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, December 14, 2010 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. Evelyn B. Renfro, Mayor Pro-tem
Hon. Steve Green, Commissioner
Hon. Frances Luna, Commissioner
Hon. Freddie Torres, Commissioner

Also present:

Dave Weiser, 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.
Commissioner Torres called for the Pledge of Allegiance.

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

"Commissioner Luna moved approval of the Agenda as presented."
Seconded by Commissioners Renfro/Green.
Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT: Mayor Montgomery stated she is going to turn this over to Dave and Jay this evening.

City Manager Weiser stated over the last few months he has been made more aware of what he perceives as personal attacks on city staff, and City Commissioners, and indicated it is something he is not really comfortable with personally. And stated it is something he is not really comfortable with professionally as a City Manager, and a former elected official.

He stated he felt that these attacks again have been more and more frequent, and that he will freely admit that he may be over sensitive to what he perceives to be a problem, and indicated about 10 days or two weeks ago he had an epiphany on his concern on this, and that revolved around the fact that by law and city code...city staff works for him, and
he is going to take it upon himself to recognize more quickly when these personal attacks take place...if they take place here he will ask the Mayor if he can break in, and ask them please to refrain from personal attacks...if it happens a second time I will ask the Mayor to step in and ask them to refrain, and if it happens a third time we'll ask the Chief to escort them from the building.

City Manager Weiser stated they all make mistakes, and its proper and right and their right to point those out to them when they make mistakes...but there are ways to do that, and there are ways not to do that, and he doesn’t need to go in and give them examples...but it's one of the things...and this happened most recently at our last commission meeting, and that it was pointed out that our City Attorney made a mistake and the pointing out of that became more of a personal attack, and he does not think that is correct, and so that is why he is going to take these steps and hopefully it doesn’t happen again, and that they won’t have to do this...none of them want to...they want to get on with city business, and conduct city business...because they are working for them, and they want them to use our time as efficiently as possible...so with that I think Mr. Rubin has a couple of things to say.

City Attorney Rubin stated let me go ahead and follow up on that...at the last meeting Ms. Sophia Peron stood up and she started off her comments by saying that (me) the City Attorney that I was living in my own little world...that I was making up rules as I was going along to benefit myself, and to benefit local big shots with some back room deals...of course those specifics are offered and you’re sitting there wondering...okay what local big shots am I benefiting, and what rules am I making up as I go along, and what back room deals are being made, and why am I even making deals in back rooms to begin with, and you’re just sitting there listening to this...this on slot. And without any specifics, and it’s too bad that Ms. Peron isn’t here because I would love to hear what she is talking about when she makes those kind of comments.

And I will tell you that they did have a hearing on December 8th as she had referenced, and it involved by way of brief to summary...they had another hearing on the Shepard’s Highlands appeal, and just by brief background...this is the case you might recall that they have already prevailed on...it was a zone challenge case, and they already prevailed that the fact the appellant didn’t have standing to bring the case...never the less there I was in court, and the appellant rambled on for maybe about a half an hour and tried to argue everything under the sun about all the different things that I was doing wrong...that the city was doing wrong.

City Attorney Rubin stated he made a very brief 5-minute argument...less than that perhaps...simply that...first of all...the underline current was that...you also understand that the service of Ray Ruffini on the Planning & Zoning Board was not even an issue in that case, and that was supposedly the basis later on of this motion that I had to defend again...so my argument was simply that here I am...I am called upon to defend myself against an irrelevant claim or by someone who didn’t even have any standing to sue us. And stated the court heard the argument...ruled in my favor and the City’s favor, and by the way the court found I did not intentionally mislead anyone.

He stated what is left in that case is my pending motion for sanctions which will be heard at a later date on a related issue...on the Hot Springs Land Development case which has been going on for quite some time or where the Judge awards sanctions to the City was recently entered...in fact I got the notice today it was entered on December 10...and also now
for myself is to submit my cost bill for Mr. Kelley of Hot Springs Land Development to submit his cost bill, and this was a lawsuit that was brought by without including other names including Ms. Peron...and I will leave it at that. Thank you.

Mr. Leroy Henderson came before the Commission with comments.

Mr. Loren Schmidt came before the Commission with comments.

Ms. Eve Elting came before the Commission with comments, and handed out information to the Commissioners and City Manager.

Ms. Linda DeMarino came before the Commission with comments.

Mr. James Gasowski came before the Commission with comments, and provided post cards.

Mr. Ron Fenn came before the Commission with comments, and submitted information for the record.

Mr. Gerald Trumbull came before the Commission with comments, and submitted information for the record.

Mr. Tim Smith came before the Commission with comments.

Mr. Neal Weeks came before the Commission with comments.

Ms. Susan Lynch came before the Commission with comments.

Ms. Susan Lynch came before the Commission with questions.

Mr. Bradley Grower came before the Commission with comments.

Ms. Joyce Hudgens came before the Commission with comments.

Ms. Kim Audette came before the Commission with comments.

Ms. Malissa Cordell came before the Commission with comments.

Mr. Anthony Gutierrez came before the Commission with comments.

Ms. Kathleen Krysinski Weeks came before the Commission with comments.


Commissioner Green referred to the DAIC report, and does not know if this is just an internal document or sent out to other government agencies, but he believes there is a mathematical error on the last line...where they multiplied a unit rate of $10.00 times 119.5 hours, and it doesn’t compute, and if they have to turn that in to Santa Fe or whoever is their funder they might want to correct that.

"Commissioner Green moved approval of the Consent Calendar as presented with that change."

Seconded by Commissioner Renfro.
Motion carried unanimously.
Mayor Montgomery stated the following are draft minutes from various boards provided to the Commission for their information, and are non-action items.

Commissioner Green stated he would like to recognize on the November 2nd attached to the Recreation Advisory Board minutes...a letter by the chair Dr. Greg D’Amour, and read the first line of the letter to Mr. Hyde, General Manager from Dollar General, and he thanks them.

Commissioner Green stated he has a comment and that he loves the idea of coming up with a project that involves the entire community if they want to be involved, and thinks it is an out reaching of young and old alike, and is assuming since the proposal was made to the Housing Authority Board that they have approved...they are willing to give up the wall or where ever it is going to go.

City Manager Weiser -- correct. And stated part of the issue that the board had was...and the most they are going to have is 64 separate pieces to be painted on, and if they turn it over to the entire elementary school there would have to be some sharing.

Commissioner Renfro -- are you going to ask for public input as far as what is going to be painted on there...or is this already decided on.

City Manager Weiser -- I am sorry if I didn’t make that clear...that was part of the process is to talk to the community, and get their input either through advertisements in the newspapers or community meetings to see what they want.

Commissioner Renfro stated she thinks it will be very important.

Mayor Montgomery referred to Article 2, section 3...The board will advertise at a minimum county-wide for design submissions, and will judge said submissions, and make recommendations to the City Commission regarding these submissions. And going through the minutes of the meeting...it’s clear that was a presentation that was made to the board with an excellent idea and taking that idea forward to the community to see how the community...one question I had to Mr. Gasowski...you made a comment that the gentlemen did the mural at the school...

Mr. Gasowski -- In his hometown. They will put out an advertisement...once this is agreed on by the council to advertise in the Herald and the Sentinel or postcards from the community telling them...
what they want on the mural, and then be sent to Mr. Stanton to design several ideas and have that brought back and agreed upon.

Commissioner Torres – How about the artist’s…give everybody a chance.

Mayor Montgomery – It will go out county-wide to any of those individuals that want to participate.

Commissioner Green – Stated our sun plays havoc with outdoor art, so if they fading or lose its luster is Mr. Stanton going to come down and touch-up…how do they protect the investment of the taxpayers.

Mr. Gasowski – This is part of the planning, and explained the way this is done…it wouldn’t take much to fix it up…with a water proof sealer.

Commissioner Luna stated the Teen Center was approached, and indicated that is a city owned building…and I’m questioning why they are not…I mean I think that is probably a much more appropriate place for something that the community children are going to be doing, and can’t they use the money for that portion vs. the graffiti happy area of the park. And indicated the old convention building hasn’t been tagged in a long time, and the park, and that wall has blotches of paint over it where it is tagged constantly…and I just think maybe they would be better using our $3,000 on this project downtown at the Teen Center across from the police station where it would be more apt to be watched…I just wonder if that’s not something they could look.

City Manager Weiser – Can the money be spent there…yes.

Commissioner Luna asked would the proposal…if the money could be spent there that would be a larger canvass that be a more suitable place?

Mr. Gasowski – when I said Teen Center I meant the Boys ‘N’ Girls Club. And stated the mural is on the upper quadrant of the corner of 2nd & Riverside, and stated there are 3-tiers of retaining walls…and that section has not been touched.

