

CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
TUESDAY, MARCH 28, 2017

A. CALL TO ORDER

The meeting was called to order by Mayor Steve Green at 9:03 a.m., who presided and Renee Cantin, City Clerk-Treasurer, acted as Secretary of the meeting.

B. INTRODUCTION

1. ROLL CALL

Upon calling the roll, the following Commissioners were reported present.

Hon. Steve Green, Mayor
Hon. Sandra Whitehead, Mayor Pro-Tem (absent will be late)
Hon. Kathy Clark, Commissioner
Hon. Rolf Hechler, Commissioner
Hon. Joshua Frankel, Commissioner

Mayor Green announced Mayor Pro-Tem Whitehead will be running an hour late and will be attending the meeting.

Also Present: Juan Fuentes, City Manager
Jay Rubin, City Attorney
John Appel, City Attorney
Renee Cantin, City Clerk-Treasurer

There being a quorum present, the Commission proceeded with the business at hand.

2. SILENT MEDITATION

Mayor Green called for fifteen seconds of Silent Meditation.

3. PLEDGE OF ALLEGIANCE

Mayor Green called for Commissioner Clark to lead the Pledge of Allegiance.

4. APPROVAL OF AGENDA

Mayor Green asked for a show of hands as to how many people are in attendance for the Subrecipient Grants. Seeing the amount of people who raised their hands, he suggested whoever makes the motion for approval to move H.5 for the Subrecipient Grant allocations to follow G.1 for the discussion of the Skyway Towers.

Commissioner Clark moved to approve the agenda moving Item H.5 Subrecipient Grant to follow G.1 on the agenda. Commissioner Hechler seconded the motion. Commissioner Frankel stated he has a conflict of interest for item H.1 and will be recusing himself for that item. Motion carried unanimously.

C. COMMENTS FROM THE PUBLIC (3 Minute Rule Applies)

Mayor Green called for Public Comment, noting those wishing to comment would get three minutes, may only approach the podium once, and any material for the Commission was to be left in the black box by the podium.

Randall Ashbaugh, 1023 Poplar St. and representing Ashbaugh Construction Co. addressed the Commission related to:

1) Gave a letter on the impact fees and the items the city is in noncompliance with. Such as Section 5-8-16 of the New Mexico Development Fee Act about the accounting and putting the money in an interest bearing account which has not occurred since 2007 when it took conception. He paid in the first three impact fees which were April, June and August. One was \$5,000, one was \$3,450, another was \$3,450 for a house. It clearly states in Section 5-8-17 after seven years that money is supposed to be refunded. Nothing has been refunded to him or anyone else who has paid into the impact fees. The City doesn't even have a council or a capital plan which is required by the New Mexico Development Fee Act. Then in Section 5-8-18, Compliance with the procedures required. The city must be in compliance with collecting impact fees and you're in total noncompliance and still collecting the fees. That's misrepresentation or even worse. The City is noncompliant in every statute in the Development Fee Act. He's asked the city council to do what is right and refund that money back for the last seven years, and get this thing cleaned up. Or pay all of the money back and just disband it. He knows they have a Resolution to make a board finally, after ten years later which is supposed to be done right away and renewed every five years. You need to make a Capital Plan and that all needs to be done before you can collect any more.

2) He knows the State Auditors have come down and audited the fund. He requested a copy of the audit and has not received one yet. He would appreciate getting a copy of that. To just be fair to the Citizen's, you work for us. This is not taxes, it's like an escrow fee. He has an interest in a Title Company, like he can go in there to get the escrow money, he will go to jail. So he would like the city to come into compliance and refund that money. He is referring this to his son Josh Ashbaugh, who is an Attorney. He's already got one letter from Mr. Apple denying all of these allegations and he doesn't know who gave him the information, but whoever did, did not tell the truth.

