CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, September 11, 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, September 11, 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. Jimmy Rainey, Commissioner
Hon. Evelyn B. Renfro, Commissioner
Hon. Freddie Torres, Commissioner

Absent was:

Hon. Jerry Stagner, Mayor Pro-tem

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, and mentioned this being the 6th year Anniversary of 9/11 please take those into your heart when you observe your silent meditation.

Mayor Montgomery called for the Pledge of Allegiance.

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

"Commissioner Renfro moved approval of the Agenda as amended."

Seconded by Commissioner Torres. Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT:

Mr. "Jagger" Cary Gustin President with the Sierra County Arts Council came before the Commission to inform them of an Arts Council sponsored event for the month of September and indicated
that he promised his board of directors with the Sierra County Arts Council that they would try to gather all the State’s Arts Councils here in Truth or Consequences.

He stated that the Arts Council will hold a conference here in T or C on September 19-21, 2007 at the Truth or Consequences Civic Center, and urged everyone to make plans to attend the conference and went on to tell about some of the guest speakers that will be attending.

Mr. Gustin stated they will be receiving information about the conference.

Mr. Steve Stookey Owner of King Peak Financial came before the Commission, and indicated he wanted to come and clear the air about a lot of publicity about the previous Planning & Zoning Meeting held on September 4, 2007 that they did not attend.

He stated they had a miss communication at that time and take the fault entirely, and that they had a conversation with Chris Nobes who informed them that they needed a survey, and their position has been is they have been waiting for the hospital to be under contract and finalized before they invest the additional money to have the survey completed.

Mr. Stookey stated in talking with Chris he went ahead and continued on the agenda which he should have done and they are very happy that he did that, however he was under the impression and kinda of communicated it in his mind that they would be taken off the agenda. He indicated that is the reason for their attendance, and that they want to inform the City Council publicly and officially that they take this project very, very seriously and they take the hospital contract very, very seriously.

He stated in addressing other issues in the paper and other papers that they’ve read he knows that’s here say…I’ve never been…well…on these recent occasions I’ve never been personally interviewed or contacted or anything for those reporting…having said that they will have…we do have control of the property…we have everybody on board including the previous owner to finalize this transaction…to complete this transaction.

Mr. Stookey stated they will also deliver un-encumbered property…the entire 15 acres to the hospital…having said that they really like Chris Nobes suggestion of stopping with the 68 acres again…the reason of the entire 68 acres..they agree lets just go forward with the hospital portion and not hold up that closing, because of the hospital contract not being finalized it’s held up their engineering and design…as you know they don’t want to go out and spend 10’s of thousands of dollars designing a property without the contract in place knowing that the hospital will be on the site knowing exactly where the hospital will be…so that’s our position, so once they have the hospital…now we’ve been given the go ahead and it will be signed…we will continue with the survey and continue with the rest of our conceptual master plan which they will present…so our suggestion is go ahead and approve or go forward with the 15 acre site, and will re-address the 60 acres when they have a full conceptual master plan and appease the City’s request and concerns regarding that.

Mayor Montgomery stated they have three items on the Consent Calendar – Minutes of the Special City Commission Meeting –

“Commissioner Renfro moved approval of the Consent Calendar as submitted.”

Seconded by Commissioner Torres.
Motion carried unanimously.

DRAFT MINUTES:

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.

BOARD COMMITTEE REPORTS:

Planning & Zoning Commission –

Zone Change – Smith Street – King Peak Financial, LLC

City Manager Aguilera indicated that the hospital has been negotiating with Kings Peak Financial for the purchase of about 15 acres and that the negotiations are on going. He stated as part of those negotiations the JPC asked that the property be subdivided...create a parcel and then zone it appropriately so they can purchase a zoned piece property.

He stated the application was made to the City building department for a zone change...for a piece of property including more than the 15 acres that the hospital site was located on, and during the meeting of the Planning Commission the recommendation by staff was that they reduce the size of the zoned parcel to only that is being considered for purchase by the hospital, and the Zoning Commission went on to consider other issues related to the application itself, traffic and circulation.

City Manager Aguilera stated he asked Chris Nobes to talk to the chairman of the Planning Commission since Mr. Nobes was not going to be here. He indicated that Adam Polley Chairman of the Planning & Zoning Commission is here to give them additional background on what happened at that meeting.

The following are verbatim transcripts –

Mr. Adam Polley Chairman with the Planning & Zoning Commission came before the Commission. He indicated this item was on their agenda, and they heard the request for a zoning change from King Peak Financial, however there was a number of questions but since there was no representative there was an action and a motion passed that there be a do not pass on the zoning change.

He stated that he is here to discuss the desires of the Planning & Zoning Commission with them, and I guess now after hearing the representatives they look forward to a new application that could come forward that would present a little bit more light than the application that they acted upon.

Mr. Polley stated so at that point and time I would still request and make it quick here is that they ask that the City Commission give it a do not pass, and be waiting for another application in light of the 15 acres.

City Attorney Rubin – Would they need a new application or could they just remand this old application back to them.

3
Mr. Polley – That was one of the problems... with the current application that they had it’s quite spotty, and that was one of the concerns that the P & Z Commission had is they wanted to see a little bit more information... in fact some quite in detail, however the original application also I believe was for 68 acres, and that posed the other problem is they would like to see that application correct if it’s going to be 15 acres.

Mayor Montgomery – I guess just a question then... if I could on behalf of the Commission, and the memo they have from Chris has a note in here that says... Also during the Public Hearing, City staff recommended that the Commission consider re-zoning on 15.181 acres, representing the proposed hospital site itself, and I assume that was done at your meeting?

Mr. Polley – I think that was done more from Chris’s point of view... they would still like to see an application that addressed the 15 acres and the surrounding acreage from that, however the original application addressed 68, and that was one of the concerns that the P & Z Commission had, and they would like to see a more in-depth application than what was presented.