“Commissioner Green suggested that they move forward with the process, and in the mean-time ask the community for other ideas of location to have more involvement with the community.”

Seconded by Commissioner Luna.

Motion carried unanimously.

Planning & Zoning Commission –

Special Use Permit – January Roberts –

City Manager Weiser stated on November 2, 2010 the Planning & Zoning Commission at their regular meeting considered this application for a special use permit to provide a housing unit at the rear of a building at 420 Broadway. He indicated our code requires a special use permit for mixed use to have housing when the property fronts on Broadway, Main & Date. And they had one resident speak against it, and the vote by the Planning & Zoning Commission was a 3-1 in favor of approving this special use permit.

Commissioner Luna – This is not her living in this building…this is living behind the building.
City Manager Weiser – It’s living in the building…in the rear half of the building.

Mayor Montgomery – The question that I have is in the ordinance…if I remember correctly…it states that the business must be open a certain period of time in order to qualify for the special use variance…and that’s understood with this individual. And the reason I say that they have granted these special use variances in the past…and the business is not open, and that the individuals are still living in the building…and don’t open their business, and opened very infrequently.

Commissioner Green – I can attest this is one of the businesses that are constantly open.

Mayor Montgomery – and I know that I just want to be clear that it continues that way.

Commissioner Torres – They do pay commercial rates…right?

Mayor Montgomery – As far as I know.

City Manager Weiser – Yes they do.

“Commissioner Luna moved approval of the special use permit for January Roberts.”

    Seconded by Commissioners Renfro/Green.
    Motion carried unanimously.

Variance Request – John & Michele Saridan –

City Manager Weiser stated at that same meeting the Planning & Zoning Commission heard a variance request for the front yard set-back from 25’ down to 13’. He stated a public hearing was held, and they did have one speaker and there were questions and answers that were answered later on from the Planning & Zoning Commission, and the commission voted 3-1 in favor of granting this variance.

Mayor Montgomery stated for clarification…this puts it in the same distance set-backs as other areas…other properties in that area?

City Manager Weiser – Yes they had pictures provided of other properties that had similar set-back issues. And whether or not those had gone through the variance procedure…I don’t know.

Commissioner Green – Where is the property located.

City Manager Weiser – And I’m sorry I don’t have the exact address.

I believe reply from Mr. Fenn – 1307 N. Riverside.

Mr. Friberg – That’s correct.

Commissioner Green – At the P & Z meeting was there a request for a variance just to have more uniform look on the block…I mean why are they asking for the variance…what was the reason for the variance application.

City Manager Weiser – Better use…be able to use more of the property.

Commissioner Green – On the back side.
City Manager Weiser — Yea with the set-back they could have a home that was larger, and one of the reasons why there wasn’t a plan provided for the home...for the use of the property would depend on this set-back if they had to comply with the 25’ set-back they would design it one way...if they were allowed the variance to 13’ set-back they would design it a different way.

Commissioner Green — Stated he would like to request that in the future when they get things such as that...that the address be available so the Commissioners can go out and look or at least pictures of the area so they know what they are talking about rather than trying to visualize something in their minds.

Commissioner Green — Stated there was one opposing vote, might I ask what they opposed...why they opposed the variance.

Mayor Montgomery — She talks about an incomplete application.

“Commissioner Green — I would like to suggest that since...I'll just speak for myself, and I haven’t seen the property there have been some questions brought up of rules not being enforced or whatever, and I’m wondering if they can get some additional information and put this on our January or whatever our next city commission meeting is.”

Mayor Montgomery — That’s your motion...

Commissioner Green — That’s the motion I make.

City Manager Weiser — Can I ask what information...additional information you would like to see Commissioner...

Commissioner Green — I’d like to...now I know where it’s located so I need the time to go out and take a look at what we’re voting on.

Mayor Montgomery — So that’s your motion to table this until the next meeting.

Seconded by Commissioner Luna.
Motion carried unanimously.

PUBLIC CDBG Public Hearing - SCCOG

Mr. Tony MacRobert with SCCOG came before the Commission and stated he works as a regional planner, and is here to discuss the 2011 project which includes Program Objectives, Eligible Applicants, Eligible Activities/Categories along with Planning, Colonias and Ineligible Activities, Program Requirements, and Application Requirements, and at this time explained each category.

He stated at this point and time to let them know about past projects...in 2005 a circuit electrical project which was completed, and in 2008 there was also an application for the Williamsburg Electrical Circuit Project which unfortunately because of the engineering that is taking place, environmental concerns that had taken place the project was delayed, however the City was acting as responsible, and they were awarded $420,300 back in CDBG funding to the NM Dept. of Finance...thus creating him to be here today to engage them in fulfilling the Williamsburg Electrical Project if they so wish. At this time they have the planning and design completed, environmental completed, and they have done the authorization to release funds and receive the authorization from DFA at this time, however if they decide on the Williamsburg
Electrical Circuit all they would have to do at this point is place everything together with the environmental and do a request for release of funds.

Mr. MacRobert stated after talking with the engineer WHPacific it should take about a month before they can start engaging in the project. He stated the project is from Steel Street in T or C to 1st Street in Williamsburg, and indicated that would be the replacement of utility poles, electrical line, phase three conductors, breakers, transformers and the hardware associated with the electrical project, and as they see here within the eligible activities...they do not see under the community infrastructure electrical because they normally...municipalities don’t own their own electrical system, however the City of T or C does, so they do qualify.

At this time Mr. MacRobert asked if anyone had any questions concerning CDBG he would be glad to entertain at this time.

Mayor Montgomery stated she would open it up for questions from the audience on the CDBG process.

Commissioner Torres – Are they ready to go forward with this project?

Mayor Montgomery – Stated it was one they were prepared for.

Mr. MacRobert – They are prepared...and if they look at the criteria within our feasibility and readiness Madam Mayor and Commissioner Torres.

Mayor Montgomery – Everything was done...I think it was environmental that they were held up with.

Mr. MacRobert – Yes ma'am.

Mayor Montgomery – and they couldn’t get that in time, and so the money had to be reverted back.

Mr. MacRobert – And this could be a boomerang effect in a positive way as well.

Commissioner Green – is the match in our existing budget?

Mr. MacRobert – Madam Mayor, if I may answer the question...Commissioner Green, yes it is. And stated what they done is the funds for CDBG were reverted back $67,900 were used in the engineering aspect which resulted in a minimal amount of the local match for engineering to go out, and indicated the City still had from his understanding an additional $94,000 from an NMFA loan, but he is going to get all the budget and verify it with WHPacific as well.

Commissioner Green asked if they are eligible to apply for not only this grant, but also for the $50,000 planning grant for a comprehensive plan...to update a comprehensive plan because ours is more than 5 years old.

Mr. MacRobert – yes you can.

Commissioner Green – at the same time.

Mr. MacRobert – at the same time.

Commissioner Green – is there a match on the planning grant as well.
Mr. MacRobert – there is a 10% cash match as well.

Commissioner Green stated he would like to suggest that they go ahead with the electrical project for Williamsburg, and at the same time apply for a $50,000 planning grant to update our comprehensive plan...especially since they will be going into some town hall meetings visioning sessions...this might be the appropriate time to get...to analyze our comprehensive plan and bring it up to where they want it to be.

Commissioner Luna – aren’t we in a public hearing.

Someone from the audience – asked in terms of the things that are available...about covering the pool. (Could not hear too well.) Is that a possibility?

Mr. MacRobert – that is correct it would follow under the public service capital outlay.

Mayor Montgomery – Stated I think one of the comments they heard is they had the project on the 2008...and they have everything in place to extend the electrical service from Steel Street to 1st Street in Williamsburg which needs to be upgraded...so they have everything already in place...the engineering...all the environmental, etc., so that is the reason they were talking about that going forward.

Ms. Kim Audette – Are we going to have a public hearing?

Mayor Montgomery – this is the public hearing. I called for the public hearing a little bit ago. I stated Public Hearing CDBG...report on the CDBG Program, and Mr. MacRobert turned to the public and asked if there were any questions or any information if anybody wanted to present anything.

Ms. Audette – the agenda says...comments.

Mayor Montgomery – right...right receive public input on community development needs and choose a CDBG project for 2011 applications. Is there other input?

Ms. Audette – I would like to give some input.

Mayor Montgomery – please do.

Ms. Audette – may I approach the microphone?

Mayor Montgomery – yes you may.