Perry Wolf, 1107 N. Bosque Dr. addressed the Commission related to:

1) Suggestion for all single and small households to save a little money for a change. Each garbage day, he wonders why he needs this large polycart and pay \$24.66 which has very little trash in it. He recycles and being a single house holder he would suggest a smaller container which could be picked up every two weeks at a savings of half of what

he is paying now. He's sure every small household, every single, on a fixed income would love to have a little extra money to contribute to their monthly expenses. Does that sounds like a plan? It sure does to him, and people who have a residence here and a full time residence in another state, just keep paying and paying. His church has two and they don't even hardly need one.

Magorie Powry, 205 Heights St. addressed the Commission related to:

- 1) Companion Action Animal Team. Left a document that shows they are current.
- 2) She was the President of SJOA and of all the entities in this town that work with Senior's, it is one of the most important and she's appalled the federal government is considering taking money from the meals on wheels. She volunteers and delivers to a woman who is legally blind and diabetic. She goes every two weeks to fill her syringes, take her dogs to have their nails clipped, but that Meal on Wheels is crucial to maintaining her ability to live by herself. She has family, but she essentially lives by herself in handicapped housing. She doesn't understand the Federal Government's stand that Meals on Wheels shows no advantages to Seniors. That's nuts! It really is sad. Even though she is here for her own grant, she will say SJOA has done a wonderful job on feeding seniors and home health care. It's the program of her heart and she thanked them for letting her speak.

George Szigeti, 913 Spruce St. addressed the Commission related to:

- 1) He would like to talk about Public Comment. It's been in the news a little bit lately. As the Mayor said when he opened the meeting, this is a business meeting. The public has the right to attend, but the public does not have the right to interfere with this meeting. By the Open Meetings Act, Public Comment is not a required portion of the meeting. It is a privilege granted to the public, by the Commission. The only the time the public is required to be allowed to speak is in the matter of the public hearings as described by law. Because it's not a required part of the meeting, the city is also not required to record any public meeting within the minutes or to retain any materials that are handed in during the meeting. This again is done by the will of the Commission. Speaking here in front of you is a privilege and he appreciates the Commission's insistence in retaining public comment. But since it is a privilege, it is up to us to behave in a civil manner, bring constructive criticism before the Commission, and bring up issues that the Commission, staff, and the rest of the public need to know about. Unruly behavior, rude and vulgar comments, and insults, have no place at this podium. And the Commission is within its right to ban anyone who does not behave in a civil manner from this podium. As long as the same criteria are applied to everyone's speaking, there can be no infringement on free speech. As he said before this is a privilege and not a right.

Sophia Peron, addressed the Commission related to:

- 1) She would like to address Mr. Szigeti's comments and general public comment. She said every time she has spoken here. Whether she has been polite, helpful, or nasty, Mr. Szigeti has stood up after she speaks and so has other people. They have called her a CAVE Person, they have insulted her and said she has never done anything for this city in the 14 years she has lived here and they have said a million horrible things about "me, myself, and I". And all she's done is move her, invest everything she has in this town,

and she will stay here until she dies. They will throw her ashes at Vista Memory Gardens unless they toss her out if they don't want her in there. And she says that Mr. Szigeti is full of it and the things he's says have been absolutely federal hate crimes against other people in this room. She thanked them so much for giving her the privilege to express her first amendment views.

Seeing none. Mayor Green said they will move on to Item D. Response

Mr. Ron Fenn stepped to the podium stating he has a comment that is to be read into the minutes of this meeting.

The mayor called a recess for five minutes at 9:18 a.m. and reconvened at 9:26 a.m.
D. RESPONSE TO PUBLIC COMMENTS

None.

E. CONSENT CALENDAR

1. City Commission Regular Minutes, February 28, 2017
2. Public Utility Advisory Board Minutes, February 21, 2017

Commissioner Frankel moved to approve the City Commission Regular Minutes for February 28, 2017 and Public Utility Advisory Board minutes for February 21, 2017. Commissioner Clark seconded the motion. Motion carried unanimously.

F. PUBLIC HEARINGS

1. Public Hearing: Special Use Permit for Skyway Towers. Robbie Travis, Building Inspector

Mayor Green gave an overview of the Battershell Procedures which will be used during the hearing.

