CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, April 28, 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, April 28, 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.

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

Seconded by Commissioner Renfro.
Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT: City Manager Aguilera stated at the last meeting when Mr. Fenn came before the Commission with his comments at the end of his presentation was asked by Commissioner Torres if he was an engineer and he responded in the affirmative, and I wasn’t sure if...so I called the State Licensing Board...I guess I started something at that point in which they confirmed that he is not an engineer registered in New Mexico, and then they said that it is a criminal offense to represent yourself as an engineer, and wanted to know if the City would follow through with a complaint, and his understanding is they would simply warn him that he shouldn’t be doing that, so he did file the complaint, and wanted to make sure there is people out there that heard the fact that he was an
engineer...and to understand he is not an engineer.

Ms. Joey Perry came before the Commission and stated she is speaking in support of item H-3 on the agenda – Resolution #38-08/09 in support of submission of a grant proposal for the construction and development of the Healing Waters Trail. And stated this is a really good project, and that she has been involved with it for several months, and everything she has heard about it is really good and that she is excited about the opportunities that it is bringing to the community, and ties in very nicely with many of the other projects that they have going on in the community, and encourages them to support this project.

Mayor Montgomery stated they have two items under the Consent Calendar – Minutes of the Regular City Commission Meeting – April 14, 2009, DAIC Monthly Report – March 2009.

"Commissioner Stagner moved approval of the Consent Calendar as presented."

Seconded by Commissioner Green.
Motion carried unanimously.

None.

None.

None.

City Manager Aguilera stated they were provided with an application packet from WHPacific which is our engineer for the Airport, and that they have taken the feedback from the Airport Board and the Airport Manager about the next round of grants and what they need.

He stated what they are applying for this year is not asphalt as they have done in the past, and indicated they are applying for a piece of equipment which will cost about $150,000...of which our 2.5% matching is $3,750, and stated the equipment is a large tractor which will be used for weeding, sweeping the runways, and for other uses at the Airport for maintenance.

City Manager Aguilera stated this is the same grant that they have applied for over the years, and the recommendation is for approval of the application.

City Attorney Rubin stated he did observe that in Section Three imposed 16 different requirements upon the sponsor which is the City, and that he spoke with the City Manager about that, and he doesn’t think any of those requirements are a problem, and City Manager Aguilera replied yes that’s right, and stated they are all standard conditions from FAA.

Commissioner Green referred to page 3 - #6...The Sponsor agrees that no landing fee shall be charged any owner or operator of aircraft using said airport...does that include or preclude commercial airline flights...because there is a possibility that they
might in the future get some commercial airline business into our airport...and that’s how airports survive is landing fees...how does that affect them.

City Manager Aguilera stated this is for use of the airport so that if somebody wants to land at the airport they do not charge them a fee...if somebody wants to operate out of the airport...such as they have talked to NM Airlines about, and want to use a space to do luggage handling and whatever that is a different issue...so there is no landing fees, but there are fees for use of the airport.

“Commissioner Renfro moved approval of the Grant Application – 2009 for the City of T or C Municipal Airport & NMDOT Aviation Division State Grant.”

Seconded by Commissioner Torres. 
Motion carried unanimously.

INTERLOCAL AGREEMENT – CITY OF T OR C & CO. OF SIERRA: City Manager Aguilera stated the City became eligible to receive a $24,000 grant because they have a computerized reporting system that keeps track of criminal activity in the City, and indicated they submit that information to the State and the Feds, and became eligible for money because the Feds will distribute money to cities based upon their criminal statistics.

He explained that the County does not have that reporting system, and they were not eligible for any money this year...although they just purchased a software program that they will begin to use, and the interesting part is that even though they created the eligibility they have to share it with the County, and they discussed with the County on how to use the money, but it turned out it wasn’t enough money to do what they wanted to do, and the idea was to put computers in the police cars so they can access data on the internet.

City Manager Aguilera stated the County decided to let the City spend the money, and explained that is what this agreement is about which will allow the City to spend the money on software and hardware which will get them closer to that point of getting computers for the vehicles, and the recommendation is for approval of the agreement between the City and the County.

“Commissioner Stagner moved approval of the Interlocal Agreement between the City of T or C & Sierra County.”

Seconded by Commissioner Green. 
Motion carried unanimously.

RESOLUTION #38-08/09: City Manager Aguilera stated Resolution #38-08/09 is supporting the submission of a grant proposal for the construction and development of the Healing Waters Trail. And a corrected copy was provided to the Commission with some changes, and referred to the second Whereas...second line to Hot Springs District instead of bath district, and the 6th Whereas...is changed to indicate they actually have spent a $ amount...$1,500 plus in-kind services. He stated that Gina Kelly is here to give them some background as to what this Resolution is about, and that she is the one who is applying for this grant.