Ms. Audette – Thank you. My name is Kim Audette...I’m on Van Patten in Truth or Consequences. For a number of years they have been asking for some re-mediation of the flooding issues downtown...the storm water run-off. This is pretty easy actually to visualize...they get 8” of rain fall every year...on the average depending, but let’s use 8” as a rule of thumb. So in any given square foot they are getting 3/4 of a foot of rain fall...if you expand the areas say to the size of these tables it’s still 8” of rain fall every year...if you put holes in the table then the rain does not run off of the table it goes into hopefully a containment system underneath the tables, so the point is they would like...after all these years of developing the land above the downtown area, and inside the downtown area covering it up with impermeable surfaces...the idea is to create permeable surfaces and catchments below so they can recharge our aquifer. And the last I heard at the Public Utility Board...the City wells
were 21 acre feet and below...they were dropping 21 acre feet every month so it would be great if they could improve that by recharging our aquifer.

Mayor Montgomery closed the public hearing.

Public Hearing – Ordinance #604

Mayor Montgomery stated the next item for the public hearing is for the Final Adoption of Ordinance #604 for publication – Amending 7-35 – Pertaining to Default/Penalties for Business Registration Fees.

City Attorney Rubin stated this is an ordinance that has been published, and stated it reiterates the due date for business registration fees to be due by January 1st of each year, and that a $10.00 late fee will be charged by any person or business that fails to comply...that fails to pay their business registration, and stated that is mandated by State Statute. And stated the City would then have the option after they make their attempts to try and collect the fee, and they can turn the matter over to him and then he can file a criminal complaint in Municipal Court, and if the person is found guilty then the judge would then have discretion to penalize that person in Court...Section 1-10 of the code, and perhaps what gives him the most teeth here...the City the most teeth here is that in the event someone does not pay their fee they can actually initiate a civil action which doesn't add additional remedies from the City including shutting down a non-compliant business.

Commissioner Green asked does the City have in its rules pertaining to business licenses...is there a date they mail out the bills...I just want to make sure they have a procedure that they follow every year.

City Clerk Penner stated they publish in the paper as a reminder that they are due by March 16th then they become delinquent after that...it’s in the ordinance.

Commissioner Renfro – you don’t send out applications out anymore?

City Clerk Penner – we just send reminders, and the ones out of town we send applications, and we do send a reminder letter at the beginning of ever year...actually we send about three reminder letters.

City Clerk Penner stated yours is a liquor establishment.

Commissioner Torres – I don’t get one.

Commissioner Torres – It don’t make any difference...that’s what I’m saying...I got to pay mine when its due...it’s due...we don't get 10 day late fees...I think a business when they open their doors if its due December 1 or January 1...that’s when its due. If you don’t have it and its not paid you shouldn't be able to open your doors. I can’t...you won’t let me do it...if I don’t pay mine by July 1...I’ll guarantee you...you'll have the cops closing me up, and I'm not no different than any other business. It’s a liquor establishment alright but it’s still a business.

Mayor Montgomery stated she will open the public hearing, and asked for those that would like to speak for the ordinance.

Bradley Grower came before the Commission, and stated he supports enforcement of law in regards to business licensing, but I think it is important since I've uncovered the fact that the City is been doing business the past two years with at least three un-licensed firms for
contracting purposes, and allowing business to occur within the City that they knew was un-licensed at the time of an IPRA request, and the fact that Sierra Community Council was an un-licensed non-profit corporation for 4 months last year while they were managing our TV station...we all need to abide by the law.

Kim Audette came before the Commission and stated she was on Van Patten Street, and stated she is for this ordinance because they have been allowing zoning applicant's to apply for zoning without a business license...apparently there is no system for due diligence unless the people in the public hearing go out and ask if this people have been licensed, therefore it would make very good sense to be more strict in the business licensing code, however I recall that it is already very strict, and as long as the City actually acts on the ordinance that it has and enforces the ordinance that it has this would not be happening.

Braxton Merritt came before the Commission and stated he would like to make a comment regarding his experience with this...and stated he owns several properties that are multi-units, and indicated he was not aware when I started purchasing them that the City required a license for them, and stated he received a letter, and turned over to the Attorney as well that he had to have a license for each one of those properties. He stated it was a positive learning experience for him, and did acquire the licenses, and was advised at the time when they came up for renewal that I would not be notified...it was up to him to renew them on his own, and if I was late there would be a fee so I dislike the comment...it would be nice if invoices or reminders were sent out.

Mayor Montgomery asked if there was anyone who would like to speak against the ordinance, and no comments were received the public hearing was closed.

Mayor Montgomery stated before they move on with other business stated to Mr. MacRobert that she owed him an apology, and indicated the issue for the CDBG was not placed on the agenda for other business for them to act on the public hearing, and that it would have to go before at their next meeting.

Commissioner Green asked Mr. MacRobert if they were up against a deadline.

Mr. MacRobert stated yes there is...December 17th.

Mayor Montgomery stated she sees a special meeting in their future.

FINAL ADOPTION ORDINANCE #604: Mayor Montgomery stated this is for Final Adoption Ordinance #604 for publication, and they held a public hearing, and that they had three individuals for the ordinance, and that no one spoke against the ordinance.

"Commissioner Renfro moved approval Final Adoption of Ordinance #604."

Seconded by Commissioners Green/Torres.
Motion carried unanimously.

RESOLUTION #14-10/11: City Manager Weiser stated following their previous discussions concerning appointments to boards and commissions, and that he researched the different boards and commissions that are listed in City Ordinances, and came up with three different types of appointment
procedures...item #1 – The Public Arts Board, and The Veterans Memorial Park Advisory Board is very specific in our code...who/what entities are represented, and how they are appointed...item #2 – Stated he is suggesting after discussion that they have had that they look at the Planning & Zoning Board, and that the City Commission will interview after they advertise those that have applied, and choose from one of those to fill that position, and stated along with that because of discussion that they have had although the SVHGB is not a City board they still use the same procedure as far as interview and appoint, and the last one is all the other boards and commissions...some of them recommend that the specific board interview their applicant's and make a recommendation to the City Commission, and that is what he memo rated here, and that they make that the policy of all the other boards...other than the four that are mentioned in #1, and #2.

Commissioner Renfro – well it says interview and select by a majority vote, and the question that kept coming up...was the tallying or tabulation or whatever...I don't see it there...I don't have a purpose with this the way it is now, but making clear that there is...it's on a vote and it says absolutely nothing about a tally sheet or anything.

Mayor Montgomery – correct it does not.

Commissioner Green – we were given two renditions of this, and if you take a look at the first Whereas...it talks about and to its citizens, and the first rendition the second Whereas...the City Commissioners of the City of Truth or Consequences have the authority to appoint residents, or non-residents, if the non-resident owns property or a business within Truth or Consequences to these voluntary advisory boards...that paragraph is not in the second rendition, #1, and #2 under the Therefore be it resolved...third line down, the City Clerk will advertise...I would like also to put down plus the Mayor announce at a City Commission meeting, and since some people don't read the newspaper, but they might be listening to the radio.

Commissioner Renfro – you say you have two renditions...all I got is one.

Commissioner Green – I am commenting on why the correction...I think we walk on very thin ice there, and the other thing is the process again on how they are going to interview to make it fair...a level playing field...open and transparent, and while we are talking about that I would just like to refer real quickly, and stated here is a cooperative agreement this is a US EPA this is a federal grant, and if you take a look at it each proposal will be rated at the specific levels point system with a total of 100 points, and it goes on for all the criteria, and the questions and the evaluator's name...the second one this is there nine grants that they award and there are 150 applicant's final proposal selection recommendations...this is the Feds will be the national selection committee from among the highest ranked proposals...that is a federal grant...this is a State Grant, NM Scenic Byway Grant Program, 2011 Project Evaluation Criteria, the evaluator's name, possible points, evaluation categories, the City of T or C interview rating form, evaluator signature, different questions, different categories and the rating system, and I would like to remind my fellow commissioners that they did the last month on a rating system.

He stated the responses were scored by the 3 people, myself this is from Manager Weiser, and I have enclosed the scoring tabulation sheet for their review, and it was broken down in all the organizations that applied...the rating...the numbers that they were given and the
recommendation was that they signed contracts with the two highest rated firms, and no one had a problem with that...this was The On Call Engineering Service...so whatever they do...one of my prime concerns is that the way the second rendition reads...they theoretically could have someone from Cuchillo sitting on a City Utility Board determining what our electric rates and garbage rates might be where they have no vested interest in those rates what so ever because they don't fall under those.

Commissioner Renfro — but if they are highly qualified to do so...what's the problem?

Commissioner Green — they want to get the best people involved there is no question about that, but I think it is disrespectful Commissioner Renfro to our citizens to make them cast the net so wide that you...I mean it would be as if I tried to myself on the Planning & Zoning Board in Albuquerque...it doesn't make sense...I mean I would like to try...I understand if you don't live in the City, but you have a business interest there is a connectivity between the board you are serving on and the views that you're taking because it does directly impact you to have people who have no dog in the hunt if you will other than just their goodness and their volunteerism which believe me I appreciate...I think I would like to have...I'd like to try it with our residents and non-resident business owners rather than having anyone from the county...you could actually...you don't have to be a county resident to apply for any of these boards. I think in a way it’s disrespectful to our citizens, and yet I appreciate what you say that we want to get the best to serve for this community. I'd like to try it and if it doesn't work they can always come back and amend a resolution or vote it down or put another resolution out there, but I thought the original rendition was fair and equitable...it made some sense to me.