City Clerk Cantin administered the Oath to each of those who signed as proponents and opponents.

Building Inspector Travis presented the Special Use Permit for Skyway Towers. There may be alternative sights that may be less intrusive. We have had seven concerned citizens come in and most were against the tower coming in. FDH Velocitel is here for any questions and comments you may have also.

Mayor Green asked if this is the same tower that was brought previously. Building Inspector Travis responded Skyway was the original group who wanted to do one at Water Tank Hill, but they wanted to do it at a different site. FDH Velocitel is the Engineering firm that actually helps Skyway Towers find the site location.

Commissioner Frankel said you mentioned there were alternative sites that would be preferable. He asked where those sites are. Building Inspector Travis responded one of

CITY COMMISSION MARCH 28, 2017 REGULAR MEETING MINUTES

those sites is by the Water Tank because we already have towers there. This one has residents right below and across the street so it's a little more intrusive.

Commissioner Hechler asked if this tower is larger. Building Inspector Travis responded it would definitely be larger. It would be about 40'-60' away from where the towers are now. But it will be on this side of the property versus the other side of the property where it is now. It's more residential and a little more visual from the public. Mayor Green asked if that is the East Side of the property. Building Inspector Travis confirmed that is correct.

Proponents:

Mark Basham, former city attorney for Santa Fe and has represented other municipalities. He explained he will have a need to cross examine staff and others. He doesn't want them to think he's being rude or belligerent because he's just doing his job and they have to create the record.

City Attorney Rubin interjected for a point of clarification, Mayor Green only listed one proponent who signed in. It was determined he signed the meeting sign in sheet instead of the Public Hearing sign in. Mr. Basham clarified he is a proponent for the applicant. City Attorney Appel also added he is entitled to participate as a proponent for the applicant.

Mr. Basham began asked Building Inspector Travis if he provided the applicant with a copy of the staff report. Building Inspector Travis responded yes, he emailed it to her when she asked for it. He doesn't have record of the day but it was Wednesday or Thursday of last week.

Mr. Basham asked if it was the same council report that was presented today. Building Inspector Travis confirmed.

Mr. Basham asked him if he recalls speaking to him and he asked what the recommendation was going to be. Building Inspector Travis confirmed he did recall that. Mr. Basham asked if it was correct that staff was not going to have a recommendation. Building Inspector Travis clarified he asked if staff had an opinion, and he responded staff did not have an opinion, but it has to go through a Special Use Permit. Whether the public will approve it or allow it, that's up to the Commission.

Mr. Basham referred to the staff report where he has the provisions for the Special Use Permit which are items A-G, he asked if that is correct. Building Inspector Travis confirmed that is correct.

Mr. Basham asked how this application shows an increase in congestive streets or Right-of-Way, or does it. Building Inspector Travis responded it does not.

Mr. Basham continued with B. and asked how does this application diminish from Safety, Fire, Panic, or other dangers? Or does it? Building Inspector Travis responded no, he doesn't think it does.

Mr. Basham asked how this application diminishes the welfare of the public? Or does it? Building Inspector Travis responded he doesn't know that it does. Mr. Basham asked if he would agree that it doesn't. Building Inspector Travis responded yes.

Mr. Basham continued under D., it says to get a Special Use Permit there cannot be a degradation of all light and air for all properties in the immediate area of the proposed permit increase over the land and increases population. How does the application do that or does it? Building Inspector Travis responded he would say the only thing would be the air because of the height of the tower and it backs up to the residents in the area in their air space.

Mr. Basham said in response to one of the Commissioner's questions, you responded there is an alternative site that is higher up the hill. He added that would exacerbate the issue if he would just elaborate on that. Building Inspector Travis disagreed because it's farther away. It's not in close proximity to somebody's backyard.

Mr. Basham asked in what ways does this application have adverse affections on provisions for transportation, water, schools, parks, or public facilities are increased in the effects of natural hazards? Building Inspector Travis said there are none.

