City Manager Aguilera stated there would be 3 buildings...the main building where the meals are served, a recreation center and an amphitheater.

The Commission added the city should be aware of future financial
obligation when and if the building is built with Commissioner Stagner indicating that they understand that.

Commissioner Green referred to page 1...the first Whereas second line after SJOA...to secure grant funds, page 3 the top paragraph fifth line down or other fire...he thinks it is a duplicate, and he does not think they can cause structural damage to the demised premises...demised means its dead, so that should be structural damage resulting in the demise of the premises.

Commissioner Renfro referred to page 1...on the 3rd Whereas bottom line and responsibility for...delete the word of, and the next Whereas, the SJOA and the City are a bodies, and strike out are bodies corporate and political.

Commissioner Green on page 2, under Scope of Duties – The City Shall...and he knows that the structure is going to be owned by the City...but under #1...is just wondering if they would become more of a viable candidate for the money if that last line...add Sierra County.

City Manager Aguilera stated the reason it is worded that way is in order to get away from the anti-donation clause...the City itself is getting a service for its dollar that they are renting it...so its very specific...citizens of Truth or Consequences.

“Commissioner Stagner moved approval the agreement between the City and SJOA with the changes discussed.”

Seconded by Commissioner Green.

Commissioner Renfro stated she supports this and feels that she should abstain because she owns property in that vicinity, and she would not want it to be construed that she is voting for it because she would benefit in some way.

Commissioner Renfro abstained.
Motion carried.

LEASE AGREEMENT FOR SIERRA COMMUNITY COUNCIL:

City Manager Aguilera stated that the Sierra Community Council and the sub-group...Public Access Channel had originally looked at the Armory for office space. He indicated they went through the lease process, and when they started to investigate their needs they found out that the electrical system needed upgraded, and stated the cable company does not have cable close by.

He stated they looked at the basement at the Civic Center which is not in use, and indicated the reason for the basement being practical for them is has constant cool temperatures which computers need and has the electrical necessary, and it is secure as there is no way to break in...except breaking into the Civic Center first, and then breaking into the area which has an iron gate.

City Manager Aguilera stated occupancy of the building would be as required by the fire marshal because it is a closed area without a second exit. He stated the City would install an exit light at the top of the stairs, and install tread on the stairs, and it is up to them to provide insurance.

He stated there is a separate agreement with the non-profit which they agree to provide services to the City, and explained they will be filming the commission meetings, and will provide other
services for the City at no charge, and in exchange the City is giving them the money to buy the equipment which will belong to the City, and to operate the business, and allowing them the use of a city building at no charge, and the City will pay for the utilities for a building that is already being utilized, and the anti-donation issue is that they are providing a service as outlined in the agreement with the non-profit.

"Commissioner Stagner moved approval of the lease agreement with the City of T or C & Sierra Community Council for Public Access Channel."

Seconded by Commissioner Green. Motion carried unanimously.

**CONSIDER AGREEMENT CITY & CYFD:**

City Manager Aguilera stated this was brought to the Commission and the Commission agreed to apply for this money through a resolution. He received notification that the grant for this project has been approved in the amount of $37,000, and the City is the fiscal agent, and it is to be used by the Boys "N" Girls Club for staffing.

"Commissioner Green moved approval of the agreement between the City of T or C & CYFD."

Seconded by Commissioner Torres. Motion carried unanimously.

**OLD BUSINESS:** None.

**REPORTS:**

**CITY MANAGER**

City Manager Aguilera stated the Tourism Board has been investing the possibility of starting up the banner program that was in place over a year ago, and indicating that several businesses had bought into, and explained NMDOT clamped down on the company and had them remove all the banners from public right-of-way. And that all the banners in New Mexico disappeared.

He stated some businesses had pre-paid, and did not get their money back, and stated the company is from out of state, and out of business.

City Manager Aguilera stated the Tourism Board decided to take on the banner program because it is a beautification project for the City, and will serve to bring them some money for operating expenses, and they will be out selling these banners, and he has agreed that the City assist them since it is a city project, and stated the electric department will hang the banners, and a local contractor will create the banners.

**CITY ATTORNEY**

City Attorney Rubin reported that the City was recently involved in litigation which they had coverage through NM Self Insurers’ Fund, and the Attorney retained by NM Self Insurers’ was Mary Torres, and she prepared a statement and he read the statement...The City of Truth or Consequences entered into a settlement in a law suit by former SCRDA Director Alice McCans, and the agreement was reached with the approval of the city’s insurer NM Self Insurers’ Fund at a settlement conference at which
the city was not a participant. The City agreed to pay Ms. McCans $50,000...the settlement was entered in order to avoid a lengthy trial which would have been a drain on city’s resources and personnel time. In settling the lawsuit there was no admission of liability and no finding of culpability with regard to any city official or employee.

City Manager Aguilera asked that City Attorney Rubin comment on the summary judgment that was handed down today on the Dukatt case.

And again as the statement indicates...I emphasize the City was not a participant in the settlement conference...in fact they were not even notified of the conference before any decision.

City Attorney Rubin stated there was a lawsuit filed by a gentleman who claimed he tripped and fell on city property, and they took the position that they were not responsible, and they filed a motion for summary judgment which he asked the court to dismiss the lawsuit and the court granted their motion, and the case has been dismissed.

COMMISSIONERS –

Commissioner Stagner stated he is glad to be back after his resounding victory.

Commissioner Green stated it is nice to have the full team back.

Commissioner Torres – No report.

Commissioner Renfro – No report.

Mayor Montgomery – No report.

EXECUTIVE SESSION:

City Attorney Rubin stated they have two items to discuss and they will reverse the order since they have guests here for the item on the Spaceport Lease.

“Commissioner Green moved that the meeting be closed for Executive Session – Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8), Lease for Spaceport Visitor’s Center, Personnel 10-15-1H(2), City Manager.”

Seconded by Commissioner Stagner.
All 5 responded to a Roll Call Vote.
Motion carried unanimously.

OPEN MEETING:

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

CERTIFICATION

“Commissioner Stagner certified that only matters pertaining to Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8), were discussed in Executive Session, and no action was taken, and they will continue for their next meeting, Personnel 10-15-1H(2), City Manager was not discussed.”

Seconded by Commissioner Green.
Motion carried unanimously.

“Commissioner Stagner moved that they instruct staff to work on the JPA agreement with Spaceport America, and bring in back once it has been completed, and that they will add Personnel for the City
Manager to the next agenda."

Seconded by Commissioner Green. Motion carried unanimously.

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

APPROVAL: PASSED AND APPROVED this 28th day of March, 2009, on motion duly made by Commissioner [Stagner] seconded by Commissioner [Green], and carried.

ATTEST:

[Signature]

MARY B. PENNER, CITY CLERK

LORI S. MONTGOMERY
MAYOR