Commissioner Torres — It always worked for us before they never had any problem, the only problem we had the last 2-3 years people complaining, but we've always had qualified people on the Utility Board, Planning & Zoning Board...we've never had any problem.

Commissioner Green — It's also a training ground...Commissioner Torres for future involvement at maybe a higher level for our citizens to get involved on our boards to possibly move and seek higher elected office to serve someone who doesn't live in the area...it's a dead end road they can't go any further than that within our City...I think this is a wonderful opportunity and they want people to get involved.

Commissioner Renfro — I still want to clarify...when you got the first rendition that you were reading off.

Commissioners Luna & Green — It was in our packet.

Commissioner Luna — Why did that sentence get deleted? Was it legal advice...did it accidentally get highlighted and the button get pressed...why did that sentence...why?

Commissioner Renfro — Because I don't have it.

Commissioner Luna — Stated the sentence that got deleted...if the non-residents own property or a business within Truth or Consequences to these voluntary advisory boards...so it says the City Commission of the City of Truth or Consequences have the authority to appoint residents or non-residents if the non-resident owns property or business, and now the one you have before us just says nothing about that, and I do agree that...I don't think we should be picking someone that doesn't have any interest in T or C owning business a property or anything...I mean if they live in
northern Sierra County and they want to be on our P & Z Board...I mean I'm glad and if they are the most qualified person I think that's fantastic, but I think there is other people, and I think we do need something that...

Commissioner Torres — I think we ought to look at that...if they're within the area and have interest in T or C that's the ones we usually appoint...I don't think we've ever appointed anybody from north Monticello...

Mayor Montgomery — So I think the question is...is first of all on the renditions of the resolution, and you made the comments about the other documents which are not reflected in this.

Commissioner Green — Yes and what Commissioner Renfro was talking about...we talked about interviews, but how, when, why, where, what...what is the constant...what is the leveling that we're gonna ask everyone, and I feel that...that is just a written document as compared to a verbal document as they discussed different things that comes before the Commission...I think it should be open...I think it should be available to the public...they elect us...they want to know what we're thinking and why we think what we do, and I think then follow-up with the advice of our lawyer then a motion be made to appoint the person who had the highest point score to that board, and that I think is the process seems to be missing here...how we're gonna do it, and that is a concern of mine.

City Manager Weiser — And to try and answer a couple of questions, and Jay I might ask you to step in as well. The intent of this resolution was because it was mentioned that there not be scoring sheets...you interview and make your decision from the answers that you're given...the intent in removing the second whereas was to only have city residents be eligible for boards and commissions...it wasn't to open it up county wide, or out of county, or out of state.

Commissioner Green — Why would the City Commission have its own...why would the City Commission want to operate under a different set of rules then the City itself operates...the City itself uses an evaluation form.

Commissioner Torres - Yea, but that's the projects...not...

Commissioner Green — No, no, no...This, no, no I beg your pardon Commissioner Torres...let me give you a copy of it. That's for interviewing for jobs...for personnel.

Commissioner Renfro — okay...and then the next thing is I doubt very seriously...but I doubt very seriously that somebody that has been interviewed or any of the people that have been interviewed know what they were scored, and the next thing is...is that the biggest and most important part of the hiring process is based on the interview, not necessarily the points...on the interview...right...

Commissioner Green — Commissioner Renfro the points would reflect the bad interview as well the points would reflect an outstanding candidate who interviewed really well.

Commissioner Renfro — But you know you're saying that everything has to be in all this and that, and like I said the scoring is never revealed to the employees through the applicant's, and then you're always told...I mean the main thing in hiring the person depends on the interview.

Commissioner Green — The federal and state grants applications rather you have the right to take a look at that document...you have a right to see.
Commissioner Renfro – You're talking about grants...

Commissioner Green – I misspoke...evaluating...evaluation.

Commissioner Torres – We all have a vote...you might rate somebody real high, but that don't mean I'm gonna hire them...he might...attitudes and things...

Mayor Montgomery – So let me see if I can synopsize everything...I think one of the concerns that came out of one of the previous meetings was that the ability on the scoring sheet to be able to sway however a person was rated and having one Commissioner over another take that process forward because of that rating...so I remember that came up...where as if someone rated them closer or not at all or whatever...there was no point system given or points given or whatever...that was one of the concerns I recall. So how would you...

Commissioner Green – I think we're all mature adults...I think that obviously we all have certain ideas about what we're looking for in a candidate...I don't think when you are scoring someone on education for example or involvement in the community or past experience in electrical or whatever it might be...that is a fact. And what I'm saying let's get the most qualified people that want to volunteer and serve this community, and let's try to come up with a process that is fair and open.

Mayor Montgomery – So let me reflect on what some of the other input was on that aspect...And I think the comments you heard was that Commissioners have the ability to do that without a rating system in place...they have the ability to listen to an interview and select the individual that they want without having to score that individual...I think that was brought forward also. So I just want to lay everything out there.

Commissioner Green – I think one of the things that the scoring does is when I talked about...Commissioner Torres...a level playing field. Every interviewee gets the same question, every interviewee gets an opportunity to not only answer that question, but then expound on their own personal life experiences...why they want to get involved, etc, etc, etc., but the baseline is constant, and that's what I want to try and make sure that they have is a constant baseline that is fair, equitable and open, and by having a rating sheet at least the 5 or 6 or 7 questions that everyone is going to be asked in the same manner, and that is what you judge them on.

Commissioner Renfro – Well then why...I mean why couldn't there be a standard form that is held or passed out when the interviews are going to be held...those questions can be asked, and they can make their own tabulation in our minds or whatever as to how they feel or what they think as to how they answered them. I don't have a problem with the questions all being the same and being asked of every applicant. That's not the problem that I have...okay...that's fair.

City Attorney Rubin – Commissioner Green let me ask you a question about the process you are talking about...I raised this once before. Suppose you have two candidates, and let's assume that 4 of the commissioners vote in favor of candidate a...all 4 say a 10-9 vote, and let's say the other commissioner votes for candidate b by let's say a 10 to nothing vote...what happens next. What if you have a situation before the 5 commissioners voted for one candidate, but the other candidate actually got a higher point system...got higher points on your tally system.

Commissioner Green – I think you're creating a scenario that's physically impossible to exist, because if the certain questions that are factual that do not involve interpretation of someone's words or their presentation...I
mean residency, non-residency, education, and experience in the field that they are asking for those are given...I mean you can't fudge that.

Mayor Montgomery – I have to question that because you can fudge that...you would think that it's black and white...you either have a degree or you don't have a degree...you either get a point or you don't get a point, but that's not what can occur.

Commissioner Green – I understand, but I don't think it's possible to create a system...and maybe it is, but I just can't come up with it right now to handle every eventuality that's gonna happen, but I think that if they come up with something that makes sense...that is reasonable and that's where you judge your motion on.

Mayor Montgomery – So we have two sides of the coin...I have a resolution that's in front of us which is the hard copy, and I've heard that standard questions are fine, and I've heard that a tally system is the way to go.

Commissioner Luna – Had a question for City Attorney Rubin, Jay is the second whereas that was omitted...do you have a copy the one they were provided...

City Attorney Rubin – I do and actually I was in favor of it being omitted. You know they were talking about voluntary advisory board...I don't know why the Commission would want to limit themselves...you have to be a city resident...I kinda agree with Commissioner Renfro was eluding to earlier...that perhaps maybe as an individual commissioner that could be something that you would favor or somebody that you would give them more credence to the rate system, but on the other hand...I mean you may have this one dynamite candidate from Cuchillo that is maybe the most qualified person who is applying, and I don't think it made any sense actually to intentionally limit yourself when you don't have to. And maybe when you vote on a particular vacancy...you're gonna look at it yourself and prefer to have a city resident, but I don't know why we would actually codify that you have to be stuck with that...so I was in favor of that being deleted.

Commissioner Green – To Jay...I think our population is somewhere around 7,300 or 7,500, and I don't know how many people live out of the city limits of T or C that own businesses in T or C, but let's say another couple hundred, so we're talking about 8,000 people out of a county of 12,000, so I don't think we are limiting ourselves that much, but I think we are disrespecting our citizens tremendously.

City Attorney Rubin – Well...me I'm saying where you are...I may say to the public...I'm gonna probably be favoring a resident over a non-resident, but yet I'm not eluded to that...I mean there may be a dynamite candidate to present themselves who is from out of the city limits, and I just want to keep open so again that's your call...I mean if it were me I would want that to be omitted...but that's your decision.