Mr. Basham asked if it increases the stipulation of the unlawful use of structures, buildings, or land. Building Inspector Travis responded yes. Mr. Basham asked in what ways? Building Inspector Travis said its unlawful to have a cell tower in a Residential Zone without a Special Use Permit.

Mr. Basham continued and the answer you had to one of the Commissioners was it can be moved onto another site which happens to be owned by the city, correct? Building Inspector Travis agreed. Mr. Basham said where the applicant is applying for the tower now is zoned R-3, right so it needs a Special Use Permit? Building Inspector Travis agreed. Mr. Basham continued the city land where you were recommending it be moved to and where we originally applied to, is also zoned R-3, correct so they would have to go through the same thing? Building Inspector Travis agreed. Mr. Basham asked if he would recommend denial there? Building Inspector Travis said he would unless they do a Special Use Permit.

Mr. Basham went to letter G in the staff report and asked in what ways does it promote the use or waste of energy and the use of structures, buildings, and land? Does it do that? Building Inspector Travis responded no. Mr. Basham said but for your one minor objection regarding the height, which is questionable, they satisfy the provisions for the Special Use Permit, correct? Building Inspector Travis said no. Mr. Basham asked in what way? Building Inspector Travis said because of number 2, the Special Use Permit should not be granted if there is a negative impact that substantially outweighs the positive impact of the use. Mr. Basham said that's understood but as we go through the provisions for the Special Use Permit, and your one little exception, we satisfy that. So, there is no

negative impact, correct? Building Inspector Travis disagreed, there is a negative impact by the public and that's why they're here at the meeting.

Mr. Basham asked so if the public came out in opposition to moving this structure on city land, also zoned as an R-3, you would say it's still in violation of number 2 and therefore you couldn't recommend it? Building Inspector Travis said that's right. Mr. Basham asked as far as what the neighbors said to him, what was their major concern? Building Inspector Travis responded it was the height and they didn't want an 80' cell tower where they could see it, and one of theirs was close to their backyard. They mainly didn't like the look of it and having a tower there.

Mr. Basham said the Site Acquisition Specialist goes out of their way to meet with the neighbors, and they'd like to know what neighbors have contacted you so they can go an address their concerns individually with them. Did he provide the names and contact of those individuals and understand that would have been a courtesy? Building Inspector Travis responded we kind of look at that a little differently, in that, are they going to go and harass the neighbor and try to persuade them. So we only had one person who sent back his letter and wrote on it that he could not be here this morning and was opposed to the tower.

Mr. Basham asked if there was any provision of the Code they did not satisfy for this application? Building Inspector Travis no. Mr. Basham said again you stated an alternative site which is also zoned R-3, it's going up the hill which you think is going to be less intrusive. When was the application submitted for the city site? Building Inspector Travis said there has not been an application submitted. Mr. Basham asked didn't they require the applicant to submit a survey to determine where the cities land was? Building Inspector Travis said they asked anybody who is interested in doing a Special Use Permit, like for a cell tower, in this case, to submit all of the requirements they may need. That would be survey, application, all of that. And it's never final on anything.

Mr. Basham asked if the code requires that they submit a survey? Building Inspector Travis said yes. Mr. Basham asked what provision that is? Building Inspector Travis said the Drainage site plan required development exceeding this in Section C. Mr. Basham asked where that says survey? Building Inspector Travis said it says site plan. Mr. Basham said a survey is an expensive proposition, don't you agree? Building Inspector Travis responded well if they don't have a survey showing where the property boundary is, then we have to know that. So you have to have a survey if you can't prove that those are the corners. Mr. Basham added as an administrator of the city, you don't know where the city's boundaries are and what they own? Building Inspector Travis responded no, they are not all marked. Mr. Basham said so that's their burden. Building Inspector Travis responded yes.