City Manager Aguilera stated normally the procedure would be that if they were considering approval... the action of this Commission would be to set for a public hearing, and 15 days later they would have a public hearing on the item. He indicated in this particular case he thinks the appropriate action would be to remand it back to the Planning & Zoning Commission so that they get the information they need in order to make more appropriate recommendation to the City Commission.

Commissioner Rainey asked if that would be just on the 15 acres... not the entire 68 acres that was requested in the original?

City Manager Aguilera stated the applicant can make whatever application they want to, and so they would leave it up to the applicant to re-file an application, and then the Planning & Zoning Commission would make an appropriate decision or recommendation to the Commission at that point, so if they file for the entire 60 acres then the Commission would make one recommendation... if they only file for the 15 acres they would probably make a different recommendation.

Commissioner Torres – When is their next meeting?

Mr. Polley – Stated the first Tuesday of the month.

Commissioner Renfro stated the one thing she thinks is very important because I’ve heard some complaints... I think it’s important to give plenty of notice as to what’s coming up on the agenda because I understand there was some people that had some concerns and they didn’t even realize that this was going to be heard before the Planning & Zoning Board so they weren’t there to make their concerns heard. She indicated when they do have the public hearing or whenever they are going to consider this... I think they have to make sure that there is plenty of notice given, and one of those was the School... they had some valid concerns.

City Manager Aguilera stated that would be up to Mr. Nobes to make sure that the notices went out correctly.

Commissioner Renfro... then you’ll see to that.
Mayor Montgomery – And I see that... I guess I was looking on the application all these say yes beside them...I would assume that they noted that they contacted them.

City Manager Aguilera – Yes.

Mr. Polley – Madam Mayor...I’m gonna...that’s not exactly correct, and indicated that was explained by Chris at the meeting, and stated those are the owners that are next to the subject property...they were not contacted.

Mayor Montgomery – So what does the yes mean?

Mr. Polley – That they are next to the property...there are some that are and some that are not next to the 15 acre property.

City Manager Aguilera – And I don’t know that part of it...but did...you’re saying that the notices did not go out.

Mr. Polley – Well I believe that procedures changed from a change in ordinance and that public record or a public notification has been made and that’s the way that it works now according to Mr. Nobes.

Commissioner Renfro – Well that’s not very smart.

Mr. Polley – So that notice has been given and they were ready for public input.

Commissioner Renfro – If some of these people were out of town or something they’re not going to be reading the local paper which is the only place where public notification is going to be given.

City Manager Aguilera – Yea that doesn’t...sound right normally.

Mr. Polley – I’ll defer that to you...City Manager you have that discussion with Chris.

City Manager Aguilera – I’ll look into that. Normally the requirement is that you get a 100 ft. radius of all the property owners and then you mail directly to those property owners as well as putting notice in the newspaper...that should be the procedure.

Commissioner Renfro – You can see from looking here that a lot of these people are from out of town.

Mr. Polley – I will...I guess say that that the yes next to the name doesn’t mean that they were contacted.

City Manager Aguilera – If they do this process again they will make sure that gets taken care of.

He indicated one more issue that was brought up at the Commission level...which I think the property owner needs to be aware of is there were concerns about traffic and traffic circulation, and explained that the site has a very narrow access point to Smith Street, and Commissioner Stagner called earlier in the week and he also indicated he was concerned about access to the property because these issues were brought up, and with such a short access point to the property both regular traffic and emergency traffic are going to have to share a driveway, or have two driveways that are very close to each other, and then compounding that the access point is on a curve, and then compounding that this particular street
has a large amount of traffic in the morning and in the afternoon because of the school that is nearby.

Commissioner Renfro – And the thing of it is... it’s not only the road up there because she thinks they said it had to be widened... but the access... coming off of Date or Smith on to Date... I mean that can be hazardous to say the least at time... with the school buses and all the traffic, and then you add emergency traffic, and then you’re gonna have people going to and from the hospital. I’m sure all of you at one time or another has tried to gain access on Broadway from Smith Street, and there have been a lot of accidents up there, so I think it’s pretty important for this to be considered.

Commissioner Torres – When this committee was purchasing this property didn’t they look at these things?

Mayor Montgomery – Yes they did.

Commissioner Torres – Maybe they need to be here and explain to us...

Mayor Montgomery – Well it’s not necessarily... well I guess I want to go ahead and speak for the JPC... all I was gonna say is I don’t think it is necessarily our position as the Commission to question who’s buying the property, or what the property is being used for... I guess the issue is... is it appropriate for re-zoning or not re-zoning for and then whoever is buying it is going to have to worry about... access and so forth.

Commissioner Rainey – Actually getting the rules and the requirements for access is something the City has to make sure the State Highway Department...

Commissioner Torres – But we’re making an investment...

Mayor Montgomery – It’s the State Highway Department though... yea.

Commissioner Torres – But they should of looked at those things and have recommendations... right now we’re in the dark and we’re saying we got traffic... it’s going to be too heavy... this and that, and I think we need to get a clear... a more clear picture on what’s going on up there than just pass on something we don’t know what we’re passing on, and something we’re gonna be sorry for later on.

Mayor Montgomery – Asked Commissioner Rainey if he wanted to go into the process of what the JPC directed the committees to do for that.

Commissioner Rainey – Actually they directed the steering committee to find a suitable piece of property for the new hospital and gave certain guidelines which they followed 100%, and at the end of their search this property was deemed to be the most advantageous for the new hospital, and indicated there is nothing up there that can’t be worked out it’s just a matter of doing it, and the steering committee at that point made the recommendation to the JPC which they took a long lengthy look at, and they know it can be worked out it’s just a matter of doing it, and I still believe it’s the right spot.

Commissioner Torres – I’ve got no problem with it as long as the
residents . we get a lot of complaints . the traffic . this , that , so that’s what we need to get worked out before they approve .

Mayor Montgomery – But that’s where it’s important that we hear the input from the public hearings . I mean . if there isn’t anybody that shows up for the public hearing . you can speculate all day long on someone’s opinion or anything like that . so it’s vital that if it’s done correctly you will have input from the public and those individuals that are . that this is going to affect . you know and then a valid decision can come to us .