Commissioner Luna – I initially liked the resident or non-resident version however I do agree that there might be a dynamite candidate that just...I mean if Mr. Week was applying for fire chief and he decided to move out because we did something he wasn't with, but he was the most qualified candidate I would hate to limit ourselves to that...so with that in thought now I think that this new one is definitely the way to go, and as far as the tally sheet and everyone knowing where they stand I think they all have phones...if somebody is upset with the way we make a motion or appoint somebody...our phones are going to ring, and if the majority of the people don't like the person they appoint or the motion they make there is an
election, and I think that’s when the people are gonna speak whether they
did a good job or not a good job...not a piece of paper, and I think that
yes they need the standard questions, and indicated when I tried out for
the governing board for the City of T or C, as well as the county I was
asked the exact same questions...there was never a tally sheet...the best
person got the job, and there was a good reason God didn’t want me on
that board, and I think that's the way it is.

“Commissioner Luna moved with the typographical error...Vista...Sierra
Vista Hospital Governing Board, and adopts this Resolution #14-10/11,
the hard copy with the addition of Vista.”

Seconded by Commissioner Renfro.

Commissioner Renfro – And are they going to put anything there about
the standard questions or whatever...does it need to be included in
here...what do you think Jay?

City Attorney Rubin - I think I would actually not bring it up...I think I
would keep it the way you have it.

Mayor Montgomery stated there is another typo in the second
whereas...should be wants its citizens.

Commissioner Green stated under the Therefore since I will not be voting
for this resolution...I would like to suggest though that they put in the
City Clerk will advertise vacancies announced by the Mayor at a City
Commission meeting.

“Commissioner Luna stated she will amend to include...

Amended second by Commissioner Renfro.
All in favor – Commissioners Luna, Renfro, Torres,
Montgomery
Opposed – Commissioner Green
Motion carried.

City Manager Weiser stated at our last commission meeting, and that
they held this over until they had a full board, and stated in the mean time
they did receive the attached letter from the chairman of the Joint Powers
Commission respectfully requesting that each entity of the commission
conduct a moratorium at their next meeting of appointing members of the
governing board of the Sierra Vista Hospital.

Mayor Montgomery read the letter in its entirety, and indicated they
would be receiving a list forth coming no later than the end of the
business day on December 10th, 2010, and assumes they did not receive
that...or they did...that was this draft?

City Manager Weiser stated they received the draft at the special meeting
of the joint powers commission last night.

Mayor Montgomery stated they have the letter from Eunice Kent,
chairperson of the Joint Powers Commission, and they have the draft of
the document that the JPC is putting forward...requirement for members
of the governing board, and will open it up for discussion.

Commissioner Renfro stated the first item is the appointment to the
SVHGB.

Mayor Montgomery stated yes, and that they held this over from the last
meeting because there wasn't a full commission.

"Commissioner Renfro moved that Warren Cross be appointed to the SVHGB."

Mayor Montgomery stated seeing no second motion dies due to a lack of a second.

Mayor Montgomery stated they will move on with the letter from the SVHGB.

Commissioner Luna – If I might add...

Mayor Montgomery – add or discuss?

Commissioner Luna – Discuss and indicated that this will be discussed at their next JPC meeting.

Mayor Montgomery – Which is?

Commissioner Renfro – That's what I was going to ask...if it was official?

Commissioner Luna stated at which point Eunice took it upon herself...not in a bad way, but to go ahead and try to get some kind of standards for the governing board members, and so she created this and presented it to them so they would have time to review it until their JPC meeting at which time they will discuss it in open session.

Mayor Montgomery - So the JPC is directing the governing board on what the qualifications of their members are. Duly noted...

Commissioner Green stated he would like to make a statement, and stated he knows this is not their board, even though the City of T or C owns a piece of the hospital...a big share, and the governing board is entitled to come up with parameters as they see fit.

Mayor Montgomery – Absolutely the governing board is.

Commissioner Green – And therefore I would like to publicly apologize for myself, and fellow commissioners can do what they want...I think that Dr. Elting and Mr. Cross have been really caught in a mainstream of politics of procedure of process...I wish that since there was an employee on the governing board previously that I only could of hoped, and this is hindsight...that the governing board would of come up with a list of parameters that they felt comfortable with so they would not be in the situation that they are today...where they have done all the right things...people have raise their hands...stepped up being interviewed, rated, whatever, and now again they changing the process in the middle of the process, however with that said I understand it's not our board, and they can do what they will.

Mayor Montgomery – Absolutely.

Commissioner Green – I also...I also have the feeling that #9 on this draft, and read it in its entirety. I had the feeling that if an employee was appointed that it would be uncomfortable at the least, and possibly counter-productive at the most and I don't want to have any of our citizens or our volunteers...who volunteer for boards to feel uncomfortable when they have raised their hand to do something along those lines, and it seems to be...being in that JPC meeting last week...to a man and to a woman they were against having an employee serve and I was given to believe and spoke to a few of the governing board members...
they actually sought me out...I didn't seek them out that the same holds true there, so I am personally in an incredible quandary...I want the hospital initiative...it's getting up fast now...I don't want by an appointment throw...for them to take their eye off the ball, and what they are tasked to do, and moving this process forward, and getting a new hospital built because of the right of this board to appoint anyone who they feel is qualified to serve and represent them on another board, and that is my quandary, and I just wanted to make that statement public...I wish this letter and draft had been a year ago, and they wouldn't even be having this discussion, but I for one apologize to the two candidates.

Commissioner Renfro – Stated that Lori's comment was that the JPC is telling the governing board the qualifications of their members are should we or maybe ask them...

Mayor Montgomery – You know what that's their call...they are two separate entities.

Commissioner Green – To Commissioner Renfro...I have the feeling and it's my fault...I never directly asked the question, but the impression was that this was a request coming from the governing board to the JPC as the ultimate owners of the hospital...that was the impression...

Commissioner Renfro – Okay.

Commissioner Luna – I agree completely.

Commissioner Renfro – So they just want left out...

Commissioner Luna – The Governing Board and the JPC have actually developed a very close bond lately. And indicated there is a lot more interaction there.

City Manager Weiser stated the JPC agreement that established the relationship...Section 4 – Hospital Governing Board By-Laws...The hospital board shall, and stated this is the direction from the JPC...The hospital board shall establish by-laws which at a minimum shall include, and under C is board members qualifications and continuing education and requirements. And indicated under the by-laws of the hospital governing board, it says here – selection of members shall be made from residents of Sierra County capable of bringing diverse experience to the hospital governing board in order to effectively fulfill the board's responsibilities.

Commissioner Green – And who else better to advice than a doctor who is working in a hospital, and who has worked in hospitals...so if it can't be a doctor on the board...certainly and there might be some mechanism for either the JPC to work on, or the governing board to explore to have an ex-officio if you will or someone who has invested interest in the well-being of moving health care forward in Sierra County, but who is practicing it on a day by day basis, and I don't think those expertise should be excluded.

“Commissioner Luna moved to table the appointment of the SVHGB member until they hear either from the JPC or the Governing Board directly on direction, and either at that point make an appointment, or re-advertise.”

Seconded by Commissioners Torres/Renfro. Motion carried unanimously.
City Manager Weiser stated this JPA has been approved by both the Village of Williamsburg and the City of Truth or Consequences, and sent to DFA for their approval, and indicated they sent it back because they did not approve the language in Section 14 on page 7...the indemnification language. And stated the directions of DFA was to either remove the indemnification language entirely or to use DFA's suggested language, and so that has been put in here, and stated the language that was added was neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.

He stated in discussion with the Village of Williamsburg they were okay with doing it either way...either adding this language or removing all language, and brought this back for your approval.

City Attorney Rubin stated everything else is the same, and that he is in favor of having something in here.

Mayor Montgomery stated they originally signed this document on October 26th.

“Commissioner Green moved approval of the JPA with the Village of Williamsburg and the City of TorC for police services.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

Commissioner Renfro stated she would like to mention again that she has requested the signature of the City Attorney on any legal documents.

City Manager Weiser stated the basis of bringing this agreement back is that the original document that had been signed in previous years contained a long list issues that the City would consider...is that correct chief?

Chief Gallagher came before the Commission, and stated yes...specifically it was after he and City Attorney Rubin looked at in regards to the duties and responsibilities that they wanted the officer to do. And stated to have the officer abide by applicable New Mexico Laws because those laws can change and perhaps if the contract was not changed it would not reflect the true purpose of the contract, and indicated that was the major change in the contract.

City Attorney Rubin stated there were several pages about search and seizure, and all those different things that they had to do or couldn't do, and say their responsibilities are in conformity with and that's the law.

“Commissioner Luna moved to approve the School Resource Officer Agreement with the TorC School District & TorC Police Department.”