Mr. Basham continued and then you asked then to provide an appraisal, correct? Building Inspector Travis responded no we did not require them to provide an appraisal. Mr. Basham argued he demanded them to provide an appraisal. Building Inspector Travis asked who he is representing? Mr. Basham responded he is representing the applicant

CITY COMMISSION MARCH 28, 2017 REGULAR MEETING MINUTES

FDL Velocity and Skyway Towers. Building Inspector Travis continued they did not ask for an appraisal. We said we have to get an appraisal for any leased city property. Mr. Basham continued by asking where in the code does it say they have to provide an appraisal? Building Inspector Travis responded our code doesn't say that, he would have to refer to the City Attorney or our City Manager for that. Mr. Basham asked if he can consult with one of his clients please.

Mr. Basham addressed the Mayor and Commissioner's, having done this cross examination, his presentation will be much shorter.

City Attorney Appel notified who can cross examine the city representative. Those who are considered parties under Battershell. That would generally be anyone who is within the notice area to be affected by this, does have that ability to cross examine Mr. Travis. Once we are done cross examining the cities representative, then the proponents would go next. City Attorney Rubin added that was why he was questioning who was signed in as a proponent.

Mayor Green asked if anyone else from staff is going to present the item. Building Inspector Travis responded no. Mayor Green went on to the next proponent who has been sworn in.

Shirley Crowder who represents FDH Velocitel and Skyway Towers. She went over some of the reasons why they need to have this tower in place. This project will be a new 80 foot monopole. If the community objects to the height of the tower, they are not opposed to changing the height of the tower. While we are looking at an 80' tower, but can change that to a 60' tower. The height of the 80' tower is so tall that where your visual mass will be, would be very difficult to cause a problem with the view or visual mass issue. Once they lower the height of the tower which they can do and still accommodate the needs of the frequency engineers that could be in question in this tower, then that is also a possibility to put before the Commission. But if the Commission would consider that as a condition for approving this Special Use Permit, then Skyway Towers is not objecting to reducing the height of the tower. She explained Skyway towers are not a carrier, they are not Verizon, AT&T, or T-Mobile. They are a build to suit Tower Company. They are proposing a monopole in the anticipation that in the future, the city will be approached by Verizon, AT&T, or T-Mobile to perhaps take site or residence on that pole in order to accommodate the wireless needs of the community. She has heard things about negative impact and she would like to present the positive effects of the cell tower. This study was done in relationship to the tower known as the New Mexico 3 Beaverville. That's a name that was given to this project by Skyway Towers with a search ring that's geographically located right where your water tower sits. That is their desired location in that area. She's done an extensive search of places within a quarter mile of that location and have not found any other location that is better based on the height of that hill. She found two options, one where the city tower is and one where there is residential use going on. There is also a small minor tower existing on that property as well that's used for internet service providing as that home business.

Ms. Crowder explained that on an average voice and data usage is growing expedientially based on the amount of devices used today. She asked how many of us in this room can say we don't have a cell phone? How many of us can say we don't use it for voice and data. Voice is when you're making a phone call whether that be 911, to check on your kids coming home from school, to call your husband to pick up groceries at the store, that is voice. When you're using data, we're using it to find our way home using our GPS, we're suing it to Google search, and for our kids homework. The demand for wireless data is expected to grow by 650% between the years of 2013-2018. This is by an extensive study that's done by the Cellular Technology Institute of America in 2015. 70% of 911 calls originate from cell phones. The area of Williamsburg and Truth or Consequences has a significant gap in 4G,LG, LTE coverage, and capacity. They have been able to demonstrate that there is only one issue that would possibly deny them for that Special Use Permit and that is based on conjecture. She requested the Commission take that into consideration. This is not based on fact, it's based on "what if?".

Mayor Green referred to the City Attorney that our public hearing rules allow 5 minutes per speaker and asked if this applies to the battershell hearings also? City Attorney Appel suggested they let they applicant continue.