Commissioner Torres – I wanna be clear of what we’re passing .

Commissioner Rainey – Right now all we’re looking at is changing the zoning , and all you’re doing is extending a C-1 zoning that is already in place on Smith Road . True Value is C-1 then it becomes R-1 , R-2 .

Commissioner Torres – Yea well I understand that , but you know . do we want to do it . I mean that . and I don’t know until I get some answers , and that’s all I’m looking for is do we want it to be commercial or keep it residential . I don’t know .

Mr. Polley – And I hope Commissioner Torres through this process of remanding it back to the P & Z Board that they can start that process and get some more answers .

Commissioner Torres – As long as we don’t get . . . or push it through .

Mr. Polley – And I can assure you this matter didn’t get pushed through because we’re here to remand it back to them or to deny it and start the process all over again .

Commissioner Torres – Well I’ve got no problem with it . . . but I want it done right .

Mr. Polley – Because we had some questions about what was in the application and those questions couldn’t be answered so .

Commissioner Torres – Okay that’s fair enough .

Commissioner Rainey – Is it possible to have a special meeting as soon as possible to get this through instead of waiting for another full month to act on it , and another two weeks before they act on it ?

Mr. Polley – I’m gonna say Commissioner Rainey anything’s possible .

Commissioner Rainey – Okay .

Mr. Polley – We can have a special meeting .

City Manager Aguilera – What would need to happen Commissioner Rainey is a new application filed . let’s assume they can file that tomorrow . they can write up a new application file it tomorrow then Chris Nobes needs to get a notice . the notice is a 15 day notice so you can’t have a meeting shorter than the 15 days plus you have to give another 3 days for mail to consider the mail going out so the shortest time period is about 2 1/2 weeks and I think that is about when the next Commission meeting is going to be .
Commissioner Renfro – And besides what’s the big rush...I mean there were...why are talking special meeting.

Commissioner Rainey – Because I would like to get it started...we are in the process...we’ve been trying to build a new hospital now for quite a few years. The King Peak has obligations they have to meet too, and they cannot come to us with a survey and everything else without spending a huge amount of money and then something not happening.

Commissioner Renfro – Well but we’ve heard from them tonight...to start with they didn’t even expect for it to have been on the agenda last Planning & Zoning Board meeting...that was their statement here tonight plus they hadn’t planned for it to be on the agenda. So I think it’s imperative for us to leave it up to King Peak let them file their applications and lets go through the normal process...I don’t see any reason why we have to be rushing.

City Attorney Rubin – We don’t want to shorten the notice.

Commissioner Renfro – No.

Commissioner Rainey – We can’t shorten the notices I realize that.

Mayor Montgomery – Yea, I mean you’re putting...you’re at 15 days you’re at the 30th anyway, and you’re saying the first meeting is the Tuesday...that’s two days.

City Attorney Rubin – I would suggest this since there is a representative from King’s Peak here and I know they were allowed to speak during the public comment section but since they are here on the agenda, and Mr. Polley spoke I think we should hear from them as to what we’re proposing just to...for do process requirements so I think we should let them speak here.

Mr. Stookey came before the Commission and indicated they definitely have several things that we’ve talked about...the JPC has taken a lot of time and has carefully selected this property among many others finding it to be the most suitable.

He stated all the concerns that have been addressed are problems and situations that can be worked out very easily...some of the answers I know the street is...there is concerns with a school and concerns with traffic, and they can talk about a traffic light when necessary...a traffic light that the ambulances can access and a traffic light can be switched and the ambulances can get out on Date...so there is easy access to...that’s one suggestion...I’m not saying that’s the end answer.

Mr. Stookey stated they are talking in the contract...we’re expanding Smith Street with hospital passage making enough room for vehicles to pull over and accessible...that’s part of the contract and that’s part of our duties to pay for that before hospital construction begins. He indicated other concerns or questions...the way they designed and laid out the hospital site to sit on...the property on Smith Street is actually...right as it begins to curve toward the Elementary School they plan on having an access basically right in front of True Value Hardware so they are coming straight in and absolutely not going past the school slowing down to a school zone...this was all taking place in all our negotiations...the concern of a school zone, and additional traffic, and they have addressed these items.
He stated again the reason being they didn’t have a conceptual master plan... my suggestion would be if there is a chance they can amend the existing contract to go back to the 15.18 acres and the reason I say that is when they submitted their request we provided metes and bounds descriptions for both the 68 acres as well as just the individual hospital site.

Mr. Stookey stated they were going to request a special meeting and they understand the public hearing times and notifications are absolutely imperative. He indicated his understanding of the notification of the notices they were actually asked to provide all of the land owners and property owners within 100 ft., as per code and they provided that to Chris to give those public notices, so I’m certain that was handled and taken care of.

He stated again he will apologize for not representing and being at that meeting and that there was some confusion there, but again they were just days away... literally 3 days away from the decision on the hospital and so I assumed they would be pushed back a week or so or have a special meeting, and they would love to go forward with a public hearing and a special meeting and they can address these issues to resolve their concerns.

Mayor Montgomery – So I guess the one question that Commissioner Rainey had...the next meeting would be October 2nd... so is that...

Mr. Stookey – Our hope is that... if we can amend the contract or provide another one simply tomorrow they can have that ready and start immediately with our notification and have a special meeting within 18 days... we will fly back out... we’ll be here in attendance and have the public hearing and sit down with the City and public officials and just the standard public who wants to see and address the concerns, and would love to have Jim there and other members of the JPC there to talk about the extent of their negotiations and a long contract process to address these issues.

City Attorney Rubin – Well if the next meeting is October 2nd that really isn’t too much beyond the 18 days anyway... tomorrow is September 12th... 18 days takes us to September 30th... so I don’t think we need to worry about a special meeting.

Mr. Stookey – That’s true... if it’s imperative the 15 day notice... if there is a way of shortening it.

Commissioner Rainey & Commissioner Renfro – No that’s the standard... it has to be.