Ms. Gina Kelly came before the Commission and stated this grant is for signage and trail amenities...and not for the actual building of the trail. She stated the City’s contribution is all in-kind services...and not cash out of pocket, and the crews will be helping
with installing the benches...shade structures, and so forth, and stated they have a large volunteer effort for the actual trail construction which is the larger cost, and stated this grant is for the signage, shades structures, parking bumpers, bicycle racks, picnic tables, and historic building markers for the downtown buildings...as the historic district is part of the Healing Waters Trail.

She stated they are working on trail markers for the sidewalks because those are WPA area sidewalks, and are historical assets, and stated they have to be very careful on how they treat the sidewalks, and stated the federal share of the grant is about $63, plus, and that is only for the trail amenities.

Commissioner Stagner asked if the trail was still the same...behind the Veterans Center and through the downtown.

Ms. Kelly stated it goes from the Veterans Memorial down the hill along the river...through the Rotary Park and through the hot springs district...loop around Main, and back up Broadway to the Veterans Home, and indicated it is a 3 mile loop.

“Commissioner Torres moved approval Resolution #38-08/09.”

Seconded by Commissioner Renfro.

Motion carried unanimously.

CONSIDER NEW
JOB DESC. —
ADM.
ASST./TRANSCR-IBER:

City Manager Aguilera stated they have a memo from Becky Rodriguez, HR Analyst, and it explains when they started taking the police reports through a system in which the police officers dictate their reports, and then the two clerks at the police department would then transcribe the reports, and indicated it would be a savings as each officer did not have to manually write their reports, and that it would save money and time, and it has as the officers are able to spend more time out in the field.

He stated the idea was to give the clerks an increase in pay because this would be a new duty added to their job descriptions, and since one of the clerks has retired, and that the administrative assistant is doing all the reports by herself, and stated is able to do them without additional assistance.

City Manager Aguilera stated they have not filled the other position that was left vacant by the clerk who retired, and it has been brought to his attention that they discussed an increase in pay for the transcribing duties. He stated he has amended the job description for the administrative assistant...which is now...administrative assistant/transcriber, and stated it is a confidential position. He stated it would be a 78¢ increase based on what other cities are paying, and the recommendation is for approval of the job description, and that there is not a budget amendment because there are savings in the police department salary budget as the other position has not been filled.

Commissioner Renfro stated she thought the increases in pay were given when they went into the Dictaphone system...and stated they approved increase in pay...she knows they did.

City Manager Aguilera stated they talked about it, and it was not done because they didn’t have the system, and not doing the work, and he could not justify giving them the pay raise without them doing the work, and that the Dictaphone system began about 4
months ago.

Commissioner Torres asked if they were going to fill the vacant position.

City Manager Aguilera stated they have a person that has come to them through the Workforce Development Board, and then later on they will decide if they will hire that person or not. And stated the other person they will hire eventually will be trained to transcribe.

Commissioner Stagner stated his concern is they only have one person doing that job...what happens if that person decides to leave or gets sick.

City Manager Aguilera state the long term plan is to have a back-up.

Mayor Montgomery stated that would be her recommendation is the position that is vacant...while it is vacant now...re-write that job description to include the transcription as the back-up person, and indicated now is the opportune time to...

"Commissioner Stagner moved approval the administrative assistant/transcriber as described along with instructions to start the process to upgrade the other position."

Seconded by Commissioner Green.
Motion carried unanimously.

City Attorney Rubin stated as they know they’ve had the question come up several times in the last several meetings as to whether they can actually discuss something at these open meetings even though something is not on the agenda...and sometimes the philosophy has been as long as they don’t take action on it is permissible...and indicated he has had concerns about that, and he wrote to the Attorney General’s Office, and they responded, and City Attorney Rubin read the letter in its entirety. (Complete copy attached hereto and made a part hereof.)

Commissioner Renfro stated that every attempt should be made to stay within the agenda, and if something absolutely has to be discussed...just very briefly, and like they said...make it an exception and not a rule.

Mayor Montgomery stated she agreed.

Commissioner Stagner stated if somebody wants to open a discussion they can put it on the next agenda.

Commissioner Green stated he appreciated the City Attorney writing the letter and getting the communication going because he thinks there was some confusion on their part...that they were in violation of something when they really weren’t, and agrees with Commissioner Renfro...it’s the exception...not the rule.

City Attorney Rubin stated he was glad that he was giving conservative advice.

Information only.
CITY MANAGER –

City Manager Aguilera reported that there are fish in the pond.

He stated he also checked into the architect for the pool, and that he received the information today before the meeting, and stated he has a different approach...it is still a metal building, but will not be using galvanized steel, and his cost is $100.00 a sq. foot, and that it does save some money, but it is still a million three hundred thousand.

City Manager Aguilera stated they can probably do something less than the full building...in other words this building will have roll up doors, and possibly put up the building without some of the amenities, and at some future date enclose it.