Ms. Crowder continued. More than 75%, she has done her research that this is a growing community. She's done her homework and knows that they have a lake close by and you're a looking at development, and growing and expanding your community. You have to consider the fact that the cell towers that are currently in place, from a study map done by a Radio Frequency Engineer from Verizon Wireless, which shows as the community goes, you will not have the capacity to support the wireless needs of this community. She reiterated that the City of Truth or Consequences and Williamsburg have significant gap in 4G LTE coverage. LTE means Long Term Evolution. It's a standard put down by High Speed Wireless communication for mobile phones and data terminals based on GS and unedged technology. So for the benefit and the positive impact this tower could have on your community she looks to the Commission to vote to please approve this Special Use Permit. The primary reason is the proximity of residential areas and I-25 as a forecasted business growth and new home construction in the area. This area lacks LTE service. There is just not enough towers or capacity in this city. And she thinks the Commission is fully aware of that. In busy cities, cell site density is half a mile or less. In an area like Truth or Consequences, there is only one site for all of that traffic in this area. As more residences come in, the more landlines decline. So when you're looking at some type of natural disaster, and she's here to tell them, her son was a victim of Katrina and for three days she was not able to talk to him which was a living hell. When you have a natural disaster, families want to be able to communicate with their loved ones. And if you do not have the infrastructure provided, these towers can give you, your community, your 911, your Police Officers, your Fire & Rescue, they're the ones who are going to suffer for that. In closing, she would like them to look at the visual possibility of negotiating a lower tower and the positive impacts this tower can have on your community.

CITY COMMISSION MARCH 28, 2017 REGULAR MEETING MINUTES

Commissioner Clark asked if Skyway Towers in other communities in New Mexico? Ms. Crowder responded she does not know, they hired her to do this job and that's all she has the knowledge of. She apologized.

Commissioner Clark asked how many towers are in the middle of other communities. Ms. Crowder responded she is not a Radio Frequency Engineer for Verizon. However, she can get those answers and provide them to her.

Commissioner Clark continued the degradation of light was an issue that was brought up. She asked if they are telling her they have to have that blinking light on top of and 80' tower? Ms. Crowder said not that she is aware of. She added a full environmental study has not been done at this parcel yet, because those cost thousands of dollars. In order to do that study, they like to have zoning approval first. There has been a preliminary environmental study that has been completed and to her knowledge, there has not been any FCC requirement that mandates a light on top of the tower. That is not to say that when a full study is completed that that wouldn't be necessary. If the town said we want you to illuminate the tower from the base up, we can do that or not do that. However, in order to camouflage this tower we would be willing to do a CMU wall that will match all of the existing structures. So it's designed to blend into the community to hide all of the equipment. They have also complied with noise and these types of units are set up to accommodate noise requirements in all communities. So she can safely say this is not going to be a noise problem. The towers of today don't generate a lot of noise. Another thing the tower companies are willing to do is plant trees that may be indigenous to your community. So if you would provide us with conditions for approval, she is sure they would be happy to accommodate.

Commissioner Clark is a little confused about how they would plant an 80' tree, but she does have a question for our Lawyers. Commissioner Clark asked Mr. Appel or Mr. Rubin to define the meaning of general welfare. Mr. Appel responded general welfare is probably defined in many ways in which there are cases where the term comes up. General welfare can mean aesthetics which is one of the things she said. It can include health, safety, other environmental issues, noise, and all of those things would come under general welfare. City Attorney Rubin agreed and thinks it's very wide open subject to what the Commission feels would be in the best interest of the community. It's

Mayor Green asked referring to the height, she talked about 60 feet. Where is the line drawn that it becomes ineffective or doesn't do the job that it's meant to be for. Does 40' or 50' work? Because you went from 80 to 60' real quick. Ms. Crowder responded that wasn't really quick, she had several discussions with the tower company in order to say if she goes into this hearing and it looks like height might be an issue, what can they give her? She is experiences in dealing with communities and Commission's so she understands the process. She would rather keep it shorter and use less of their time by coming prepared with what the lowest she could possibly go to is. And that is 60'. She explained the towers don't have a down tilt, they shoot out and have the capacity of a half a mile radius. She explained more about the set up.

Commissioner Clark asked what would a carrier pay for a location on an 80' tower. Ms. Crowder is not privy to that information. She did volunteer to the people of the community of the resources for the American Cancer society and would not be opposed to holding a community meeting for the resident. By no means would that be done by harassment. She takes her job very personally and if she thought the towers were any risk, she wouldn't be here.

