CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, February 8, 2011

REGULAR MEETING

Minutes

TIME & PLACE: The Mayor and the City Commission of the City of Truth or Consequences in the County of Sierra and State of New Mexico met in Regular Session in full conformity with the law and ordinances of said Commission in the Commission Chambers of said City, on Tuesday, February 8, 2011 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 Luna called for the Pledge of Allegiance.

APPROVAL OF AGENDA: Mayor Montgomery called for approval of the Agenda, and indicated that they needed to make one change...item a under F needs to be moved to item a under I, as that was an old business item as it was continued from the last meeting. She asked if the Commission wanted to hear it before they go into the regular business.

Commissioner Green stated that he would suggest that they hear it first for anyone that might be in the audience specifically for that.

Mayor Montgomery stated that I – old business will become will be before G – public hearings.

“Commissioner Green moved approval of the Agenda as amended.”

Seconded by Commissioners Luna/Renfro.

Motion carried unanimously.

Recognition of City Employees & previous Municipal Judge –
At this time Mayor Montgomery presented former Municipal Judge Hawkins with a plaque for 20 years of service as T or C Municipal Judge.

Mayor Montgomery stated there were other presentations for City Employees but that those employees could not make it.

RESPONSE TO PUBLIC COMMENT:
None.

COMMENTS FROM THE PUBLIC:
Ms. Eve Elting came before the Commission with comments.

Mr. Neal Weeks came before the Commission with comments.

Ms. Susan Lynch came before the Commission with comments.

Mr. Audon Trujillo came before the Commission with comments.

Mr. Gordon Mishler, Mayor, Village of Williamsburg came before the Commission with comments, and provided the Commission, City Manager, News Media, and the City Attorney with information.

Mr. Bradley Grower came before the Commission with comments.

CONSENT CALENDAR:

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

Seconded by Commissioner Renfro.
Motion carried unanimously.

DRAFT MINUTES:
Mayor Montgomery stated the following are draft minutes from various boards provided to the Commission for their information, and are not-action items.

Commissioner Green stated the draft minutes for the Airport Advisory Board on page 3, and indicated there is a typo...for the approval they need to change the date and the same for the Recreation Advisory Board.

BOARD & COMMITTEE REPORTS:
None.

OLD BUSINESS:
Planning & Zoning Commission –

Consider Variance Request – From front yard setback – 1303 N. Riverside – John & Michele Saridan. (Tabled from the 1/11/2011 CC Mtg.)

City Manager Weiser stated they heard this proposal at the January 11th, 2011 Commission meeting, and stated they have the same information with additional information as requested...a plot plan of the proposed site, and a letter from the property owners naming Mr. Sid Bryan as their representative.
Mayor Montgomery stated that Mr. Bryan is in the audience if the Commission has any questions of him, or questions from staff.

Commissioner Green stated he appreciates the additional information as requested and thanked staff.

“Commissioner Green moved approval of the Variance request for 1303 N. Riverside Dr., as submitted for John and Michele Saridan.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

PUBLIC HEARINGS:

None.

APPOINTMENT – HOUSING AUTHORITY:

Ms. Marie Bradley, Executive Director with the T or C Housing Authority came before the Commission.

She stated she is here on behalf of the Housing Authority Board of Commissioners in regard to the appointment of a new commissioner to their board. And stated HUD requires the inclusion of a resident on the Housing Board, and indicated the term on the most recent resident expired on December 31st, 2010, and stated the board interviewed two applicant’s, and they are recommending the appointment of Margaret Gallegos-Clanton to the position of the resident housing commissioner.

“Commissioner Green moved the appointment of Ms. Margaret Gallegos-Clanton to the Housing Authority Board of Commissioners.”

Seconded by Commissioner Torres.
Motion carried unanimously.

CHARGES – CIVIC CENTER – MISS FIESTA:

Ms. Marie Richter with the Sierra County Jr. Woman’s Club came before the Commission, and stated she is the chairperson for the Miss Fiesta Contest, and indicated that every year they have it at the Civic Center.

She stated they are a non-profit organization and that they have been in the community since 1965, and have done the contest for over 40 years.

Ms. Richter stated they are requesting that the fees be waived for the Sierra Co. Jr.’s, and indicated they were requested to pay a fee of $380.00 plus the $100.00 deposit, and realizes they use the center for a full week. She stated this is an important production that they do for the girls in the community to compete for scholarships, and that all funding they receive for the Miss Fiesta goes right back into the community either in scholarships directly to the girls that evening or in community projects, and requesting that the fees be waived.

She stated there are other items such as the lift, and requesting the use of the lift, and that they are willing to sign any liability and that they have used it for numerous years for adjusting the lights, and to decorate.

Mayor Montgomery asked if they have had any incidents with using any of the equipment.

Ms. Richter stated...no...none. She did say that one year a hinge
from a door broke, and that they did offer to pay for it but never received a bill, and stated that is the only damage they ever had at the Civic Center. And also requested using the light and sound equipment and they have professional people that know the equipment, and stated there is a clause in the application that they could not screw, bolt anything down. She stated they have the runway that the girls walk on, and that they have used the runway for over 10 years since they have designed it, and explained they have set screw marks on the stage that they have used year after year, and would like to be able to continue to use it for the safety of the girls, and for the decorations stated they are not allowed to attach anything to the curtains, and they are requesting that they be able to clothes pin items to the curtains which will not do any damage to the curtains.

Commissioner Torres stated he thinks they need to waive the fees, and stated it is something good for our community as it brings people in and helps our gross receipts. He stated it is a wonderful thing they do every year, and that they put a lot of hard work into it, and thinks they deserve to use...that’s what we built it for.

Commissioner Renfro stated she doesn’t have any problems with the requests that they are making.

Commissioner Green stated according to our regulations they are a non-profit, and we waive the fees for non-profits.

Ms. Richter stated they are willing to submit reports to show where our profits go in a timely manner to the Commission.

City Attorney Rubin stated that City Manager Weiser might want to explain his concern was, and that they passed a resolution, and you and I discussed this.

City Manager Weiser stated he included the resolution that the City Commission passed, and let me go with the non-profit issue, and indicated if you have two tiers...one that allows you to waive the fee entirely, and one that allows you to waive 50%. And stated in the past they had difficulty getting a signed contract for the use of the building, and that they require that per year, per the resolution, and it does include the criteria, and stated they have yet to receive that information to allow a waiver or not.

He stated he will mention and Ms. Richter did say this...they use the center for 5 days, and stated there is 26 hours of use of the building beyond normal working hours...so that either translates to 39 hours of pay for someone as overt-time, or 26 hours of comp-time that has to be taken some time during the year, and stated they do have certain regulations about comp-time...about how quickly that has to be taken.

City Manager Weiser...and as to the runway...the screw holes do cause a problem with the stage, and stated there are other ways to fasten it down, or to raise that up...so my understanding there is a lip and 2x4’s or something like that could be placed underneath the runway to raise it up so its level and not a tripping hazard. And stated they had issues in the past with scotch taped to walls, and it pulls the paint off, and then they have to go back in and do some maintenance to put the building back up for use by the next occupant, and for those reasons, and the fact that they do have this resolution that is why they put the fee at 50%, and stated they are well within their scope of work, and responsibility if they wish to
override that, and declare that there not be a fee, but those are the reasons that staff used for establishing the fee.

Ms. Richter stated she does want to clarify that when she did submit the application that she did sign the contract.

Commissioner Green stated he agrees with Commissioner Torres, and that this is a major event for our community...its history, and it is something we can’t afford to lose, and I might suggest speaking of Mr. Bauer...in working during the day, and maybe he can work at nighttime if it requires staff to be there to help or make sure everything is proper.

Mayor Montgomery asked if they need his assistance.

Ms. Richter stated no they don’t...they’ve done it for many, many years with nobody there...we’ve had keys to the facility.

Mayor Montgomery – can some else take responsibility for it? Can one of the Commissioners take that responsibility? I’m just asking.