Mr. Stookey – They can just keep it for the next meeting.

Mayor Montgomery – I guess my question would be if the original notice was given with the original application... wouldn’t you just re-notify them of the upcoming meeting because they have already been duly notified.

Commissioner Renfro – If they have.

City Manager Aguilera – If there was... two things I guess if there was the required notice given and this meeting has been publicized so anyone who would of shown up to the original meeting or would have had an interest would have had the opportunity to follow-up and so they have constructive notice of this meeting also. So
another notice...and then if they remand it back they would also be following the issue and a new notice would not be necessary. But Mr. Polley brings up an issue that I haven’t heard of and it sounds like perhaps Chris didn’t mail out those notices, and I’m not sure and Chris is gone for the week, and I’m not sure how to verify whether the notices went out or not until he comes back.

Mr. Stookey – Now again I just want to point out one thing that was actually suggested by Chris Nobes and the Commission to approve only the 15.1 acres rather than the entire piece, and I don’t know what the legalities or technicalities there are but because that was an option that was put on the table which would assume to me would be let’s amend it and just change it to this and go forward with approving this...I don’t know if that was what was represented...I know I read it and that is what it says in the notice but...

Commissioner Renfro – My feeling is that the recommendation from the Planning & Zoning Board was to vote no until a lot of their questions are answered, and I don’t know how the rest of the Commissioners feel but I guarantee you that’s the way I’m gonna feel is that it should be remanded back to the Planning & Zoning Board so they can have their issues addressed.

City Attorney Rubin – And I’m not even sure that remand is even the right word...I think what we’re talking about is we would just deny the application at this point and they would file a brand new application tomorrow and start all over again. Isn’t that who you prefer is that what I understand Mr. Polley.

Mr. Polley – Yes it is.

Mayor Montgomery – And I think the time line is...you’re talking probably about two days difference.

Mr. Stookey – Very simple...not a big deal...let’s not have a special meeting let’s continue for the next meeting, and they will submit an application tomorrow at least by the end of the week...we will definitely have it in by tomorrow.

Commissioner Rainey – You said Chris was not going to be in the office who’s gonna be in the office to take the application.

City Manager Aguilera – And that was going to be my comment...Chris is not going to be in the office and I will not be in either...and what will probably end up happening is instead of having a special meeting before the regular meeting...we’re gonna have to have a special meeting after the regular meeting. He stated if Chris comes in on Monday and the notice will go out on Monday, and that the timing starts on Monday...so 15 days past Monday is when the meeting would have to be not 15 days past tomorrow.

Commissioner Rainey – Right.

Commissioner Renfro – Well all we have to do now is...

Mayor Montgomery – So you’re looking at...15 days puts you at October 1...that’s what I count.

Mr. Stookey – Can I re-address what you said earlier Jaime about additional public notice would not be necessary because of the original public notice if we have the special meeting before and
have the regular scheduled meeting as well... Is that kinda what your thoughts were a minute ago.

City Manager Aguilera — If we had already sent the notice... then... and then it would not be a re-filing it would just be a reconsideration of the same item... then a new notice is not necessary, but...

Mr. Stookey — We like that option better.

City Manager Aguilera — But I don't know what the answer is without Chris telling me that he did send those notices out.

Commissioner Rainey — If I might ask Adam... that question was brought up to Chris at the Planning & Zoning meeting here and I think you asked him were they sent out and he said yes they were... were they notified and he said yes... it should be in his files.

Mr. Polley — It should be in his files but... I don't mean to stop this process but the P & Z Commission would much rather see a new application... they really had some serious questions with the old application, and if that time limit comes into October 1st... the meeting is on October 2nd... so I think there is plenty of time to consider this matter at a regular P & Z Commission meeting.

Commissioner Renfro — Would you entertain a motion Mayor.

Mayor Montgomery — Not unless anybody has anymore questions.

"Commissioner Renfro moved that the application for the zone change from Peak Financial be denied... King Peak Financial be denied and that a new application be re-filed with the Planning & Zoning."

Seconded by Commissioner Torres.

City Manager Aguilera — Stated normally it has been his experience that when an application is denied with the hopes that it's gonna be re-filed again... then it's usually denied without prejudice so that... I don't think our zoning ordinance has this language but other zoning ordinances say that if an application is denied you can't re-file for a year... and there is some case law to that so I would rather if the Commission would amend the motion to say without prejudice.

"Commissioner Renfro so amended."

Seconded by Commissioner Torres.

Motion carried unanimously.

City Attorney Rubin — One thing just before we go off the issue... Jaime did I understand you to say that even if they bring in an application tomorrow it actually would not be accepted for filing until Monday the 17th?

City Manager Aguilera — Right.

Mayor Montgomery — So there is no back-up person for anybody in the office...

City Attorney Rubin — Because I'm thinking out loud... excuse me I'm sorry... I'm thinking September 17th... if you add the 18 days which is the 15 days notice plus the 3 days mailing that's gonna
take us to October 5th.

City Manager Aguilera – I know that’s why I said that they are going to have a special meeting after the regular meeting.

City Attorney Rubin – Okay I just wanna make sure everybody is aware of that...that’s all.

Mr. Stookey – If I could just make this suggestion...King Peak would take it upon themselves to send certified mail to all those recipients tomorrow...they’ll put that together and I will come approve the letter with you Jaime tomorrow...

City Manager Aguilera – Except...the reason I’m not going to be in tomorrow.

Mr. Stookey – Is anyone in tomorrow? Anyway we can put this...I can present a letter to whoever could authorize the letter.

Mayor Montgomery – Are you in tomorrow Jay...maybe you can peruse the letter to make sure that it meets...would you have a problem with that or...

City Attorney Rubin – I could do that...I’m only just thinking out loud though...you’re gonna think I’m really being difficult here, but just making sure we’re doing this procedurally correct...I’m not sure a notice from you is sufficient...isn’t the notice suppose to be coming from the Planning & Zoning?

Commissioner Renfro – Yea...from the City.

Mr. Polley – I think more specifically it’s even suppose to be coming from Chris.