Mayor Green asked if any opponents would like to cross examine the proponents.

Mr. Basham gave his presentation. The one thing you cannot consider in making your determination is the alleged harmful effects of a tower. He knows working with other communities, they hate the fact that the Federal Government has usurped their zoning authority in that regard. But you cannot consider that and he can guarantee both attorneys will confirm that. So to the extent people want to come up here and vent on that issue, it's a waste of time.

Mayor Green said before he goes on he would like our attorneys to respond to that statement. Mr. Appel said Mr. Basham left out one key element of that prohibition in 47 USC332. You may not consider the radio frequencies potential health effect if the tower meets FCC criteria. And frankly at this moment in time, he has not heard testimony about that. He did hear testimony about the fact that the antennas would not be tilted down, therefore it would potentially be directed horizontally. And based on testimony he has heard elsewhere, but he is not testifying, this tower at 60' or 80' would be tall enough to fit within a categorical exclusion that has been designated by the FCC. But you might want to inquire that with the applicant.

Ms. Crowder responded in regards to the Federal Communications mandates, its her understanding and has been her experience that all of the towers she has seen go up and been a part of, are not going to put up a tower that is not within federal criteria, that would put their license at risk and doesn't make logical sense to her. When they do get an approval at this stage and go to the construction page, those drawings have a lot of good detail.

Mr. Basham began his presentation with the increase in technology going from 2G or 4G, they need more power. People are demanding that it be there instantaneously on their phones. That's why there's going to be a proliferation of towers. He's never seen a good looking tower, how do you make it good looking? He can't tell them how many times he's been before Commissioner's or councilors where they ask real hard questions, and suddenly he sees them look down at their cells and get up and leave. Again it was mentioned, it promotes education, public protection, fire safety, 911 calls. The bottom line is we meet the special criteria for the Special Use Permit. And to say we need to go back and look at the city property is disingenuous and it's arbitrary and capricious, He's not saying they will file a lawsuit or anything, we will just pack up our bags and leave. But they do meet the criteria, and if they do fight, he thinks they have some grounds for a challenge. Time is money, to say to go back to the city or come back to a public meeting is money, serious money. He can tell Commissioner Clark, these people that think these

CITY COMMISSION MARCH 28, 2017 REGULAR MEETING MINUTES

towers charge tons of money for antennas isn't true. The appraisal that came in for the city, the Building Inspector said he didn't require them to do came in to \$500 per month. They've dealt with the city for a long time and they've essentially been run off. It doesn't make economical sense and it's not fair. He reiterated that they meet the provisions and have done everything and more and he asks that they grant this for the community.

Mayor Green commented that he's not quite sure because the Commission doesn't get involved much with the staff and what they are doing. But he's almost certain that run-off is not a term that we prefer to use. He feels strongly that staff has no intention to running anybody off, we are open and certainly want to do what's best for our citizens as we grow our community. Mr. Basham apologized for the use of that term. This is an honorable administration and honorable Commission.

City Attorney Appel asked the Mayor to recall Mr. Travis for a couple of brief questions at this time. He asked Building Inspector Travis when the site was referenced on the city side, who arranged for that appraisal to be done? Building Inspector Travis responded staff did, he arranged for that and the city paid for it. City Attorney Appel thanked him, he just answered his second question and has nothing further at this time,

Mr. Basham asked how much the city paid for the appraisal. Building Inspector Travis said he believed it was \$1100. Mr. Basham asked how much time it took for that appraisal to come in from the time it was requested to the time it was received. Building Inspector Travis said it took about six weeks or so.