City Manager Weiser stated they can rework the resolution.

Mayor Montgomery stated she understands the overtime, and I would prefer him not to accrue any over time for this, and I’m willing to take on the responsibility to take the keys, and take responsibility for the ladies during that week. If we can work something out I’d be willing to do that too.

Ms. Richter stated the one thing on the stage...the runway is built and that it boots right up to the edge, and that there is a little bit of a lip...and what they screw down is a flap to come down so it’s flush while the girls are wearing heels...and that they have a straight walk in instead of having a little bit of a lip that they would be able to not fall, and that it is taped good so there is nothing that could lift up.

“Commissioner Luna moved that they waive the fees for the Jr. Woman’s Club for Miss Fiesta, and allow them to use the stage however they need to, and clothes pins for the curtains.”

Seconded by Commissioner Renfro.

City Attorney Rubin – may I recommend in you motion you might want to include a finding that they do fall in the tier 1 criteria.

“Commissioner Luna – yes because they fall in the tier 1, and also use the lift, and if it is not okay for Mayor Montgomery take the key that Mr. Bauer adjust his hours so there is no accrued over time.”

Motion carried unanimously.

LETTER OF SUPPORT – DWI: Ms. Nola Kent, DWI Coordinator came before the Commission, and stated this letter of support is for the Truth or Consequences/Sierra County DWI Program...our grant application for year 11/12, and read the letter in its entirety.

Commissioner Green stated he would suggest and thinks the letter was written on the wrong stationery, and that it has the old area code.
"Commissioner Green moved the letter of support for the T or C/Sierra County DWI Program."

Seconded by Commissioner Renfro.
Motion carried unanimously.

RESOLUTION
#16-10/11 – DWI:

Ms. Nola Kent, DWI Coordinator came before the Commission for the DWI Grant and Distribution Program, and stated this year they are asking for $105,481.20 under the grant, and that would be to include prevention, enforcement, screening program, treatment which is a new... well not a new as they have not had a treatment component for a while now because they have not had the providers, compliance monitoring, tracking and coordination planning and evaluation, and alternative sentencing which is our teen court program, and stated under the distribution they will receive $73,539.30, and the programs that will be covered under that is their prevention program, coordination planning and evaluation.

She stated one of the things she wanted to bring up, and that they show a large amount under prevention, but they finally after many, many years been able to get into all area public schools with their prevention programs, and stated they are very good programs, and that tomorrow at the school they are showing quit a few of their programs to the communities, and that they are hitting a lot of the kids and students...not only with substance abuse but bullying and other programs that they feel are really important for the kids, and treatment of course, and enforcement is mostly for over time money, and that this year the County Sheriff’s Office has requested over time money, and that they are also applying for money for that.

"Commissioner Green moved approval Resolution #16-10/11, and Grant Application"

Seconded by Commissioner Torres.
Motion carried unanimously.

QUARTERLY
FINANCIAL
REPORT:

Mr. Juan Fuentes, Finance Director came before the Commission to explain the Quarterly Financial Report. (Complete copy attached hereto and made a part hereof.)

He stated the highlights for the revenue side...the general fund revenue is 7.8 less than the projected budget revenue, and unrealized revenue shortfall is partly due as a result of the Small Cities Assistance Fund, business registrations as well as a court computer system that was budgeted for, and stated the Small Cities Assistance and the business registration usually that happens in the 3rd quarter and 4th quarter of the fiscal year, so that is why they've seen that...

Commissioner Renfro – it's not in your gross receipts.

Mr. Fuentes stated in regards to the gross receipts the gross receipts for January, and even though this report is mainly on the mid-year because they already received the January gross receipts he included the January gross receipts, and as you can see on the graph the January gross receipts were significantly lower than last year's by $67,000.00. And in reviewing the tax and revenue report from last year and this year...almost all of the categories in that report were very similar with the exception of the total taxes paid
category, and stated that category was 29% less than last year’s report.

Commissioner Renfro – and are you sort of adjusting the expenditures according to the revenues that are coming in?

Mr. Fuentes – no ma’am...the expenditures are not adjusting for each individual department...again the expenditures have been approved by the Commission for the whole fiscal year, and stated as they go in to the 3rd quarter especially going in to the 4th quarter we’ll be monitoring closely...not only the expenditures and want to make sure they stay within the approved budget, but they also want to make sure that our revenues are at least keeping pace with what was budgeted...if there is a significant gap that will certainly have to be addressed because then they will start tapping into our reserves.

Commissioner Renfro – right now you’re not monitoring the expenditures?

Mr. Fuentes – the expenditures are monitored on a monthly basis as reported in this report, and that’s why we include, and all the department heads are given a monthly report that lets them not that where they’re at on their expenditures...example for the mid-year review budget wise they should only be at 50% of their expenditure reports, and stated there are some funds...some departments that have exceeding the 50% mark...mid-year, and those are monitored closer because they want to make sure that either it’s because it’s just the one time expenditure for example an insurance payment that was un-anticipated...but they want to make sure that towards then they get closer to the end of the fiscal year that gap is closed, and that their budget stays within on the approved budget...so those are especially in the 3rd & 4th quarter will be monitored closely.

Commissioner Renfro – you just don’t want to let it get too far out of hand, and make it very difficult to try to adjust at the last minute.

Mr. Fuentes – that’s correct.

Mayor Montgomery – and I think that some of the departments there may be early one time purchases.

Mr. Fuentes went on to explain the report. And indicated this report will be made available on line for those members of the public who may be interested.

Report only.

City Manager Weiser stated they provided the letter of resignation from Judge Sanders, and at their last meeting they discussed they wanted the opportunity to decide on how they wanted to proceed in moving forward. And stated the options they have is they can make the interim appointment for the alternate judge permanent until the next Municipal Election which is March 2012, or they could take application’s and interview potential candidates and choose from that list, and indicated they have a number of people who have expressed interest, and depending on what your decision is tonight is why we didn’t include them in the packet as they wanted to decide how you wanted to move forward.

Commissioner Green...correct me if I’m wrong Manager Weiser...we are or did advertise in 1 or both newspapers for this,
and if that is a true statement...

City Manager Weiser – that is a true statement sir.

Commissioner Green – okay then if we have had people who have responded for that call then I think that we owe it to them to go through an interview process for everybody…it just doesn’t seem to be fair that we’re looking for volunteers and then just throw the process away. So my suggestion would be to…was there a time…a date when that expired…the applications expired.

City Manager Weiser – no.

Commissioner Green – it was just open ended.

City Manager Weiser – yes.

Commissioner Green – well I would suggest that we somehow get it ended…close it out and then see who we have, and then set up a process that’s fair to the community.

City Manager Weiser stated that was part of the discussion at our last meeting…that the Commission felt that I went too far in advertising before you had the chance to discuss it.

Commissioner Luna – we currently have two alternates running the Court, and stated it is being a cost savings not paying a Judge…I think that the staff…I mean the Court can continue to run that way, or we can appoint one of them to serve…did you speak to either of the alternates or anybody from the Court?

City Manager Weiser – I haven’t spoken with them yet…no…depending on what the outcome of tonight’s discussion was gonna be.

Commissioner Renfro – isn’t there a possibility that Bobbie might be back though.

City Manager Weiser – I haven’t heard that.

Commissioner Luna – from what I understood she was willing to come back however her condition is still not permanent…she wouldn’t be here full time.

Commissioner Renfro – I don’t have a problem with the alternate’s continuing with the Court the way they’ve been.

Commissioner Torres – I don’t either…it’s been running real smooth with no problems. I would say that take her recommendation and appoint Sandra Lucero as the Judge…she’s very capable…she knows how to run the office…we don’t have to send anybody for training…like you say it’s been cost effective. I think we need to adjust her salary.