Mayor Montgomery – Well my only concern with that is...when they have an individual that’s a city employee and there is no back-up for that city employee...that’s not fair to the person that is trying to complete whatever work they’re trying to do in the City...so we need to have somebody that can pick up the pieces when people are on vacation...you know.

City Attorney Rubin – I’m happy to do it...I’m just throwing that as a procedural issue that could be raised.

Mayor Montgomery – And I’m not going to tell Mr. Aguilera how to run the City...it doesn’t matter to me if...how they want to do that or...

City Attorney Rubin – Let me ask this...we talked about a special meeting Adam.

City Manager Aguilera – Jay I’ll take care of it tomorrow...all I have to do is dictate a letter to Angie...she’ll write it up...he’ll pay for the mailing and that will be the end of that.

Mayor Montgomery – It will come from the City and it will be legal.

Appointments & Re-appointments –

Sierra Vista Hospital Governing Board –
City Manager Aguilera indicated the Hospital Board has a vacancy of a City appointment. He stated the incumbent Ms. Ann Filosa and has requested to be re-appointed.

"Commissioner Renfro moved the re-appointment of Ms. Ann Filosa to the Sierra Vista Hospital Governing Board as the City’s representative."

Seconded by Commissioner Rainey.
Motion carried unanimously.

T or C Housing Authority –

City Manager Aguilera stated the T or C Housing Authority has a vacancy, and they have a letter in their packet which indicated this is the first time that they have had an interest from a tenant.

He indicated that Ms. Adrian O’Neill has expressed interest to serve on the board and that she is quite qualified, and recommendation is for approval the appointment of Ms. O’Neill.

"Commissioner Renfro moved approval the appointment of Ms. Adrian O’Neill to the T or C Housing Board of Commissioners."

Seconded by Commissioner Torres.
Motion carried unanimously.

South Central Council of Governments –

City Manager Aguilera stated these are appointments to the SCCOG, and indicated that Commissioner Rainey currently sits on the Policy Committee, and Don Armijo currently sits on the Technical Advisory Committee, and that he is listed as the alternate to Commissioner Rainey on the Policy Committee. He stated recommendation from staff would be for re-appointment for Commissioner Rainey, Don Armijo, and City Manager Aguilera.

Commissioner Rainey expressed that he would still be interested in serving on the Policy Committee for SCCOG.

"Commissioner Torres moved the re-appointments of Commissioner Rainey, Don Armijo, and City Manager Aguilera on the Policy Committee & Technical Advisory Committee for the SCCOG."

Seconded by Commissioner Renfro.
Motion carried unanimously.

City Manager Aguilera indicated this is the 3rd of the series for the last of the Public Hearings for the CDBG Program, and explaining that CDBG standing for Community Development Block Grant.

He stated what is required is the 3 Public Hearings and public input which they have had to some extent, and that Mr. Jay Armijo, Executive Director with SCCOG is here to give some information on the public hearing process.

Mr. Jay Armijo came before the Commission, and stated in the past public hearings it was voiced to this Commission that the Williamsburg Main Electrical Circuit be proved as this Commission’s project for the Community Development Block Grant Program.
He explained that it is Phase 11 of a phase project and his recommendation from the Council of Governments would be to approve this project if there are no additional comments, and indicated that it is a very viable project, and already on an application from last year, and that COG is ready to move forward with the application and ready to go.

Mayor Montgomery asked if there any questions from anyone in the audience about the process or what they are doing or questions from the Commission.

At this time Mayor Montgomery opened up the Public Hearing and asked if there was anyone who would like to speak for or against Resolution #10-07/08, and no comments were received and the Public Hearing was closed.

RESOLUTION #10-07/08:

Mayor Montgomery stated they held a Public Hearing on Resolution #10-07/08 and asked if there were additional comments.

City Manager Aguilera stated the application is ready to go, and hope they will get funded in the amount of $500,000.

"Commissioner Renfro moved approval of Resolution #10-07/08 for the CDBG Program – Williamsburg Main Electric Circuit."

Seconded by Commissioners Torres/Rainey.

Motion carried unanimously.

MEMBERS/BY-LAWS – SChEC:

City Manager Aguilera stated this is a project that the Mayor has been spear heading, and indicated that the Mayor was the interim board chair, and asked Mayor Montgomery to give them some more information on this.

Mayor Montgomery stated that the Sierra County Higher Education Council was formed by different individuals from the City, County, School Board, Village of Williamsburg, and City of Elephant Butte who sit on this committee.

She stated they have prepared by-laws and have appointed a chairman and a co-chairman, and that the Chairperson for this committee is Ron Williams who is the President of the Hot Springs High School, and the Co-Chair and Secretary is Patch Rose, and other members on the board are Gary Whitehead representing the County, Mayor Montgomery from the City of T or C, Ann Filosa from the School Board, Patsy Barnett from the City of Elephant Butte and Ed Steck from the Village of Williamsburg.

Mayor Montgomery stated they tried to solidify this committee to do things legally and have prepared by-laws, and they are doing meeting minutes and notifications and so forth. She indicated what they have before them is the by-laws, and stated what they are looking for is acceptance of the by-laws and the appointments/re-appointments to this board/committee.

City Manager Aguilera stated one other comment...the board is not a 501C3 non-profit, and indicated it really should an appointed board or a created board by one of the four entities in the County, and the suggestion by staff would be that it would be appointed or created as a City board to serve the County, and to serve the educational needs of the County, but because the City is the owner of the building and probably where the grant money would come to, and besides approving the by-laws that they set this for another
hearing to actually create the board by resolution, and he doesn’t think they need an ordinance to create it, but it least to have it an official board of the City.

Commissioner Renfro asked City Attorney Rubin if they would need an ordinance.

City Attorney Rubin – Actually I always thought we had ordinances for all the boards...maybe Jaime...I don’t know Jaime do we know...

City Manager Aguilera – We have ordinances for the other boards, but it...there’s no requirement that it be an ordinance...it can be done by resolution.