Mayor Montgomery asked if there was a possibility that they do the plans in phases, and City Manager replied, "yes." And Mayor Montgomery stated they could do phase 1, and next year do phase 2, and do it in phases, and show them the cost of each phase.

CITY ATTORNEY – No report.

COMMISSIONERS –

Commissioner Stagner – No report.

Commissioner Green – Stated he would like to remind everyone that this is Fiesta week-end, and indicated festivities start at Ralph Edwards Park at 4:30 on Friday, and the parade is on Saturday morning, and more fun and events at Ralph Edwards Park on Saturday and Sunday, and encouraged everyone to come out.

He stated he would like to recognize two local citizens...the Herbalist Michael Moore who passed away in February, and stated he was originally from California, and moved to Taos then Santa Fe where he had a business for 25 years.

Commissioner Green stated there was a group of people who got together to honor him, and stated he was the father of modern medicine...herbalism where all our medicines come from, and stated from the 6 people from the steering committee...2 are from Truth or Consequences, 3 from Las Cruces, and 1 from Santa Fe, and 1 from Colorado or northern New Mexico. He stated after coming down for a site visit they chose Truth or Consequences to have their conference for 3 days and 2 nights, and read their welcoming..."Welcome to the celebration of Michael Moore an American herbalist in the beautiful southwest town of Truth or Consequences, New Mexico. With its relaxing atmosphere attributed to the mineral rich hot springs that it sits upon...T or C has helped them keep this event focused on fun, thoughtful love of nature and the southwest landscape that Michael Moore so loved, in the thanks they see the director of tourism Gina Kelly is mentioned, so obviously she had a little bit to do with this, but the 2 citizens he would like to recognize for bringing this event into our community...Demet Hayes and Catherine MacKenzie, and thanked them, and hope they make it an annual event.

Commissioner Torres – No report.
April 20, 2009

City Commissioners
Attention: City Commissioners
505 Sims Street
Truth or Consequences, NM 87901

Re: Discussion of Matters Not Listed on the Agenda

Dear Commissioners:

I am enclosing a copy of my letter to the Attorney General's office dated March 13, 2009, and Mr. Lama's response dated April 15, 2009.

I look forward to our discussion of this issue at a regular City Commission meeting.

Thank you.

Very Sincerely,

Jaime F. Rubin, City Attorney
Jaime F. Rubin, LLC.
P.O. Drawer 151
Truth or Consequences, NM 87901
575.894.3031 Fax: 575.894.3282

JFR: aco
Enclosures
cc: Jaime Aguilera, City Manager, (w/encl.)
March 13, 2009

Albert Lama-Chief Deputy Ag
P.O. Box 1508
Santa Fe, NM  87504

Re: Open Meetings Act

Dear Mr. Lama:

Please be advised that I represent the City of Truth or Consequences. I understand that you have given lectures on the application of the Open Meetings Act. Indeed, some of our local officials have attended and enjoyed listening to you.

A question has arisen. Can the City Commission, during an open meeting, discuss a matter that is not listed on the agenda? The Commission believes that it is permissible, so long as no action is taken on the discussed item. I have previously counseled however, that my reading of 10-15-1, (B) and (F) prohibits even the discussion of matters not listed on the agenda.

I have reviewed the AG's Open Meetings Act Compliance Guide, and I'm enclosing a copy of page 18. Example 25 seems to indicate that discussion of non-listed items is permissible. However, the Commentary directly below that example notes that "The agenda must contain 'a list of specific items of business to be DISCUSSED or transacted at the meeting" (emphasis added).

So, I'd greatly appreciate your clarifying this issue for us. Thank you for your consideration.

Very Sincerely,

Jaime F. Rubin, Esq.
City Attorney
Jamie F. Rubin, LLC
P.O. Drawer 151
Truth or Consequences, NM  87901
575.894.3031  575.894.3282

JFR: aco
Enclosures
cc: Jaime Aguilera, City Manager, (w/encl.)
Public bodies must include an agenda in their meeting notices or information on where a copy of the agenda may be obtained. In general, the agenda must be available at least twenty-four hours before the meeting. At the meeting, the public body may discuss, but cannot take action on, matters that are not listed as specific items of business on the agenda. Action on items outside the agenda must be taken at a subsequent special or regular meeting.

Example 25:

A mutual domestic water users association reserves an hour of its regular board meeting for public comment. During the public comment portion of a meeting, a member of the association complains about frequent interruptions in water service. The topic was not listed on the agenda for the meeting. If they choose, the board members may discuss options for addressing the complaint, but must delay any action on it until a subsequent meeting after the issue is listed on the agenda available to the public twenty-four hours before the meeting.