City Attorney Rubin – once you appoint her…

Commissioner Renfro – if you’re gonna appoint her as Judge…

Commissioner Luna – do we know if she is even interested in being appointed as the Judge…we haven’t even talked to her…we don’t know if she is willing to continue serving as the alternate or if she wants the Judge seat.
Commissioner Renfro – I prefer to leave her in as alternate for a while anyway.

Commissioner Luna – well I think…I mean if the Courts running smoothly…we’ve had no communication with them, and so obviously they haven’t been in any need of anything I think that we can just continue business as is…leave her as the Administrative…she’s the Chief Administrative of the Court anyways, and let her continue to serve as an alternate…the Presiding Alternate Judge until the election.

City Attorney Rubin – I’m not sure if that’s really what I would recommend…that’s actually 13 months from now…well it really depends on the case work load becomes, but we may actually need a Judge to be there at some point.

Commissioner Green – Manager Weiser…have we had any response…I know one person called me, and I’m assuming that person sent a letter of interest…has anyone else responded from the ads that we have run…expressing an interest in this position?

City Manager Weiser – yes.

Commissioner Green – okay…whether we should or should not have run that ad is another discussion…the fact that we have run the ad…I think that in all fairness to those who have taken the time and the energy to respond to a call that the City has put out that we just cannot pretend that those ads or those responses didn’t happen, and I would like to see us go through an interview process, and no disrespect to the two alternatives that are there now, and I’m quite sure they can do a very capable job…and that’s not the issue…I think the issue is that we have to follow a process that we started to its normal and logical conclusion…and that’s what I’m suggesting.

City Attorney Rubin – and I hadn’t heard that Ms. Lucero is interested in being the Judge…I think…as far as I understood I thought she was only interested in being the alternate. I guess we could ask her.

Commissioner Luna – and if we appoint a Judge to that seat whether it be Ms. Lucero or one of the applicant’s then she may or may not be retained as the Administrative Clerk, and the Clerk that is there now…so then we have the expense in having those two people trained as well as paying the Judge for a possible 13 month period in which they may or may not be elected at that point, and then we may have to train two new people if somebody else is elected and they bring somebody else in…and I mean cost effectiveness…if we appointed…if Ms. Lucero was interested in being the Judge…we’re still going, and we named her the Presiding Judge then we have to fill her seat as the clerk…there is a whole bunch of if’s.

Commissioner Renfro – you read the second letter from Bobbie…I mean so it’s like…I see there’s a possibility that she could be coming back, and she also says that she would be available to assist the alternates in any way possible within a phone call away. I would like to at least wait another month or so…somebody can get a hold of her and talk to her to see what the situation is…I understand the surgery has been moved to March, and she if she is interested in coming back.

Mayor Montgomery – why don’t we make two contacts…with Ms.
Sanders and Ms. Lucero to find out both answers to the questions...to see if Ms. Sanders is able to come back or going to come back, and whether Ms. Lucero is interested one way or the other...if she is interested in only retaining the position of alternate or Chief Executive of the Court...find out the answers before we try to make a decision.

Commissioner Renfro – I think that is what we need to do.

“Commissioner Renfro moved that Ms. Sanders and Ms. Lucero be contacted before they make a decision.”

Seconded by Commissioner Luna.
Motion carried unanimously.

LETTER
JOINING
CUCHILLO
VALLEY:

City Manager Weiser stated a number of them attended a meeting having to do with an application for water rights to the Northwest of Socorro. He stated the application asked for the use of 54,000 acre feet of water per year...a maximum of 37 wells drilled to a depth of maximum of 3,000 feet. And stated roughly 4,400 acre feet of that water would be used for irrigation in and around each of the wells...a total of 4,400 acre feet but not for each well...but 4,400 acre feet total.

He stated the balance of the water would be used either to...as one paragraph stated replenish any wells that saw a decrease in water productivity or it would be piped to the Rio Grande River to be used further downstream.

City Manager Weiser stated the presentation that they had during the meeting actually dealt with...more of the mechanics of how the appeal process was going forward, and stated this was an application that was done in 2008, and notice was sent out at that time, and stated evidently none of us saw it or didn’t understand what the potential issues were. And indicated they are too late to actually join to become a party to the protest against this application, but they do have the ability to join with others that have already...that are part of the protest to the application, and that is what this letter to you is about...the idea being we would contribute a total of...for Sierra County of $2,000, and that the county would contribute a portion of that...Elephant Butte would contribute a portion, and understands the Village of Williamsburg stated they would contribute a portion, and the City is being asked to contribute $1,000, and stated there were at least two individuals at that meeting...two private parties that stated they would contribute some funds for that.

He stated this is a two-part protest...the first part...the applicant is going to have to prove that they have the wear-with-all to not only pump the water out of the ground, but also to get it to the Rio Grande.

City Attorney Rubin stated what I understood from Ms. Tippett the Attorney who addressed us is she is going to be filing a brief on behalf of her client in the early part of March, and so that is why we want to get this to you by this meeting that way if you are inclined to join we can do that now. And stated I would assume that this litigation and representation agreement letter that she prepared, and the Sierra County Water Users Association to sign...you actually could join that association, and I assume I guess that’s us, and the other municipalities that are present here they would signing this as well.
Commissioner Green stated I think you covered it all Manager Weiser, and indicated Elephant Butte has already voted on this, and Commissioner Chairman Armijo is in the audience, and I know that it was on the agenda for the County Commission, and I think they were discussing it, and I think they are gonna go for a vote at their next meeting, and I think it’s important…I think certain things in life you have no choice and that you just have to do, and we pray that it’s not knocked out early on so it doesn’t go to the courts, but we really have to protect our water.

Mayor Montgomery – so has the Cuchillo Valley Acequia already done…already put in money for this…or no…have they already done their part?

Commissioner Green – yes, from what I understand they have a fund already.

Mayor Montgomery – it talks about the retainer check…so we’re looking at an additional $2,000?

Commissioner Green – and just to follow-up on Manager Weiser’s report that…I think the County is contemplating $600.00, Elephant Butte voted for $200.00, and that their check has been sent…the City is looking at $1,000, and stated there has been $650.00 pledged from private individuals, and private businesses, and once this is established then other individuals who would like to make a donation for this project will have a legitimate mechanism to go through to make that check.

“At Commissioner Green moved that the City of Truth or Consequences pledge $1,000 to join the Cuchillo Valley Acequia Association.”

City Attorney Rubin – I think I would also say…to approve this litigation representation agreement prepared by Ms. Tippett.

“At Commissioner Green stated and to include the litigation representation agreement prepared by Ms. Tippett.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

AGREEMENT – CYFD & CITY OF T OR C:

City Manager Weiser stated this is the 3rd year of a three year agreement that you have approved in the past, and the only changes from the previous one are the dates, and the dollar amounts and the language is the same.

Commissioner Renfro stated I realize it’s the Boys ‘N’ Girls Club, but we’re the contractors…and so who monitors to make sure that everything is being done according to all these rules and regulations because we’re the ones they’re gonna come back on.

City Manager Weiser stated they give us a report…quarterly on their activities, and what they’ve done and what they are proposing to do, and stated we have not had those for a couple of quarters, but we have them now, and we can make them available to you.

Commissioner Renfro stated there are a lot of rules and regulations in here that…and like I said if they don’t comply with that it’s not gonna be their neck…it’s gonna be the City that’s gonna have to be answering to them…so…that’s my only concern there.
City Attorney Rubin – Dave I assume that’s actually been happening…it’s the 3rd year.

City Manager Weiser – yes, we haven’t heard anything different...

Commissioner Green – referred to page 9, #3...maintain the prevention policy board established by the contractor...do we have a prevention policy board? Because it says here...minutes from this board shall be maintained...the board is a requirement of Title V, and its membership shall meet the specifications of the Title V guidelines, and I never heard that we had a prevention policy.

Commissioner Renfro – that’s what I mean that’s one of many things.

Commissioner Green – and reviewed by the agent program manager, and that’s a follow-up on Commissioner Renfro’s concern that we’re the one that it comes back on not anyone else so I was just wondering I never heard of a prevention policy board before that the City had.