City Attorney Rubin – I would like to look...maybe you and I can confer about that Jaime...if I could research that for us...is that something that we can do.

Mayor Montgomery stated the one thing that the Council is looking for is approval and adoption of the by-laws to at least get started...they have some decisions that they need to make regarding the higher education needs for the community, but we want to make sure that all the entities are okay with the way that they are going forward, and the by-laws show the mission and vision statements for that council.

Commissioner Renfro asked if the by-laws were going to the different entities, and Mayor Montgomery indicated they already had, and Commissioner Renfro asked City Attorney Rubin...there shouldn’t be a problem if they approve the by-laws and leave the...

City Attorney Rubin – I think they can approve the by-laws and contemplation that they are going to have this properly set up as either through an ordinance or by resolution whichever is appropriate, but I think they can approve the by-laws subject to that being done.

“Commissioner Renfro moved approval the by-laws subject to approval either by resolution or ordinance of the SCHEC Council, and approval of Mayor Montgomery serving on the board.”

Seconded by Commissioner Rainey.

Mayor Montgomery stated they also need approval of her being on the board.

Commissioner Renfro stated she will include that in her motion.

Motion carried.

Mayor Montgomery abstained.

City Attorney Rubin – And Jaime you might be right perhaps this can be done by resolution...I just want to go ahead and take a look at that with you and let the Commission know at the next meeting.

PROPOSED ORDINANCE  MUNICIPAL JUDGE SALARY: City Manager Aguilera stated this came up during the budget sessions. He indicated it turns out that the Judge’s salary...the way it’s currently set up in our City Ordinance is a percentage of the Magistrate’s salary.

He stated it was sought that it would be better to change that to
make it a set salary instead of a percentage of someone’s else’s salary, so they have amended the Ordinance for publication, and explained that it be a 3-tiered salary. (Complete copy attached hereto and made a part hereof.) And pointed out the typo and that it will be corrected, and recommendation is for publication of the Ordinance.

City Manager Aguilera stated that he and City Attorney Rubin had a meeting with Judge Hawkins before they changed the salary even though this will not affect him now, and will affect him if he runs for re-election and is re-elected otherwise will affect who is elected, and explained there is a discrepancy currently with the amount that the Judge is being paid and the amount that is reflected in the ordinance which indicates a percentage of the Magistrate Court and Judge Hawkins had indicated that differential is not important to him at this point and that he is willing to for go that difference and that he would endorse this ordinance as it is written.

“Commissioner Renfro moved approval of the Proposed Ordinance - Amending Chapter 2, Article V, §2-373 pertaining to the Judge’s Salary for publication with the correction.”

Seconded by Commissioner Torres.
Motion carried unanimously.

PROPOSED ORDINANCE - City Manager Aguilera this is a normal update almost yearly which is updated when changes occur for the NM Uniform Traffic Code.
NM UNIFORM TRAFFIC CODE: City Attorney Rubin stated these changes came from the legislature and have not choice but to adopt. He indicated he always makes it clear that what he has prepared for them is a summary about what is being proposed, and if someone desires to read the entire text they are welcome to go to the City Clerk’s during normal business hours to review it.

He stated maybe to summarize it, and probably the biggest change deals with the crime of “Driving While Intoxicated, and referred to page 2 paragraph B, it reads…it is unlawful for a person to drive a vehicle in this state if the person has an alcohol concentration of eight one-hundredths or more in the person’s blood or breath, and here is the added language...within three hours of driving the vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle.

“Commissioner Renfro moved approval of the Proposed Ordinance - amending NM Uniform Traffic Code for publication.”

Seconded by Commissioner Rainey.
Motion carried unanimously.

RESOLUTION #8-07/08: City Manager Aguilera indicated this is their 3rd attempt for establishing appropriate green fees for the Golf Course, and the board stated they left the Juniors out, and they have been added in the three categories, and this is the only change.

Commissioner Renfro asked...there is nothing listed on the membership for the Juniors.

City Manager Aguilera stated that members are usually adults and the Juniors fall inside of those memberships...it’s a family membership.
AN ORDINANCE AMENDING CHAPTER 2, ARTICLE V, §2-373 OF THE CITY OF TRUTH OR CONSEQUENCES CODE OF ORDINANCES, PERTAINING TO MUNICIPAL MAGISTRATE QUALIFICATIONS AND SALARY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TRUTH OR CONSEQUENCES:

Chapter 2, Article V, §2-373, be amended as follows:

§2-373. The qualifications of the Municipal Magistrate and any Bond required by him, will be as prescribed by law. The Salary of the Municipal Magistrate will be as follows:

(a) For a Municipal Magistrate having no prior experience as a Municipal Magistrate in New Mexico: $20,000.00;

(b) For a Municipal Magistrate having one (1) to five (5) years experience as a Municipal Magistrate in New Mexico: $30,000.00; and

(c) For a Municipal Magistrate having in excess of five (5) years experience as a Municipal Magistrate in New Mexico: $42,000.00.

The above-described salary schedule will become effective upon the Municipal Magistrate taking office following the next regular Municipal election.

PASSED, APPROVED AND ADOPTED this ___ day of ___________ 2007.

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO

By: ____________________________

LORI MONTGOMERY - Mayor

ATTEST:

MARY PENNER - City Clerk
“Commissioner Renfro moved adoption of Resolution #08-07/08.”
Seconded by Commissioner Rainey.
Motion carried unanimously.

RESOLUTION
#09-07/08

City Manager Aguilera stated they have been provided with a memo on justification from the Utility Office and the Clerk’s Office, and a Resolution and these are the 1st Quarter budget adjustments.

He explained the budget adjustments from the computers will come from unexpended general fund and the other budget adjustments are monies that are changing within departments, and Helen is here if they have any questions.

Commissioner Renfro...just run us through the changes please.

Ms. Helen Belis came before the Commission to explain the budget adjustments and are as follows:

Fund 10 – General Fund – Increasing the revenues by $4,018 and that is because the Police Department has been awarded the CDWI Grant.