Commentary

The agenda must contain “a list of specific items of business to be discussed or transacted at the meeting.” This requirement ensures that interested members of the public are given reasonable notice about the topics a public body plans on discussing or addressing at a meeting. Generally, a public body should not describe agenda items in broad or vague terms. Compliance with this requirement is particularly important when a public body intends to act on an agenda item.

Example 26:

The agenda for a school board meeting contains the following items of business:

1. Old Business
2. New Business
   a. vending machines in the cafeteria
   b. personnel matters

Under item 1, the board discusses and acts on three contracts. Under item 2(a), the board discusses and votes to allow vending machines in the middle school cafeteria. Under item 2(b), the board dismisses the director of the district’s administrative office and reorganizes the remaining staff positions. The board’s vote under item 2(a) is proper. In contrast, the board’s actions under items 1 and 2(b) violate the Act because those items were not listed as “specific items of business” on the agenda, as required by the Act. Items 1 and 2(b) are described in such general and vague terms that they do not give the public a reasonably clear idea about the actions the board intended to take at the meeting.

Commentary

The Act relaxes the agenda requirement in cases of emergency. The public body must still provide an agenda for an emergency meeting, but it need not be available twenty-four hours before the meeting. In addition, if an emergency matter arises too late to appear on a meeting’s agenda, the public body is permitted to take action on, as well as discuss, the matter. For purposes of the agenda requirements, an “emergency” is a matter that could not be foreseen by the public body and that requires immediate attention by the public body to avoid imminent personal injury or property damage or substantial financial loss to the public body.
Jaime F. Rubin, City Attorney
City of Truth or Consequences
P.O. Drawer 151
Truth or Consequences, NM 87901

Dear Mr. Rubin:

I have received your letter dated March 13, 2009 wherein you inquired whether the City Commission can discuss a matter not listed on the agenda in an otherwise properly noticed open meeting. Thank you for writing and for your interest in maintaining compliance with New Mexico’s Open Government laws.

All meetings where public business is to be discussed must be properly noticed in advance so as to afford the public reasonable notice that the public body will be engaging in discussions of public matters and to allow them the opportunity to attend and listen. Similarly, agendas listing specific matters of business to be discussed enable the public to determine whether they will exercise their right to attend meetings of a public body.

Nevertheless, we recognize that there will be instances where the public body will be unable to anticipate every issue that may arise during any given meeting. For this reason, and in the interest of facilitating public discourse on pressing public issues, we have determined that it is reasonable to allow discussion of a matter not listed on the meeting agenda. Any action on the unanticipated issue must be postponed, however, until the next properly noticed meeting at which that item appears on the agenda. Please note that this practice should be the exception and not the rule. Indeed, it is important for the public body to make every effort to anticipate any issue that may arise when preparing an agenda for an open meeting, so as to afford the public sufficient information to make an educated decision as to whether or not to attend and listen to the proceedings of a meeting.

I hope that this clarifies the ambiguity you described in your letter. We appreciate your efforts to assist the City Commission in upholding the requirements of the Open Meetings Act. If we may be of further assistance, please do not hesitate to let me know.

Sincerely,

ALBERT J. LAMA
Chief Deputy Attorney General

cc: Jaime Aguilera, City Manager
Commissioner Renfro stated she would like to recommend they start the mosquito spraying, and stated they are bad.

City Manager Aguilera stated he talked with Norman Carter and they indicated they would be starting this week.

Mayor Montgomery stated she would like to thank everyone who came out last Saturday for the clean-up for the community, especially the staff who got everything to everybody to pick up trash, and all the volunteers in the community who helped. Kudos to everybody, and that Ray did a good job organizing this one again.

EXECUTIVE SESSION:

"Commissioner Stagner moved that the meeting be closed for Executive Session – Personnel 10-15-1H(2) – re: Police personnel, Pending or Threatened Litigation 10-15-1H(7) – Morrow Construction, Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8) – JPA – City of T or C & NM Spaceport Authority & Consider purchase of bowling alley."

Seconded by Commissioner Green. All 5 responded Yes 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 Personnel 10-15-1H(2), Pending or Threatened Litigation 10-15-1H(7), Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8), were discussed in Executive Session, an no action was taken.

Seconded by Commissioner Green. Motion carried unanimously.

1. Police Personnel – The Commission stated this is confidential personnel issues, and to authorize staff to proceed as directed.
2. Morrow Construction – City Attorney Rubin reported that they are pleased to advise that the threatened litigation has been successfully resolved.
3. JPA between the City & NM Spaceport – "Commissioner Stagner moved to approve the JPA between the City and the Spaceport as proposed by staff, and to include a 5 year repayment under paragraph #23 on page 7 of 9."

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 10/4/09 day of 2009, on motion duly made by Commissioner Stagner, seconded by Commissioner Green, and carried.
ATTEST:

Mary B. Penner
MARY B. PENNER, CITY CLERK