Commissioner Luna – the Boys ‘N’ Girls Club does have a Board of Directors that meets monthly.

Mayor Montgomery – they comply with all the requirements of that contract.

Commissioner Luna – I have no doubt.

“Commissioner Luna moved that they accept the Title V Agreement between the State CYFD and the City of T or C.”

Seconded by Commissioner Green.

Motion carried unanimously.

DECISION

BRAXTON

MERRITT:

City Manager Weiser stated Jay and I sat down and put down in numerical form the issues that you wanted considered in the preliminary plat...the conditions that you wanted added to the preliminary plat. And stated the City Attorney after we finished with this wanted to bring this before you to make sure that these conditions say what you wanted them to say.

City Attorney Rubin – Well I think actually the Statue requires that. You took action to approve the preliminary plat subject to modification of the variances...If there was an appeal for example to District Court there needs to be final written decision from this board. So that’s what I tried to do draft a decision for your review.

Mayor Montgomery – the decision that we made at the last meeting was as such, and the minutes would reflect that decision...correct.

City Attorney Rubin – yes.

Mayor Montgomery – so it’s not...it’s not re-looking at that information or that decision...see I don’t understand why this is on here.

Commissioner Renfro – I don’t either.

City Attorney Rubin – there is a State Statue that says that upon you taking action there actually needs to be a written decision that can be appealed from, and that’s what I was trying to draft, and I
felt this actually...

Mayor Montgomery – But I don’t understand why the minutes and the decision is not...the action was taken.

Commissioner Renfro – the action was taken...the proper correspondence should have been...at that point sent out.

Mayor Montgomery – right...do you see what I’m saying. We made the decision at the last meeting...whatever document needed to be done at that point...needed to have been done at that point for a signature.

City Attorney Rubin – Well actually you voted at that meeting...the variances, and the meeting was adjourned there really wasn’t time...you couldn’t just sit down and prepare this at that meeting.

Commissioner Renfro – no but I mean we have a secretary...I believe the City Clerk is the secretary for the City Commission, and we have a manager, and of course we have you Jay, but I mean if we take action...I mean we’re not saying that we are all going to sit here and draft a letter and put it out...I mean we have taken action, and we have said what we want...in the past...

Mayor Montgomery – Somebody should have prepared whatever document needed to be done to hold the City Commission in compliance with the rules and regulations.

Commissioner Renfro – it would have been prepared and put in the Mayor’s basket for her signature as coming from the City Commission, and it would have been taken care of.

Mayor Montgomery – correct. I agree with that.

Commissioner Renfro – it should have been.

City Attorney Rubin – well the minutes are legally adopted by the Commission and I understand that, but I guess I was just being...and I’m looking from a stand point City protection that I guess if this ever does get in front of a judge it would be good to actually hear how a written decision in front of the judge...

Mayor Montgomery – which is fine...I don’t think we’re disputing that...what I think that I’m saying, and I’m not gonna speak for the Commission...is that I’m saying that document should have been prepared after that last meeting for my signature, because that decision was made in that meeting...now the Commission should be...somebody should be looking out for the Commission to make sure that we’re in compliance with the way that we makes those decisions. If there is a document that needs to be prepared after any decision that the Commission makes it should be prepared after the decision is made at whatever meeting it is. I don’t think the Commission expects to make a decision...we finalize it and then one or two or three meetings later we have a document that codifies that decision and have it back on the Commission agenda...you see what I’m saying...do you understand what I’m...

Commissioner Renfro – there is personnel that’s responsible for this, and they are the ones that should be taking care of this.

City Attorney Rubin – and I know actually when I prepared this a couple of days after the meeting...I just assumed and agreed this
would be back on the agenda...and that’s what we did and that’s what I thought...

Mayor Montgomery – I wasn’t agreeing to that. I looked at the document and reflected what I thought that the Commission had agreed to at that meeting. And that’s what I said to you...yes it does reflect what we said at the meeting.

City Attorney Rubin – let me ask this...the way this is drafted is there...do you disagree with what we put here actually reflects what we acted on at that particular evening.

Mayor Montgomery – no I don’t think we are saying that at all...what I’m saying is I don’t understand why it’s on this agenda...that’s what I’m saying. What I’m saying is this document should be signed based on the reflection of what was in the minutes, and the Commission made the decision...it’s a done deal....that’s what I’m saying. I’m not saying it’s wrong, different or...what I’m saying is that I just don’t think that we should not be doing this with every decision that the City Commission makes because what you’re saying is every time we make a decision if there is a document out there that needs to be prepared...that may not come to us until it’s back on another agenda to look at...that doesn’t make sense to me.

City Attorney Rubin – no it’s only on certain land use cases such as this one.

Mayor Montgomery – it could be on anything...I mean you could say based on this we could do this on every decision that we make.

City Attorney Rubin – no but there is a State Statue there that contemplates a written decision on land use cases.

Mayor Montgomery – which is fine, and I’m not disputing that one way or the other...I’m just saying that I just didn’t understand why tonight on this agenda...I didn’t make any sense to me.

City Attorney Rubin – I guess my thinking was I didn’t know that Madam Mayor that you would want to take responsibility of approving this or just signing it yourself without the Commission seeing it...I don’t know I guess maybe I was thinking...you wanted everybody to see it.

Mayor Montgomery – well I appreciate you looking out for me.

City Attorney Rubin – and I was that’s what I was trying to do.

Mayor Montgomery – and I do appreciate that very much. I just wasn’t expecting it on the agenda...I have no problem...does the Commission see anything different in the document than what we made in the decision at the other meetings.

All Commissioners replied – no.

Mayor Montgomery – I didn’t but I don’t have...

Commissioner Green – just a few words here and there but basically the idea is here.

Mayor Montgomery – okay so to protect me.
“Commissioner Renfro moved approval of the Decision of the City Commission.”

Seconded by Commissioner Torres.
Motion carried unanimously.

City Attorney Rubin – I want to say the comments I’m making I will tell you I just think you put yourself in a better legal position with this.

GRIEVANCE – City Manager Weiser stated they were provided with a copy of the grievance, and they have copies of the City’s Administrative Policy, Section 10 – Employee Grievances, and they also have a copy of the Police Department Policies, and the documentation that was used in the Chief’s decision on the grievance, and his decision on the grievance, and the Personnel Appeals Board decision, and when it came back to me to send on to the Commission.

Chief Gallagher came before the Commission and stated he will briefly summarize what occurred, and indicated back in November of last year a position vacancy arose in the police department…supervisory position vacancy, and I did not fill it with the Sergeant, and stated prior to announcing it I did some research as to what position description was for the rank of Sergeant in the police department…so he consulted with Human Resources and learned that among other things there was a specific requirement that in order to be eligible to take...be an applicant for the rank of Sergeant you needed to have 3 years of service with the Truth or Consequences Police Department, and stated that is what the City position description stated.

He stated on the other hand there was a conflicting policy in the police department’s procedural manual which stated you only needed 3 years of police experience…not with the Truth or Consequences Police Department…it was clear to me that the City policy should take precedence over the department policy for a variety of reasons none the least which is that the City policy was signed by then the Police Chief, City Manager, Human Resource designee, and in fact was adopted by a resolution in 2008 by the Commission.

Chief Gallagher stated the Police Department’s Policy was subjected to none of those requirements or extra scrutiny, so I made a decision to announce the position vacancy with that in mind…I made that announcement, and the officer filed a grievance believing that the police department’s policy should take precedence because that’s what the police department goes by. And as Manager Weiser explained we went through a three step process, and accordance with the grievance procedure…first step being an informal attempt to resolve it with myself, the officer and the Human Resource Designee…the next step being the City Manager getting involved whereby he agreed with me that the City policy should take precedent…the third step the officer took was appealing it to the Personnel Appeals Board, and stated they had a Personnel Appeals Board Hearing in January, and at that meeting he brought it to the attention…further to the attention of the board that if they would agree that the department’s policy should take precedence over the City policy…I pointed out that in fact the department’s policy contains a provision which basically says that she is unable…the officer is unable to grieve what she is trying to grieve.