Page 1 – Governing Body – Increasing expenditures by $2,000 and that is for the Village of Williamsburg Fire Department.

Pages 1 & 2 – City Clerk – Increasing expenditures by $854...the $154 justifies that DFA wants to keep track of the 1% property tax administrative fee that Sierra County charges us, and it’s both in the current and prior expenditures. She stated when she consulted DFA they told her no it’s just on the current property tax, but when they received a check it’s on both. The $700 is for a computer explained in the memo.

Page 2 – Municipal Court – Moving funds their Public Defender line item to cover their part-time intern.

Commissioner Renfro...they didn’t have a part-time when they did their budget.

HB – They didn’t have one and the City Manager had told them if they wanted to cover that intern they would have to find it from one of her line items, so she would not increase her budget.

In the City Manager’s budget they moved funds from his professional services line item to cover the increase and membership dues that he had in the NMML and to pay the May & June Rotary dues.

Human Resource/Homeland Security Fund – They moved $960 from the capital purchase to non-capital equipment for shelving as the funds were allocated in the wrong line item.

Pages 3 & 4 – Police Department – Increasing expenditures because of the CDWI Grant that they were awarded.

Page 5 – Fleet Maintenance – Increased in expenditures due to back pay wages and the PERA that was in reference to a settlement with one of the employees.

Commissioner Renfro – How come the full time wages increased.
HB – Because they back dated back to June.

The total increase in the General Fund expenditures came out to $40,631.

Fund 16 – State Fire – Increasing the revenue and the expenditures by $6,160 for additional funds that the State Fire allotment gave out.

Fund 41 – Joint Utility – Pages 9 & 10 – Increasing the expenditures by $900 for the two computers in reference to the memo.

Pages 11 & 12 – WW Department – Moved $1,500 from another maintenance line item to the capital improvement for an ice machine needed at the Service Center.

City Manager Aguilera – Back up to page 9 at the top of the page there was a reduction in the Lodger’s Tax having to do with the fact that they received less money.

Fund 25 – They reduced the revenue by $10,000 because the Tourism Board was awarded $20,000 instead of $30,000, and also reduced their expenditures by $11,294, and part of that $1,294 was when they did the final budget they hadn’t presented the expenditures.

Fund 43 – Golf Course – Increasing the revenue by $4,000 and that is for the new line item for the sign-in fee.

Fund 50 – State Agency on Aging Fund – Increasing the revenue and expenditures by $1,800 as they received an additional $1,800 in a grant.

City Manager Aguilera stated that was a grant they approved for that emergency repair.

Fund 61 – Revenue for the Capital Improvement Joint Utility – Increasing that by $50 that is revenue from the interest in the bank account.

Transfers – They are increasing the transfer out from the General Fund to cover the expenditures on the State Agency on Aging Grant. She indicated they have to pay it first and then they get reimbursed. There was $37,000 that had been in that fund since back in 02 and rather than putting in back in the General Fund they just left it there, and indicated that particular bank account does not collect any interest.

The Commission thanked Helen.

“Commissioner Renfro moved adoption of Resolution #09-07/08 – Budgetary Adjustments.”

Seconded by Commissioner Torres.

Motion carried unanimously.

JP A – ANIMAL CONTROL WITH S.COUNTY: City Manager Aguilera indicated that this is the same Animal Control Contract that they recently enacted with the City of Elephant Butte. He stated it spells out a little more clear what happens after an hour of looking for an animal.
He stated the County increased the fee to the City on their own from $25.00 to $30.00.

Commissioner Renfro—where is it more clear about what happens after the hour or whatever...to me this wasn’t anywhere compared to the one they passed with the City of Elephant Butte...this to me is very open. To start with the City shall provide the rough animal control officers...what’s that about.

City Manager Aguilera stated it’s obviously a typo...this is the agreement...this is the original agreement that they’ve had with the County and they are the ones that typed it up and obviously, and indicated that typo should read...Provide, through.

Commissioner Renfro – It doesn’t really, I mean...how thin are we going to spread our Animal Control Officers. We have two...what I always hear is that they’re busy, busy, busy, and we’ve already signed an agreement with the City of Elephant Butte...and I don’t mind helping, but my question is to start with this doesn’t say anything...like the one with Elephant Butte that they wouldn’t spend over an hour chasing a dog...this doesn’t cover anything like that.

She mentioned $30.00 isn’t that what Elephant Butte was gonna pay us.

City Manager Aguilera - $25.00

Commissioner Renfro- $25.00...but it’s like...it doesn’t say provided that they are available or not busy or whatever...to me it’s like...and then what happens in the City if our Animal Control Officers are in Tim-buck-to up in Winston or Chloride or Monticello or Engle of down in Arrey chasing a dog or whatever and we have an animal situation here in town...is it just ignored...is the other one gonna have to come in and get overtime or...how is this all gonna work.

City Manager Aguilera stated normally a police officer will respond if the Animal Control Officer is not available.

Commissioner Renfro stated I thought there had been a discussion that the police department was not going to be handling animal complaints anymore.

City Manager Aguilera indicated they will not handle animal complaints anymore unless it is an emergency...a bite or a rabid dog or something to that affect...the police will not respond. He stated if there is no Animal Control Officer because either they’re on a different call at the County or at Elephant Butte or simply off on that day then nobody responds...if it is an urgent situation then they will either have a police respond or they will call out...

Commissioner Renfro – Then we’re still going to be offering our citizens maybe second hand...second class service because our Animal Control Officers have already been committed to the County that they can be in Arrey chasing a dog when one of our citizens in town maybe has some stray dogs running that they would like picked up, and the Animal Control Officer is busy down there so then our citizens here in town just gonna have to be happy with it and say okay.

Commissioner Torres – We’ve been doing this for a long time
havent we... have we had any problems.

City Manager Aguilera - Indicated this is a long standing contract agreement with the County... I have not heard of any problems, but if the Commission doesn't want to utilize our Animal Control Officers in this way I don't have a problem.