Seconded by Commissioners Renfro/Green.
Motion carried unanimously.

Chief Gallagher came before the Commission and stated that several months ago he briefed them on what he determined to be the primary problem with the operation and efficiency of the Truth or Consequences Police Department, and after about 7 months being there, and now it's over a year, and stated it still remains the problem, and that is retention of
qualified officers to do the job.

He stated the turn-over rate is 7% annually, and the Truth or Consequences Police Department continues to average a turn-over rate of 50% per year. And indicated at the time he did suggest a two prong solution to this problem, and the bottom line it comes down to a compensation package that the officers find attractive to remain here.

Chief Gallagher stated he did exit interviews on all the officers who left during his tenure here, and 80-85% of them indicated that the compensation package was the problem, so part 1 was addressed, and stated in the last budget they increased the officer's salary to a level a little more commensurate with the surrounding communities, and stated the second thing he suggested was a retention incentive program...basically a one-time payment of $1,500 to the officers...and some of the questions they had...is that legal, and stated they did some research, and indicated he contacted several surrounding police chiefs, and the general counsel for the NM Sheriff and Police Association, and City Attorney Rubin spoke with the NMML Counsel as well.

He stated in the initial way of looking at it would have been problematic, and that his initial thought was let's offer the officers the $1,500 today to stay for the entire year...that's a problem as it would be viewed as paying them for services not yet rendered, and that is contrary to NM law, and stated doing it the opposite way of signing the contract now, and at the end of the contract would not be conflict with NM law and would be permissible, and indicated several towns do that.

Chief Gallagher stated the other thing he wanted to mention is in the interest of time, and that they have the agreement before them, and can go over it or open it up for questions they may have.

Commissioner Green asked if the money was in his budget, or is it grant money you are applying for, or vacancies, and taking that money and putting it into this project.

Chief Gallagher stated actually a two-part answer to that...that money would be payable in next year’s budget...so I will be asking and coming to them to fund it next year, and will remind you when they spoke about this last time in May he had been scrimping and saving and not spending in anticipation of this in last budget year, and so as a result they actually finished last budget year $62,000 in the black, and stated this would cost essentially with his current staff roughly $16,500 if I get another officer about $18,000.

Commissioner Green – I would like to create a scenario, #2 triggering event there is a typo on fully...full duty employment, and so let me create a scenario...what happens if in October close to December...close to the nice Christmas bonus if you will an officer is injured in the line of duty therefore that officer cannot do full duty employment for that year would they still be eligible...my only concern would be...that $1,500 to buy the kids Christmas gifts, and maybe they're not gonna run as hard after the purse snatcher because they are afraid of getting injured, and if they can’t perform their job then they don’t get the money...so is that just an unrealistic scenario.

Chief Gallagher – No not necessarily when I was considering full duty I mostly meant an officer who was not suspended for instance.

Commissioner Green – So they would still be eligible.

Chief Gallagher – I would think perhaps that the City Manager and Jay
and I could discuss perhaps a pro-rated portion of it.

Commissioner Torres – I think if they were hurt in the line of duty they should be eligible for it.

Commissioner Green – I just want to make sure.

City Attorney Rubin – I think that's always been the intent...I mean certainly if someone is injured through...while performing their duty...I think that's really what the intent was.

Chief Gallagher – The difference being also as well though if somebody falls off a horse off duty in January they shouldn't be eligible for it.

Commissioner Green – Absolutely...in the line of duty I agree...I just wanted to make sure that...that is if not written here it's implied so there is no misunderstanding if a situation should happen down the road.

"Commissioner Green moved approval of the Retention Incentive Agreement."

Seconded by Commissioners Luna/Renfro.

Mayor Montgomery stated the one comment that she would like to put in there is the clause that they have to ensure that the money is available at the time...it is not an automatic given...so everything will be determined on budget availability. Some phrase of that based on budget availability. And stated they may sign it in January and may have the money there all year until October...and then something happens in the department and you have to take that money so the money would not be available.

Chief Gallagher stated any consideration to the fact if the money was available.

Commissioner Green – If the department is running in the black...

Mayor Montgomery – All I'm saying...

Commissioner Green – Is it legal for them to earmark that money.

Mayor Montgomery – You can do it however you want...I'm just saying that if you get to a certain point in the year, and you have some type of emergency that you have to tap into that money which could happen...I'm just saying that I want to make sure the budget is available...just a phrase that says dependent on budget availability...that's all it has to say.

Motion carried unanimously.

City Manager Weiser stated this has been before the Planning & Zoning Commission and this Commission several times, and thinks there are some options that they have that go beyond the four alternatives that he listed in his synopsis.

He stated during this process in reading our code and when it talks about the appeal...the decision of the Planning & Zoning Commission he interpreted that to mean that the decision by the Planning & Zoning Commission to recommend to this Commission approval of these two variances, and the preliminary plat was an actual decision of the Planning & Zoning Commission. And that the City Attorney and I have had several conversations on this, and he questions because this is actually a recommendation whether or not the appeal should go forward...am I
stating that correctly?

City Attorney Rubin – sort of...that's an important point here...I have not really reviewed these proceedings as an appeal. The only thing that the Planning & Zoning Board had the authority to do is make a recommendation to you, and I don't really think it's appropriate to call something an appeal from a recommendation. A recommendation is just that...it's a recommendation, but it's not a final decision. You're the ones that are in charge of making the final decision, and as I look at 15-8 under variances it just talks about that the Planning & Zoning Commission would make a recommendation to you, under 15-13 on subdivision code I find the same language that were recommendations so yea I think in my mind there has been a little misconception here that somehow this is an appeal, and I really never really thought it was an appeal...I just felt this was a recommendation made to you from Planning & Zoning Board, and it's up to you to make a decision whether you feel it is appropriate.

City Manager Weiser stated to move on to the alternatives I think we have heard some concerns raised here, and I think that the alternatives that you have...1 – you could approve one or the other of the variance requests or neither or both, and later on vote on the preliminary plat, and you can decide to deny the variance requests, and perhaps deny the preliminary plat. You could approve the preliminary plat with certain conditions, and you've heard some of the conditions here today, 1- you could ask for a 6" water line to be installed at the frontage property both Joffre & Gold...as they know that would connect the two to a 4" line on either end...it would provide more volume, but not necessarily a lot more because of the 4" line that is already in place. The other one that you might want to consider is that access to the 5 lots must come from either Joffre or Gold...that alleviates the concern of perhaps using the utility easement on the west side of the property for the main entrance to any of these lots. So those are some of the options that you do have in front of you tonight.

Commissioner Torres – Do we have a copy of the plat?

City Manager Weiser – It was in the original packet...yes.

Mayor Montgomery – Mr. Rubin if you would just take just a moment to explain why variance recommendations are coming before the preliminary plat as per our ordinance.

City Attorney Rubin – That's what our ordinance says...yea and actually that is something I had a question in my mind it almost seemed to make more sense to decide whether you're gonna approve the plat first before you spend time with the variances...as I'm reading 15-8-C (2) it appears that our code mandates that you have to discuss the variances first, and I guess depending on your decision with that issue then I guess you decide if it's appropriate to even go forward with the preliminary plat...so you do the variances first.

Mayor Montgomery stated she would open it up for conversation and discussion from the Commission, and that they will talk about the variance requests first...they talk about the street width first, and take this one step at a time.

Commissioner Green – Madam Mayor can I ask Jay a legal question...I'm a little bit...and this is not your fault Jay...it's mine. I didn't follow the appeal. He stated in our codes there is an appeal process, and I'm assuming that the folks...the neighbors...is there a document that they have to come to the City to fill out for an appeal.
City Attorney Rubin – yes.

Commissioner Green – So if they are the neighbors are appealing a vote of the Planning & Zoning Board...don't we first have to address that appeal before they can go on to any...even though we might be talking about the same thing on the next page.

City Attorney Rubin – Well I think you are talking the same thing on the next page...no I don't think it is an appeal though because the decision...it's a vote but the vote is going to recommend something to you it's not a final decision. When I think of an appeal I think of someone who is actually already lost at a lower level, and then your appealing your decision you're an aggrieved party...your appealing a decision to higher authority...in this case that's not what happened. All you have...I made a recommendation to you to do something, but that's not buying with anybody, so I don't look at it that way...that's why I don't think there is an appeal.

Mayor Montgomery – no I'm not going to address the public...I'm sorry.

Mayor Montgomery – The question that I had was just that...how someone can appeal...there hasn't been a decision made...there has been a recommendation to us. And stated those individuals came not by fault of their own...the way it was placed on the agenda, and presented information to us regarding that recommendation from the Planning & Zoning is one in the form of an appeal, but there hasn't been a decision yet.