He stated the Personnel Appeals Board agreed with me, and said in
fact yes...this police department policy that I gave you have copies that says...she is unable to grieve that, however according to the City policy she does have a right to grieve it, and then they went on to say...City policy takes precedence over police department policy, so in that case police department policy takes the back seat, so City policy takes precedence...the 3 year requirement with the T or c Police Department rules, and again they ruled in the favor of my decision, and City Manager Weiser again accepted that, and recommended that the matter be put to bed at that point.

Chief Gallagher stated the officer has requested that the Commission review it, and I would like to recommend that the Commission take the course of action which is in within your purview to do which is basically to let stand the decision of the Personnel Appeals Board and that of the City Manager, and put this matter to bed once and for all...too much time and effort has been expended on this at this point.

Commissioner Renfro – My only question is what are you gonna do about that other policy that’s floating out there that conflicts...

Chief Gallagher – City policy...once I get a decision that I just recommended you take...there will be strictly put in line with the City policy. And stated in my experience situations such as this requirement for promotions should be strictly up to the City...it should be in the job description...it has no place being in Police Department Policy and it will be removed if you concur with my recommendation.

“Commissioner Renfro moved that they concur with the recommendation of the grievance board, manager and the police chief.”

Seconded by Commissioners Torres/Green.
Motion carried.
Commissioner Luna abstained.

OPTION AGREEMENT HSLD: – City Manager Weiser stated he provided a copy of the Option Agreement that the City Commission signed with Mr. Neal and the Motortplex Development LLC, back in August 2007.

He stated Mr. Neal approached him on January 20th I believe it was, and asked if there is a possibility for an extension...and he mentioned to me earlier 60-90 days, and included in the information they are asking for 6-months, and indicated they have that issue, and there are representatives here for Mr. Neal to address you or answer any questions that you may have. He did point out that there are a couple of alternatives, and probably 10, 20 or 30 alternatives beyond the two that I mentioned.

City Manager Weiser stated that one of the issues that the City Attorney and I discussed was the short time frame between now and February 13th which is this Sunday...and that being the case Mr. Neal’s Attorney did provide you with a draft of a possible extension agreement.

Commissioner Torres – they want at least 6 months.

City Manager Weiser – that’s what the draft said was 6 months.

City Attorney Kubin – I see in the audience Mr. John Kelly, and stated that he does represent the HSLD, and indicated that they
have worked together on the litigation involving the decision the Commission made a couple of years ago in the zone change.

City Manager Weiser stated as you recall recently Mr. Neal did approach the City Commission on a couple of issues...one was the possibility of asking the City to consider de-annexing the property, and Mr. Neal did mention that...the possibility that he was exploring or providing his own water and sewer capacity for the property, and he did question at that time the value that the City negotiated as far as the water rights...what the water right cost would be today per acre foot.

Commissioner Green stated he would like to point out that under the circumstances that HSLD has found themselves in the last couple of years...I think that this is a fair and reasonable request...that said I also would like to point out that the initial agreement...if you turn to page 2...there were clauses for an extension, and what I would like to suggest is that since HSLD and Mr. Neal has come up with the 6-month figure that we abide by that, but then...we don’t know where the economy is gonna go...who can predict the future, and I think that’s enough time...Mr. Neal feels it’s enough time for him to do what he has to do, however I don’t want to find this community or ourselves in the situation of going back, and I think if we put in something where the extension clause the way it was in the first one which is basically 1% of the amount of money per quarter...that we go for the extension, but then if there is an extension after the 6 months that it’s in 90-day increments and HSLD will owe the City 1% of the unpaid balance of whatever they owe us, and that they might be the impetus for them to move forward because they see that if they want this it is gonna cost them $66,000 every 3 months, and I think it will take a lot of work and discussion that we might have to do in another 6 months...it kinda tightens it up and I think it’s fair.

Commissioner Torres – I talked to Mr. Neal today and it seems like...sounds like they are ready to do something, and I would also be in favor of extending it for 6 months. And stated he sounder real favorable today.

“Commissioner Green moved that we extend it but include verbiage that appears in the original contract on the deposit that the first extension is 1% of the unpaid balance, and extensions are for 90 days...first extension is 90 days, second extension is 90 days, and the third extension 90, or until the closing date of the 2nd...but I think that makes it a real business deal.”

Commissioner Renfro – so we’ll be providing for just 3 extensions, and then at that time...

Commissioner Torres – and I agree.

City Attorney Rubin – before you actually take action...Mr. Kelly do you want to ask...do you want to ask me something, or something you want to ask the Commission?

Mr. Kelly – I would like to address the Commission but it is obviously the Mayor and Commissions prerogative whether I speak or not.

Mr. Kelly came before the Commission and stated since September of 2008 he has been the Attorney representing Hot Springs in Judge Kase’s courtroom in connection with appeal of this body’s decision
taken in August of 2008 in connection with the annexation master planning and zoning of the Hot Springs Property.

He stated they are here today asking for a brief extension, and the document that they prepared says 6 months, and if they were to say they didn’t want to do 6 months…we would rather do 4 months…my response would be fine let’s do whatever we need to do to reach an agreement. And stated as I understand what Commissioner Green has said…he’s proposing that the…this extension which gets us passed this week…which at the moment is the problem we have…that they’d be no fee assessed in connection with this extension, and I understand that in order to have a subsequent extension it is the prerogative…it would be something that would be negotiated but it is certainly your prerogative to impose whatever conditions or requirements you deem appropriate on any subsequent extensions. We believe that this 6 month extension is ample time to resolve basically the big…the big question here is how will Hot Springs proceed with the development of the infrastructure for its lands…the water and sewer infrastructure that’s an issue that we’d like to have more time to visit with the City about…we’ve got a lot of ideas of our own, but that’s a complicated agreement…that agreement that was signed in 2008, and rather than have us all feel like we’re at a point where we need to make a decision immediately we’d like a little bit more time. And I say that in the spirit of the fact that they’ve been working together on this litigation the last couple of years, and that the City has recently made a request of Hot Springs to either exchange some property at the Airport that it would be in the interest of the City to receive from Hot Springs so that the City can proceed with agreements with the FAA…we’re delighted to do that, and they recognize that over the number of years…we’re gonna be back here many, many of times for various matters, and we just like to give us each a little bit of breathing space to figure out how they’re gonna do this water and sewer piece…at the same time we’re more than open…we’ve committed to work with the City in good faith to accomplish this land exchange if that’s how we want to do it…whether you’re talking about lands at the Airport or lands that the City owns somewhere else…we’re ready and willing to go forward and work with you.

He stated the action that Hot Springs is requesting tonight is that you approve this extension, and that the Mayor sign it this evening along with Mr. Neal so that we have an agreement that the clock is not gonna run out on us this weekend, now with respect to what Commissioner Green…you have said this is just John Kelly’s opinion but you could approve this formal option agreement, and we could sign it this evening or you could also pass a resolution or express the sense of the Commission that if Hot Springs ever comes back for an additional extension these would be the terms…we will hear that, and in my judgment that doesn’t need to be part of this extension…you’re basically…by your resolution you would communicate to us though that you know gentleman you need to make a decision, and if you don’t make a decision…Hot Springs about how you want to proceed in the next 6 months it’s gonna cost you some money, so if you want that to be part of your resolution we certainly have no objection to you saying whatever you feel is appropriate in terms of public policy for the City on that question, and stated his goal is to leave this evening with this little piece finished, and then we can between staff, and with the office of the City Manager, and the City Attorney and others we can work through this land exchange, and we can make decisions about what’s the best…both in Hot Springs private interest and the City’s
interest... what's the best way to proceed with the infrastructure, construction and development on the Hot Springs property, and those are my thoughts, and I will certainly answer any questions. Commissioner Renfro — how soon would we see a document signed on that land that the City is needing back... I think you're familiar with what I'm talking about... that's been hanging in mid-air for a long, long time, and we can't get anything done. The City approved it, but yet from you all's end of it we have had nothing... so how soon would this one document at least be executed...