Commissioner Renfro - And I don't mind... like I said I don't mind helping out but to me this... I just thought that there should be something more specific in this one like the one for the City of Elephant Butte... and I mean that clearly stated that our Animal Control Officers wouldn't be spending... over an hour.

Mayor Montgomery - Well that's the one that you just wrote though.

City Manager Aguilera - That's the one I re-wrote for Elephant Butte.

Commissioner Renfro - Well that's what I'm thinking... I mean... I would sort of like to have...

Mayor Montgomery - Maybe it should mirror the same as Elephant Butte saying that first the City of T or C then as available.

Commissioner Renfro - As available for the County and then also put a limit on how much time they spend.

City Manager Aguilera - So then what we'll do is I'll re-draft using the Elephant Butte model and bring it to the Commission and then back to the County.

Commissioner Renfro - Yea... I'd like that a lot better... more specific because this was like wide open.

Mayor Montgomery - And I see what you're saying it's the same agreement that's been in place and it's probably never even been... this closely.

"Commissioner Renfro moved that this be postponed until our next meeting."

Seconded by Commissioner Torres.
Motion carried unanimously.

LEASE- NAT'L GUARD ARMORY:

City Manager Aguilera stated that the National Guard was going to have a meeting tomorrow but they were notified that they would not be on the Agenda, and they rescheduled the meeting for October the 17th or 18th.

He indicated they were going to lease us the National Guard building and grounds.

Commissioner Torres - Stated that was our land to start with.

Commissioner Renfro - That's what I was gonna ask Jay.

City Manager Aguilera - Let me explain... in the original gift of the property from the City to the National Guard in 1953 there was a stipulation that if the property was not used for military purposes then it would revert back to the City at no cost and without any compensation to them. At this point I don't really want to bring it
that up as an issue because if they think not having a military use means that they get the property back entirely they may decide to have a military use...if they want to lease us the property for 99 years for $1.00 there's no difference, at that point they can prove at some later point and time they can prove that the property is not being used for military purposes...so I would rather just not mention that to them at this point let them lease it to them...it's our property anyway but they can lease it back to them and that at some point in the future if they want to keep it then they can say look it belongs to us anyway because the stipulation says so.

City Attorney Rubin stated didn't they tell you they moved their meeting back to October, and give you a chance to look at their documentation before they take any action.

City Manager Aguilera – The lease yea...we don't have a copy of that 99 year lease and what the stipulations are and so...and we weren't able to get one for this meeting and now that it is moved to October hopefully they will get a copy of that so they can have a chance to review it.

City Attorney Rubin – And possibly with that agreement they can reference what they just talked about the 1953 provision so that way it's clear as to what our intent maybe later on so that's something we may want to take a look at.

Mayor Montgomery – Well surely they would look at that documentation before they would enter into a lease with anybody or would they not.

City Manager Aguilera – I don't think they know.

Mayor Montgomery – I bet they do now.

Commissioner Renfro – Through the years people up there have known.

Mayor Montgomery – Well see I thought that was part of the reason why ROTC was in there for awhile because that kinda met their semi-military use...whatever.

City Manager Aguilera – The ROTC agreement lease has expired, so if they lease the entire facility to us then it's definitely non-military.

City Attorney Rubin – I guess the only thing we have to consider is whether entering into a lease would compromise the position they already have regarding the terms of the previous conveyance...so we need to take a look at that quite truthfully.

City Manager Aguilera – At this point no decision is necessary...just an update to the Commission.

OLD BUSINESS: None.

REPORTS: CITY MANAGER –

City Manager Aguilera stated they had a meeting with the legislative auditors, and explained they go around looking at what cities are doing with their grant money. He indicated they were picked at random and a particular grant was picked at random and the particular grant is a $200,000 grant for restoration of our water
tanks an interestingly it happened to prove the point...I think that
the legislature is trying to make, and that is that when they partially
fund projects because they asked for $400,000 and they gave them
$200,000.

He stated there is nothing they can do with $200,000 so the money
is sitting there waiting for an additional appropriation, and they
were glad to see that is actually occurring and had their
documentation in order and that she was somewhat on their side in
other words reporting back to the legislature that they need to
change the way they fund projects and that they need to fund an
entire project.

City Manager Aguilera reported on the rehabilitation of the Human
Resources building is back on square one, and that they got the
final on the electrical, and the walls are being closed in and
hopefully to be occupied in about 30 days.

CITY ATTORNEY –

City Attorney Rubin stated he may have some good news regarding
the John Deere lease they talked about 2 meetings ago. He
indicated after locating the person he needed to talk to he invited
him to submit to those proposed changes to the contract that he
thought would be more favorable to the City, and stated he sent it to
him and he presented it to his legal counsel, and he received the
word that they are basically okay with the changes with maybe a
couple of minor modifications and to get the contract back to him
and they should be ready to go and will keep them posted.

COMMISSIONERS –

Commissioner Rainey – No report.

Commissioner Torres – No report.

Commissioner Renfro stated she would like to congratulate Chris
Nobes, Building Inspector/Floodplain Manager for being with the
City for 10 years.

Mayor Montgomery – Read a Thank-You note they received from
Mr. Fred Gurule who retired from the FAA for the proclamation he
received on behalf of the City of T or C.

EXECUTIVE SESSION:

“Commissioner Renfro moved that the meeting be closed for
Executive Session – Personnel 10-15-1H(2), City Manager,
Pending or Threatened Litigation 10-15-1H(7), McCans vs. City of
T or C.”

Seconded by Commissioner Torres.
All 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 Rainey certified that only matters pertaining to
Personnel 10-15-1H(2), Pending or Threatened Litigation 10-15-
1H(7), were discussed in Executive Session, and no action was
taken.

Seconded by Commissioner Renfro.
Motion carried unanimously.

"Commissioner Rainey moved to approve amendment #1 — Contract for the City Manager."

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 September 2007, on motion duly made by Commissioner Rainey, seconded by Commissioner Renfro, and carried.

LORI S. MONTGOMERY
MAYOR

MARY B. PENNER, CITY CLERK