Commissioner Green – If I might then follow-up on your point and that's a valid point. Just playing the if game...if they were to take a vote tonight, and there were people who were not thrilled with the outcome of that vote... they have an appeal process, and during that process nothing can move forward, but predicated on our vote is that the understanding.

City Attorney Rubin – If you make a ruling...yes someone can appeal this decision to the District Court, and there are certain rules in place there in District Court and State Statute about putting a stay on the enforcement of their vote until the case is decided by District Court...there is procedures for that.

Commissioner Green- I think you answered my question, but so I understand in my own mind...the appeal is not back to the City Commission...the appeal goes to the Courts.

Mayor Montgomery – Right, right because we made the decision.

City Attorney Rubin – And let me also elaborate further on why I feel pretty strongly about this...why this is not an appeal because there are certain things that the Planning & Zoning Board does have the authority to make final decisions on...such as a home occupation permit such as a decision from Mr. Friberg for example...it goes to the Planning & Zoning Board...they do have the authority to make a decision in which case then there would be an appeal to hear...in this situation...Planning & Zoning Board makes a recommendation which is going to come to them anyway regardless of whether someone says I want to appeal it or not...so that's what I am trying to tell you.

Commissioner Luna – I have a problem with that though. There was a planning application form filled out by Susan Lynch and a $50.00 fee collected for an appeal.

City Attorney Rubin – I heard about that later on...yes.
Commissioner Luna — I mean we can't...and I understand that on the agenda it was listed as an appeal, so...

City Attorney Rubin — Well it's not though is it...I thought.

Commissioner Luna — No on the agenda where they had the public hearing, and Ms. Lynch I mean...

City Attorney Rubin — She should not be charged, and I don't know what happened there but I don't think it's an appeal...I mean I don't know what to tell you...I don't think it's an appeal it's a recommendation.

Mayor Montgomery — We didn't make a decision and that's what I kept asking, how can you appeal something that a decision that hasn't...

Commissioner Green — But I think...Commissioner Luna's point and I agree with her 100%...I mean here you have someone who follows the process, and goes through all the effort and energy to put together their position, and then not even at the appeal did this come up...it's coming up now after the fact again, and I don't know...

City Attorney Rubin — Okay but here's what...They've been given a chance to say everything they wanted to say about this...I mean I would be more concerned if they were denying someone without the right to speak...I mean we had a public hearing, and the Planning & Zoning there was another public hearing. I don't know I don't think anybody has been denied the right to present their views about the sub-division or the variances.

Commissioner Luna — No and I agree with that completely I think ad nauseam they have heard...we are still hearing and I am thankful that they have such a great interest in their neighborhood, however I just think that they need to give Ms. Lynch back her $50.00, and they need to get the process in which this is explained to people from the get go...we need to get it down pat and quit messing up...that's unacceptable...I'm tired of having to tell people I'm sorry we messed up...it's not acceptable.

Commissioner Renfro — That had been expressed here a few months ago I think.

Commissioner Luna — I mean we waived fees for Mr. Merritt that we may have to say oh I'm sorry now you need to pay us and we're gonna have to give Ms. Lynch back her money because I'm sorry we keep messing up...let's figure out what the process is and let's go with it, but I do agree that they have heard every side that they can hear and we are ready to go with this.

Mayor Montgomery — Then let's go...or not...make a decision and back it up.

Commissioner Green — Along those lines and I know and I'm not trying to...this is not the blame game, and I understand that there have been a lot of bumps in the road here, and process has or has not been followed totally. And I guess by looking at some of the different applications and reading some of the P & Z minutes, and the correspondence going back between the City Manager and the building inspector that no one can even come up with a handle on what you call this, so we tried to make things fit to try to move the process along to be respectful of the citizens and be respectful of people who want to invest in our community and with that said...the one constant that I found under sub-division, under preliminary plat was something called a schedule of construction, and to this day I have never ever, ever, ever seen this...I have heard three stick
built homes, and two trailers...I have heard two stick built homes, and three trailers...to the best of my knowledge and my fellow commissioners correct me if I'm wrong...the only thing we have been given is this map, grading and drainage...that is not a plan, and I don't know how they can even consider conceptually the variances, and what Mr. Merritt wants to do is proposing to do until we see it in black and white.

He stated who hires someone to build a building without a plan, and a time schedule, and performances and deliveries...there is nothing here yet the neighbors have I think some legitimate concerns about the safety of their own homes, and I want to get it right and end up in a court of law...let's get it right...if it takes another month, two weeks...whatever, and thinks the least we can expect from Mr. Merritt is a plan, a schedule.

Commissioner Green stated a couple of weeks ago, and stated he heard they were going to scrape the land, and that he would not want to be one of the houses on the southwest corner...the southeast corner with 65 mile an hour winds blowing dirt on to my property into my windows...that's what I'm talking about...I would like to see a time schedule...this is what we're gonna do first...this is what we're gonna do second, and I think that Ms. Hudgens has legitimate concerns about pushing dirt to build a retention wall...what's gonna hold that dirt there...how is it gonna be compacted...if that dirt lets go...someone it gonna be in a world of hurt. I think that Merry Jo Fahl has some valid points, and think she has no dog in this fight...she doesn't own property or live there...about the two retention walls...I just think that we are being asked to make a decision where they don't know what they are really deciding on, and I think it's just more than putting 5 houses on 1.331 acres of land. I would like to have Mr. Merritt, who has heard our concerns and the concerns of the citizens, and I'm not trying to ask him to do extra work, and I'm not trying to stall anything, but I just want information to be able to make an intelligent decision.

Mayor Montgomery — Okay...so I think that and my opinion is...is that if you're asking for something then you be specific on what that you are wanting because I don't want to get down another month and say...oh well know I want to see this, and then a month after that...go oh now I want to hear this, because my gracious we have gone on...Planning & Zoning took how long...a year...a year almost. June 1st was the first meeting...so you got 6 months, and the issues that I saw when I went through every single one of the minutes and every one of the statements came back to the issue about the drainage, no fire hydrant...the road width and people's view. The view is out there's not an ordinance, so the others we're back to are the drainage, the fire hydrant and the road width.

She stated now we've heard additional...we talk about the retention wall that was in Ms. Fahl's letter to them...granted...if you want...if we want more information be specific about what you're looking for...what do you want, and what are we putting on...I have no problem going back to the contractor and saying...you need to do this or else...I don't understand why Planning & Zoning didn't do it...why I have to do it.

Commissioner Green — I agree with you, and I think the least we can do is for us to abide by our own codes.

Mayor Montgomery — I agree with you.

Commissioner Green — And if the code says...a schedule of construction...then let's get it.

Mayor Montgomery — I agree with you...but there was also the comment before at the meetings...why have codes...if you're gonna grant
variances...well you have codes that yes sometimes you have to grant variances, so just because there is everything in black and white doesn't mean that you're always gonna get everything in black and white. You have to issue those variances...those exceptions whatever it is, but it should be done along the way by the individuals that needed to review it.

City Manager Weiser – Commissioner Green what is your definition of a preliminary plat?

Commissioner Green – My definition of a preliminary plat is on page 15 something in our code book...that's the definition I'm going on the requirements...there is a lot of forms, but I'm looking for substance, and there is no substance in this application...that's my concern...I mean I'm looking at a map, and I have a 25' driveway parking in a utility easement coming in off Joffre, and coming down to the property. I just heard tonight unless I misunderstood Mr. Gutierrez that...that now has been changed.

Mayor Montgomery – So where is that plan...

Commissioner Green – Where is that plan...everyone keeps making it up as it goes along...and all I would like something factual and concrete that they can refer to.

Mayor Montgomery – I just don't want us to get...asking for and get another 2 months down the road...and go oh by the way...now I want you to provide this...or I just came across the ordinance that says this.

Commissioner Green – I do understand Madam Mayor. And Mr. Merritt I do believe eluded to the fact that he has done this before, and therefore the schedule of construction...a developer knows what that is...what is your schedule of building your project...what comes first...what comes second...what comes third...now I understand that the driveways...I'm assuming if I understood...come off Gold, but we're looking at a map that doesn't show that...we're looking at a map that has a 25' driveway. I know that things change, and people say well this might be the best idea, but I would like to have a final piece of paper that they can refer to that Mr. Merritt...he talks about I believe in one of the minutes I read that there were going to put a hydrant on the corner of Gold & Joffre...if I'm not mistaken if he is willing to do that on his own...I'd like to see that in black and white...that's part of a construction plan...I would like to see the things that they are offering to do, and then that's we are going to base our decision on, how it marries up to our codes if there needs to be a variance, and he has applied for it already...there seems to be some problem with the variance for the sidewalk...the paperwork is kinda not around. He would at least like the developer to come up with...this is what it is going to be.