Mr. Kelly — I am... what I can represent to you right now is that Hot Springs is ready and willing to sit down immediately and discuss what the... what specific property Hot Springs would receive in exchange for the property you want... there is no question about what property the City wants... the question is what property will Hot Springs receive in exchange for the property that the City needs, and there are... and what I understand, and this is what I'm hearing through the City Attorney's office... is that there are a couple of different ways that we can go with the exchange, and we're open ready and willing to have that discussion... obviously we're talking about equivalent value... we're talking about you receiving property, and then Hot Springs would receive the same number of acres or something of equivalent value in exchange... we're ready to do that... it's just the details of that exchange are agreed to yet.

Commissioner Renfro — I thought the land that the City was willing to trade or whatever was included in the documents that would have been prepared that the City had approved.

Mayor Montgomery — correct I thought we had already done that.

Mr. Kelly — we haven't done that.

City Manager Weiser — yes we have.

Mayor Montgomery — we said what we wanted to do.

Commissioner Renfro - the City did it and you all haven’t agreed to it.

Mr. Kelly — well I’ve never seen those documents #1. #2 — there's a question about the... I believe you wanted to give Hot Springs other property at the Airport that would be in a 100 year lease, and I believe in recent... we believe that the property can and should be conveyed to Hot Springs in fee... that it ought not be on a 100 year lease, and I believe... although I wasn't in the discussions when they occurred that I'm representing my client's position correctly we never specifically agreed to a 100 year lease, so at least that was subject to looking at title... the condition of title to the property, and what we now know about the condition of title is that you are able to exchange fee for fee and we would like to do that.

And stated now if what you tell us is that the only property you're prepared to exchange is that 21-acres then we'll visit about that, but I had heard in the last 48 hours is that the City might want to consider some other options, and that's not coming from us... that's coming from the City, so the answer is yes we're willing to do a transaction...

Commissioner Renfro — may I ask who within in the City.
Mr. Kelly – the only person that I communicated directly with is the City Attorney.

City Attorney Rubin – and I will elaborate because actually I spoke with the City Manager… the concern was whether we could give you a piece… 2 acres that were under discussion… when it appears that the City’s interest came from a US Patent, and there was a question as to whether we actually had the ability to give you fee simple interest as something we got from a Patent… for something used for municipal airport purpose anyway… so that was the concern I was raising… I don’t know how we work for a title stand point whether the Title Company would even give title insurance on that type of property I don’t know… that’s why we drafted this as a lease agreement as opposed to a deed.

Mr. Kelly – if I may address that… the question is not whether the City can convey the real estate… the question is whether Hot Springs will use the real estate once it’s conveyed for Airport and municipal purposes, and the answer to that question is… a, yes because we’re talking about property that’s right there at the Airport… right… it’s part of the… it’s gonna be part of the Airport development #1… it wouldn’t make sense to do anything else with it, and second we understand that when the US conveys property by Patent, and there is a limitation on use of the property that use has to be… who ever has title has to abide by that use… in another words it’s a restriction on our use… just as much as it’s a restriction on your use, and so we would acquire title to the property… it would be limited to Airport and municipal uses, and what you would see is our facilities that are need out there for… to make this Airport work, and that’s where Hot Springs would be heading… now if you have a different… if you have a different thought we’d certainly entertain that thought too, but we don’t want to take a 100 year lease we want title, and we understand that we would need to abide by the restrictions in the Patent from the US… otherwise the reverting clause in the Patent could cause us to lose the property, and so that’s the issue.

City Attorney Rubin – I think you clarified something… I had asked you about yesterday, and now you’re asking the question that if we were to give you a fee simple interest you are stating that it’s understood that your client understands that it can only be used for municipal airport purposes pursuant to the Patent, and that’s something… real clear about yesterday.

Mr. Kelly – I would say that I haven’t actually seen the Patent.

City Attorney Rubin – in fact I brought it with me.

Mr. Kelly – but yes… on the level we’re discussing this… I’d like to read the Patent, but whatever… if the restriction is as Mr. Rubin has represented it to me, and I believe that it is… it says Airport and municipal purposes… the we’re talking about hangar space, FBO space… facilities to accommodate pilots, and other uses that are consistent with and necessary for your Airport, and if the US had wanted it to say this property should never be transferred from municipal ownership they would have said that… what they’re saying it’s got to be used for municipal and Airport purposes, and that is certainly what we’ll do if it’s your decision that you want to do that… that you want to exchange that specific acreage. I had understood that there might be some other possibilities that the City was interested in, but if that’s what you want… that’s what we’ll do.
City Attorney Rubin – and we have that on our agenda tonight for closed session to discuss whatever we want to do.

Commissioner Green – Mr. Kelly correct me if I’m wrong…some of the land is underneath our runway right now…is that a fair statement?

Mr. Kelly – that’s a fair statement.

Commissioner Green – so basically it’s worthless land…build a house in the middle of a runway

Mr. Kelly – I’m going to correct you Commissioner…you are right that nobody’s going to build a house on it…you are wrong that it’s worthless.

Commissioner Green – okay.

Mr. Kelly – in fact it’s probably some of the most valuable property in the County because without it we don’t have an airport.

Commissioner Green – with that said…and I want to go back to a point that the Mayor made that I was under the assumption that we had reached some type of an agreement on swapping out of the 21, something whatever acres of land for another equal of equal value, and then we were waiting for weeks…months for a signed agreement which never happened, and so correct me…what happened after that…it seemed that we had an agreement and then now we don’t have an agreement.

Mr. Kelly – Well I think what you’re thinking…what you’re saying you had…was you had an understanding.

Commissioner Green – okay.

Mr. Kelly – You said yourself that the exchange would be for property of equal value…well you don’t have a real agreement until you have identified the specific real estate that you are expanding, and you don’t have a real agreement until all of that is put in writing, and you don’t have a real agreement until that writing which identifies the property we’re exchanging, and the property you’re exchanging is executed. So I think there was an understanding…there was an understanding, and we’re not suggesting there wasn’t an understanding, but my clients have been pre-occupied with saving this project the last couple of years…that’s been our focus, and when Jay called me and said can we get this accomplished I called my client and he said absolutely let’s go forward…but to do this right you’ve got to have documents, and identify the real estate, and those documents may need to come back before this body…I don’t know whether that’s your requirement or not.

City Manager Weiser – stated those documents have been provided to Mr. Neal at least twice by me.

City Attorney Rubin – and the documents we’re referring to Mr. Kelly we…in fact I’m the one who drew them up…I prepared the deed from your client to us the 21 acres that we need for the Airport in exchange for that…that’s where this lease came in…in exchange I drew up this 99 year lease for your client to get from us for the…21 acres…it was a lease not a deed it was a lease for the reasons that we discussed tonight.
Mr. Kelly – right so what I said is when he raised this with me is we want fee title…we understand…we want to see the condition of title which means that the abstract…I assume you got an abstract.

City Attorney Rubin – We had a title search done I believe some time ago when we had this discussion when Mr. Weiser…last May I believe I think there was a lien on one piece of property and I think that has been addressed so I think we’re okay.

City Manager Weiser – yes those were taken care of.

Mr. Kelly – Okay so…this just has to be lawyered then the lawyers have to look over the paperwork and prepare a deed from the City, a conveyed title to Hot Springs of the property that has been…

City Manager Weiser – I’m not an attorney okay but I did have 2 years-experience working with the Bureau of Land Management on an issue extremely similar to this down to the size of the piece property, and what I found out working with Bureau of Land Management is yes we have a Patent, and it says we can use that property for as long…some have a specified time some say forever as long as we use it for that particular purpose…we can go back to the Bureau of Land Management and ask them to change that purpose they don’t have to agree, but we can ask them to change that purpose…what we cannot do is give you title for that property in fee.

Mayor Montgomery – and I thought that was all of the reason why it came back to the lease in the very beginning when we were in agreement with your client when all of this was done way back…we’ve just been waiting for that document, and I can tell you I’m a little irritated about not getting that signed document back.

And stated its holding up major issues with us with the Airport because we…you guys are sitting on that land.

Commissioner Renfro – we can’t get any funding until we get that land back.

Mayor Montgomery – we can’t get any FAA bucks coming in for our Airport at all…so…

Mr. Kelley – with all due respect to the City Manager he’s not an Attorney.

Mayor Montgomery – right.

Mr. Kelly – and I happen to be the lawyer for the BLM for about 8 years, and I know a little bit about this myself…and…

Mayor Montgomery – which you can understand why my concern, and my irritation comes from having laid all of these documents out…everything that you eluded to prior to tonight in waiting for that…now it appears to me is that there has been a change of heart because now I know we don’t want the lease we want fee simple, and nobody came back to us at any point until now saying we don’t want lease we want fee simple…I don’t know if you’re gonna get it or not…to be honest with you.

Mr. Kelly – to be honest with you there has been no communication between the City and Hot Springs on this issue for the last year…
Mayor Montgomery – see well now I...

Mr. Kelly – Mr. Rubin and I talked three times a week and...

Mayor Montgomery – you need to talk to your client because there’s been a lot of communication with the City and your client.

Mr. Kelly – about this land swap since the first conversation...well you’re telling me that there has been discussion about the land swap, and I believe that it has been on the back burner...and

Mayor Montgomery – it’s not been on our back burner.

Mr. Kelly – well the phone hasn’t rung. Mayor Montgomery...if you’re telling me that you’ve taken this up with Mr. Neal and he walked away from you...

Mayor Montgomery – I’m not telling you that at all...no...

Mr. Kelly – Alright and nobody else has either...nobody else has done that either including Manager Weiser.

City Manager Weiser – yes I have. I’m sorry with all due respect sir I’ve sent the documents to him twice...I’ve sent letters to Mr. Neal...I’ve asked him about it...when are we gonna get this done? Don’t tell me that I haven’t communicated...please.

Mayor Montgomery – okay...so.

Mr. Neal came before the Commission and stated we had the understanding...it was that the BLM owned the land and that because of the BLM ownership of the Airport property it was effectively a lease because you all effectively were running the Airport on top of BLM land, and in speaking to someone in the Las Cruces office with BLM he told me that’s absolutely not the case...you’ve owned the land since 1955...so that came as a huge revelation to me which I communicated to the City Manager, and that’s why we want to pursue fee simple because according to the Las Cruces office of the BLM that’s perfectly appropriate.

Mr. Kelly – Mayor let me apologize if I got a little bit heated...we want to work this out...you asked the City Attorney...he called me and I said of course we’ll do this...didn’t I Jay?

City Attorney Rubin – yes.

Mr. Kelly – and it’s only been the last 10 days that anybody has spoken to me about it, and we believe as Mr. Neal said that what we had been told previously about the condition of title is not correct, and so given these circumstances we’d like fee...now you may say to...John whatever...no matter what the condition of title is we’re only prepared to give you a lease...we’re not prepared to give you fee...if that’s what’s going on...then tell us that, but let’s work this out...let’s not do it all evening tonight because I haven’t seen the Patent yet, and I’m not authorized to agree to take a 100 year lease on a piece of property where I believe the City is able to give a fee title...people don’t like taking leases...they...

City Manager Weiser – if it’s true that we’ve owned the property in fee simple since 1955 then why are we here? Because you don’t own the 21 acres.
Mr. Kelly – I beg your pardon.

City Manager Weiser – if we have owned the property since 1955 in fee simple from the BLM according to that land Patent then why are we discussing this because you don’t not own that 21 acres that’s underneath the runway.

Mr. Kelly – I might need Mr. Neal for help me with our 21 acres.

City Manager Weiser – We have 2 land Patents that comprise of 660 acres for the Airport from BLM. We don’t have any agreement with the State Land Commissioner...so if we do own the property...and again I’m not an Attorney but I have dealt with this, if Mr. Neal is correct and we own the property then we don’t need to discuss it. You were given a property by the State Land Commissioner that you don’t own...that they didn’t own.

Mr. Kelly - Well...have a problem.

Mayor Montgomery – that’s what we’re saying.

Mr. Kelly – doesn’t this sound like the kind of conversation that should happen outside of this room.

Mayor Montgomery – I can tell you that...

Mr. Kelly – I’m sorry Mayor...do you have anything else?

Mayor Montgomery – Not at this point.

Mr. Kelly – I’ve learned two things this evening...I’ve learned that the City Manager believes that the City doesn’t have the ability to transfer title, and I’ve learned that he also suspects that we don’t even have an ownership interest in our own real estate.

Mayor Montgomery – based on Mr. Neal’s statement...if Mr. Neal’s statement is correct.

Mr. Kelly – that we obtained that property from the State Land Office.

Mayor Montgomery – no...but I think Mr. Neal when he said...he made the statement that we have had ownership in that land since 1955...that’s what Mr. Weiser was making his comment based on Mr. Neal’s statement to that affect.

Mr. Kelly – well I thought we’re talking about the land you were going to transfer.

City Manager Weiser – no I’m talking about the land...the runway that you were given title to by the State Land Commissioner.

Mayor Montgomery – right...

City Manager Weiser – after a swap between BLM and the State Land Commission.

Mr. Kelly – so...

Mr. Neal – the land is in section 32 which is owned by the State. The State Land Office have a lease with the City of Truth or Consequences which I’d be pleased to share with you that allowed
you to operate the Airport on their land.

City Manager Weiser – I think what we need to do is sit down because one of our land patents talks about section 32.

Mr. Neal – but it was never owned by the Federal Government…it’s always been owned by the State of NM until we bought it.

Mr. Kelly – that’s why we need to look at the condition of title and look at all the documents, and I don’t think that…at least I don’t think a lawyer for our side has done that since Mr. Neal acquired title from the State Land Office a couple of years ago.

Mayor Montgomery – so back to the issue at hand…we have the Option Agreement…the extension that everybody is talking about, so Commissioner Green your comments were that you would agree to the 6-month extension with the caveats on the further extensions at that point.

Commissioner Green – 90 days 1%.

Mayor Montgomery – correct, and one of the comments that we’ve heard from Mr. Kelly was that they want to leave here tonight with this document signed and that I don’t know there…personally I don’t feel comfortable without a reference to the future extensions not being in this document somewhere to protect the City one way or the other…we don’t have opportunity on the agenda to talk about other resolutions…so we cannot do that at this point.

Commissioner Luna – can you make a notation to the side of the names stating that any further extensions up to 3 would be at a 1% fee…in this wide space.

Mr. Kelly – what I would say…

Commissioner Luna – and you guys can still leave with the document you need.

Mr. Kelly – yes let’s just have a very brief re-sentence, and it’s not for me to say what that sentence should…I prefer not to use percentages because then you gotta talk about percentage of what.

Commissioner Green – the unpaid balance you owe us 6.685 million dollars.

Mr. Kelly – no that’s not accurate.

Commissioner Green – I beg your pardon if you look Mr. Kelly I believe if you look at the original option February 13, 2011 its 6.685 million dollars.

Mr. Kelly – we have an option.

Commissioner Green – yes.

Mr. Kelly - so we don’t owe it until we exercise the option.

Commissioner Green - absolutely but that’s the number, and that’s where the 1% would come from so that’s the number you’re dealing with.
Mr. Kelly – okay so that’s how you arrived at 66,000.

Commissioner Green – yes.

Mr. Kelly – so we could put a sentence in here that said any further extensions will be 90 days in duration at a price of $66,000.00.