Mayor Montgomery – And that's another point that I would like to make is that if we...it's almost...I don't know what...your planning document and your schedule of construction is fine, but if I'm a contractor...am I going to put in all of those things that haven't been directed at me to do before I present it. You see what I'm saying...if I say that...yes the code says 36' on the roads, and we know it's not going to be 36' an we're okay with that because there's other areas that we've already granted that to, and I direct 24 or 30 or whatever it is...do I rely on him to go ahead and do what 30, 36.

Commissioner Green – Well I assume that the developer would do...in the code or the variance says.

Mayor Montgomery – Okay we're back to variances...so we haven't even
made a decision on that.

Commissioner Green — And what I'm saying is I think to over-look the totality of the project...and variances are part of the project...that we need a plan.

Mayor Montgomery — And I agree.

Commissioner Green — We need a schedule of construction at the very least.

Commissioner Luna — At our public hearing I specifically asked, and I know you don't want comments from the public, but this is going to help me move forward or whatever. I asked why you could not have parking in the street, and it was told because you guys were going to have the roadway into...at the end of Joffre they were going to come in...drive on your guys property and park on the their property that they...so here's my question...if you...this 25' that's on this map that they do have...if you got rid of that...why couldn't you widen the road to 36'...what is the problem with that? I mean you had 25' here...you already have 18 there...you're getting a lot actually...I mean you're gaining, and I've had this thought since I got this map...I thought well if you guys just let them drive up from Gold Street onto their property which you just said today that was going to happen...widening the road to 36' you're only giving 9' where you had planned by this map to give 25' to that.

Mr. Gutierrez is talking from audience, and it is hard to understand some of what he is saying -

Mr. Gutierrez — We'd still need the extra space for parking, and the acreage is tight now. For the minimum they go width...they can't do it. And there are issues with that and when they were running all that information that's what we were doing, and the other thing is that either way my client is losing something because his property has been being used for years, and he has never required...the previous owner was never asked to give it...or any easements required so all that's been...the right way I think as far as I'm concerned.

Commissioner Luna — All is I'm looking at is a happy medium for everybody, and according to this map I think we have to compromise...according to this map.

Mr. Gutierrez - I don't know what map you're looking at.

Commissioner Luna – Grading and drainage plan.

Mr. Gutierrez - There are 5 sheets to that...

Commissioner Luna – This is the only sheet we got.

Mr. Gutierrez – And that isn't our fault...I'm angry about that and I have to say that. Whose responsibility was to give the maps that we paid money for to give to you guy's. Whose responsibility is it...they have every right to be mad...I don't think...

Mayor Montgomery – Alright enough okay...enough.

Mr. Gutierrez – You do have every right to be mad. It's unacceptable...where's the information. I had copies of that because I had to give that to you guys.

Mayor Montgomery – It went to Planning & Zoning and it didn't come to
us...so we have what we have...we don't have what we have...that's just the way it is. We have the one piece of paper that doesn't show us...

Commissioner Luna — Then I hate to do this, but...

Mayor Montgomery — Before you do anything...just please be specific in whatever it is that you're going to ask or do or whatever it is that we're gonna do, so that we can...

"Commissioner Luna moved that this go back to P & Z and they send it to us whenever they have all the documents, and they have taken care of the things they need to take care of."

Seconded by Commissioner Green.

Commissioner Luna — I have one thing to say...I don't want to say this...I am sorry to you guys, and I am sorry to you guys...this should not be happening...we need to fix this problem just like I said...Ms. Lynch you should get your $50.00 back...Mr. Merritt...everybody whatever the procedures are we need to get this in line...so this doesn't happen again. Mr. Merritt has money tied up in this...it's not...fair to him as an investor...it's not fair to these people who have said they have been stressed and not being able to sleep. Mr. Merritt has come here numerous times...these people have missed dinners with their families...their favorite TV shows, restful nights...it's not fair...we need to fix it.

Mayor Montgomery — Duly noted...

All in favor — Aye — Commissioners Green/Luna/Renfro
Montgomery
Opposed — Commissioner Torres.
Motion carried.

Mayor Montgomery asked the Commission about the City Commission of December 28th whether to have one.

Commissioner Luna stated they need to have a special meeting on the 17th.

Commissioner Torres — How long before this comes back to us?

Mayor Montgomery — From P & Z?

Commissioner Luna — Who knows.

Commissioner Torres — The reason I voted no is because I think...it's already been a vote...we should have a special meeting and not waste some more time for Mr. Merritt. We should have made a decision at a special meeting or something...to send it back we're just going backwards.

Commissioner Green — Just a comment on Commissioner Torres. If the City Manager could get a hold of the P & Z Board and their chair Mr. Howell and tell them how important this is...that they focus on this until it has been done.

Mayor Montgomery stated there are two things they are going to discuss...the first thing on the agenda is the December 28th City Commission meeting...are people going to be here...not here...are you
going to be able to make the meeting...not make a meeting. I need some direction.

Commissioner Luna - I will make a meeting but what is the likelihood that we're gonna have business?

Mayor Montgomery – I don't know the answer to that.

Commissioner Green – I will be in town...so I can make the meeting.

City Manager Weiser – It's hard to say if there is going to be anything that can't wait.

Commissioner Renfro – I'm going to have company.

"Mayor Montgomery moved that they cancel the meeting for December 28th."

Seconded by Commissioner Luna.
Motion carried unanimously.

Mayor Montgomery asked Mr. MacRobert...you said that the CDBG is due in Santa Fe on the 17th.

Mr. MacRobert – Madam Mayor that is correct.

The Commission decided to schedule the special meeting for Thursday, December 16th, at noon for approval of the CDBG Resolution.

REPORTS:

He reported that the ARRA Project has been deemed to be complete, and that they were granted $700,000, and indicated they utilized $604,000, and have a request to modify our initial request, and if the Commission doesn't object they can have the Mayor sign that tonight or if they want to discuss it further they can bring it back in January.

Mayor Montgomery stated to add it to the special meeting for Thursday.

City Manager Weiser reported on the section of Foch Street is also essentially complete, and that the material samples were sent to the lab and came back within established parameters.

Mayor Montgomery stated she received a call thanking them for it.

He also reported that they had a virus attack on our e-mail service last week, and Mr. Hupp has identified the issue and has taken steps to correct the problem...although it has caused some communication issues for us, and stated they are up and running now.

City Manager Weiser stated he would like to suggest that they have their first workshop concerning the discussion on vision mission statement and goals for January 4 or 18, and the second one on February 15.

City Attorney Rubin – No report.

COMMISSIONERS -

Commissioner Torres – No report.

Commissioner Renfro – She would like to wish everybody a very Merry
Christmas and a Happy New Year.

Commissioner Green – Regarding the Old Fashion Christmas and thanks to Main Street, city staff, Rotary, and Commissioner Luna who gave Santa all the bags to hand out to the little kiddies. And found out that Santa Clause has an absolute replica here in town...his name is Jim Brannon, and thanked him, the Forest Service, the carolers, music, horse and wagons, and most important he would like to thank the shop keepers who kept their stores open to make this a festive event, and even more important for the citizens who participated, and thanks all the volunteers and organizations who helped, and also thanks to John Mulcahy and the SCEDO Board for producing that business day, and that it was attended by 50 prime contractors for Spaceport, and 50-60 local businesses...it was great exposure, and appreciates the pro-activeness that SCEDO is taking in our community, and to remind all that there is a student art show at Ledger Gallery. And wished everyone, staff, his fellow commissioners, and Manager Weiser a healthy and a Happy Holiday and the best of New Years to All.

Commissioner Luna – Merry Christmas & Happy New Year, and would like to ask the City Manager for an update on the pool, tennis courts, and the lighting at the fields.

City Manager Weiser – Stated the purchase order is in on the tennis courts, and going in on the lighting, and will get the request for bids out on the pool this week.

Mayor Montgomery- No report.

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

EXECUTIVE SESSION: “Commissioner Green moved that the meeting be closed for Executive Session pertaining to: Personnel 10-15-1H(2) – 1. City Manager Contract.”

Seconded by Commissioner Luna.

Commissioner Montgomery responded Aye to a Roll Call Vote
Commissioner Renfro responded Aye to a Roll Call Vote
Commissioner Green responded Aye to a Roll Call Vote
Commissioner Luna responded Aye to a Roll Call Vote
Commissioner Torres responded Aye to a Roll Call Vote

Motion carried unanimously.

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

“Commissioner Green certified that only matters pertaining to Personnel 10-15-1H (2) were discussed in Executive Session.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

No action taken.

CERTIFICATION: There being no further business to come before the Commission the meeting was adjourned.
PASSED AND APPROVED this ____ day of ____________, 2011, on motion duly made by Commissioner ____________, seconded by Commissioner ____________, and carried.

LORI S. MONTGOMERY
MAYOR

ATTEST:

MARY B. PENNER, CITY CLERK