Commissioner Green – or 1% of the amount that’s owed because you might pay down some money…let’s say you might pay down two million dollars, but you want another extension, so why…why hurt yourself, so it would be 1% of 4.6 million dollars, so it would just be 1% of the amount obligated to whatever is existing at that particular time when the extension would be asked for.

Mayor Montgomery – the option balance.

Commissioner Green – yea exactly right, and this is something that you obviously counseled Mr. Neal, and was comfortable in having him sign back in 2007 or 08 when the original document was signed…so I just took the words off that original agreement…that’s all.

Mr. Kelly – the only word I’m objecting to is…(didn’t understand), so if you can propose some language I think Commissioner Luna is correct…we can just add it here…I would be inclined to add at the bottom of the first page as a 2-a for example, and tell me what you want it to say.

Commissioner Green – if you feel comfortable with this payment of the following extensions fees which represent 1% of the obligated balance due…at the time of the extension.

Commissioner Green referred to the Option Agreement…bottom line…Hot Springs may purchase an extension period by providing notice in the manner for given notice provided in the agreement within 10 days…together with payment of the following extension fees…and the only reason I come up with 1% because it’s a $200,000 deposit and 1% is $2,000 so obviously we’re dealing with a bigger number now…any such extension period shall last either 90 days or until the closing date of the second…this was about the land exchange, so it gives them the option if they’re really, really close and they want to drop some money down, but they don’t want to put all of it down at least we’re moving forward, and I think rather than just leaving it open ended, and in 6 months where are we…we might be back here having the same discussion…at least when there’s dollars on the table I think in a contract people tend to move a little bit quicker.

Mr. Kelly – may I suggest some language…Commissioner Green…how about something like this…any further so we got one extension it’s in there…any further extensions shall be 90-days in length, and shall require payment of 1% of any amounts with respect to which Hot Springs has not yet exercised its option.

Commissioner Green – Jay you feel comfortable…is that legally…

City Attorney Rubin – I’m breaking it down…is shall be 90-days in length…

Mr. Kelly – any further extensions shall be 90-days in length, and shall require payment…let’s do it this way…of an amount equal to 1% of any remaining water and sewer rights with respect to which
Hot Springs has not yet exercised its option.

City Attorney Rubin – and when is the 1% due?

Mayor Montgomery – at the time of the request of the extension.

Commissioner Green – and that’s the way I read the original agreement on page 2.

Commissioner Luna – I’m sorry I didn’t hear you say…up to 3…

Mr. Kelly – you’re right I didn’t say that Commissioner. Asked if there was any transcription at this meeting…do we have a tape…?

Commissioners – yes.

Mayor Montgomery – If you talk about…well I guess because under the purchase price it has a – relating to the sewer, and b – relating to the water, so you were talking about any balance due related to water or sewer available…then you get into the available sewer capacity…see what I’m saying…

Mr. Kelly – I don’t think we need to do that either.

Mayor Montgomery – So why wouldn’t it be any option balance…any balance or the balance at that time…see I don’t even know…

Mr. Kelly – that’s why I kinda suggested just a fixed amount.

Mayor Montgomery – with the option balance due at that time. I wrote down any future extensions will be for a maximum of 90-days and will result in a necessary payment of 1% of the option balance due at that time.

Commissioner Green – with a maximum of 3 extensions.

Mr. Kelly – if we got that recorded…

Mayor Montgomery – is that what we’re agreeing to?

Mr. Kelly – would you read it back again.

Mayor Montgomery – I don’t have the thing in there about the three extensions…what I did…there will be only 3 extensions available…3 additional extensions available…any future extension will be for a maximum of 90-days, and will result in a necessary payment of 1% of the option balance due at that time…but I don’t know if that’s correct.

Mr. Kelly – well the only thing that I would change is the option balance with respect of not yet exercised, because…suggest there is an irrecoverable obligation to pay the amount.

Mayor Montgomery – okay…a 1% of the unexercised option balance at that time.

Mr. Kelly – I think that’s fine. And if I could have an appropriate time and take 5 minutes with Mr. Rubin we’ll put that language…

“Commissioner Luna moved that we approve the first amendment to option agreement for purchase and sale of rights as amended.”
Seconded by Commissioner Green.  
Motion carried unanimously.

SCHEDULE
SPECIAL MEETING:

Mayor Montgomery stated they need to set a date and time to do the interviews for Planning & Zoning and the SVHGB.

City Manager Weiser stated they have the Town Hall Meeting scheduled for Tuesday, February 15th at 6:00 P. M.

The Commission agreed to schedule the interviews on February 15th at 5:00 P. M., City Commission Chambers for Planning & Zoning and SVHGB.

City Attorney Rubin stated they will be going into closed session to discuss the Airport property, and asked if they wanted Mr. Kelly to stick around for when they come out of closed session to discuss whatever action that may be taken.

The Commission stated they didn’t think so.

REPORTS:

CITY MANAGER –

City Manager Weiser reported on damage they suffered on broken pipes with various city buildings.

He reported that the structural engineer visited the Youth Center, and indicated has made a preliminary report, and stated he will be going over that tomorrow, or the next day with the building inspector, insurance personnel, and facility personnel, and will get back to them on their findings.

City Manager Weiser reported they started work on the tennis courts today, and on the swimming pool RFP’s are out, and indicated they have a meeting tomorrow with city staff, and at least one of the potential applicants to go over an on sight inspection of the facilities.

And mentioned the Town Hall Meeting next Tuesday to receive input on the city goals from the public.

CITY ATTORNEY –

City Attorney Rubin stated he would like to announce that there will be a hearing on February 16th at 2:30 with Judge Sweazea for motion for sanctions that he filed in the Shepard’s Highland case.

COMMISSIONERS –

Commissioner Luna – No report.

Commissioner Green stated on the snow event that we had he would like to thank Patti & Gene Lester, and the kitchen staff from SJOA, and city staff that stepped up to the plate big time that day, and the Bountiful Alliance 4th Street Community Garden volunteers, and all the volunteer who helped, and stated that everyone did a great job.

He stated on the trip to Santa Fe he thinks they went up there with no false expectations and not disappointed, and must say Mayor Montgomery did a phenomenal job with the meeting with the Governor, and stated it was right on the dime, and thanked her for representing them as always.
And he would ask that the City Manager place on their next agenda a discussion on the CDBG $50,000 grant, and that he spoke with Tony MacRobert, and stated there is money left in the state, and indicated there are 10 grants...$50,000 each and that it is a 10% match, and that they can use the money for either a comprehensive plan...an engineering study worth about $30,000.

Commissioner Green stated he had lunch at SJOA, and will give a report at their next meeting, and give a copy to his fellow Commissioners to see what their concerns were. And stated whoever cleaned up exit 79 thanked them...and stated it looks great.

He stated he heard yesterday that the International Academy of Visual Arts in their web-site design category for the year 2010 was awarded a silver award to Sierra County Arts Council for their Truth or Consequences Film Festival web-site, and stated that is James Durham the Executive Director, and congratulates staff and the Arts Council for that accolade, and well deserved honor.

Commissioner Torres – No report.

Commissioner Renfro – Asked City Manager the status of the audit.

City Manager Weiser – Stated we have it back, and they will be presenting that to them.

Commissioner Renfro – When do we get our copies?

City Manager Weiser – I will get copies for you.

Mayor Montgomery – No report.

EXECUTIVE SESSION:

“Commissioner Green moved that the meeting be closed for Executive Session pertaining to Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8) – 1. Airport Property.

Seconded by Commissioner Torres.

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.”

CERTIFICATION

“Commissioner Green certified that only matters pertaining to Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8) were discussed in Executive Session, and no action was taken.”

Seconded by Commissioner Luna.
Motion carried unanimously.

Mayor Montgomery stated they will direct staff and the City
Attorney to proceed as directed regarding the Airport property.

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

APPROVAL: 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