Sophia Peron, 316 North Joffre was disappointed the person who is here for the applicant could not have more time for their presentation. They should be allowed to do their full presentation. She asked them to call the municipal league to get some Battershell training. Building Inspector Travis stood up and said five people called him after he advertised or whatever. She didn't see anything in either paper about this and she was told by these nice folks to do this, that they offered the city a public meeting and a public presentation before the Commission would vote on this. But they were told not to worry about this, just like they were told when the Nascar Race Team came, etc. etc. She doesn't understand why Mrs. Clark Commissioner is sitting there and not recused when she lives right across the street from the proposed project. She also has a financial interest in a place that is a few yards past that. She should not be speaking now. She would like to say they just changed from 2 to 4G on the space station on Friday when we watched them do their space walk. And that was terrific. They flew over my house the same day. We're going to have to go up in technology and the towers are not permanent. They can go down anytime anybody wants to take them down. But this city staff knew full well if they thought they could sneak this off on a bunch of people who had businesses and homes and rooms they rent downtown and get it by, they are crazy. This is a complete breakdown in communication in this city which has been going on for 14 years. From every place in her front yard she can see that hill and there's millions of wires, burned out transformers, flop houses, and junk, crappy trees, dead trees, all in front of that tower. What does it matter? Thank you.

Opponents:

Tracy McGowan, appreciates the opportunity to give her comments about this tower. She arrived in T or C two years ago and didn't really know what to expect of this city she now calls home,. Except it was a tourist town with Hot Springs and a large artist community. And as her husband and she came down Date St., her first moment was actually with the Water Tank. So for her that's a view she really cares about and cherish. She first heard about the tower project when the homeowners adjacent to the proposed tower site became alarmed by construction noise on the hill above his home. He went to investigate and found they were soil sampling for the new proposed cell phone tower. This particular residential lot already has an existing small tower and it is the proposed site for the 80' monopole. This current tower is relatively small compared to the other towers on the hill. However, it stands out already and all of the other towers are on city property located up the hill near the water tank. While she understands this specific tower type is called a stealth design, the fact that its 80', it would stand approximately twice the height of the water tower. Or another perspective, the height of an 8 story building makes it intrusive and offensive in an artist's standpoint. The pole itself consists of three sections, each having the ability of holding up to four antennas. So we're not talking one to three antennas, at full capacity this thing would have 12 and ten attached to it. She doesn't know about reducing the height to 60' and still accommodating those 12 possible antennas which we are saying is coming right up, more antennas. They are saying they are pointing them down and shooting them sideways. By reducing the height you're going to have more of the frequencies on that hill. The proposed site is 300 ' above John Brady's home. He has a couple of concerns regarding the proximity of this tower to his property. While it is known that the telecommunications act of 1996 prohibits citizens from objecting to towers on health grounds, it does not mean that the public believes these towers are safe. In fact, it is well known in the Real Estate community, that property values go down when towers go up. This actually was confirmed by phone from a Realtor which John Brady contacted for more information. The city is responsible for controlling growth for T or C residents. The building code is zoned R-3 Residential requiring a Special Use Permit for commercial use. She is strongly urging the Commission deny this Special Use Permit for this proposed project. And also recommend that you consider codes regarding height limitations on new structures involving artistically sensitive areas of our town. The city has spent a lot of time and energy producing building codes to protect our resources as a tourist destination. As a citizen of T or C, she asks the Commissioners refuse to issue the Special Use Permit for the aforementioned reasons. She would also like to ask if there were any other locations that were looked at outside of the little area downtown. We have a lot of terrain that may be appropriate. But she doesn't think it's on the major hill that everyone sees coming in to town and you can see all the way from the top of Date St. She thanked them.

Mayor Pro-Tem Whitehead joined the meeting at 10:30 a.m.

Ronda Britton, owns Black Cat Books and Coffee at 128 Broadway and lives at 314 Kopra St. She is in the line of sight of the water tower and not that far from it, but many homes are closer to it than hers. She worries about the health effects from the microwaves emitted from these towers. So being located in a residentially zoned area is worrisome

indeed. As a business owner with a clear view of this site, it will obviously be a terrible eyesore for anyone downtown. Surely there are better locations in previously designated commercial zone areas. She is very hesitant of the "Tower Zilla" in her district. Please do not condone this location for special use. This is not an innocuous treatment of this site. These are powerful microwaves and we don't want more. There was a huge crane for soil testing, she heard was before a permit was obtained. She asked if she could ask Robbie Travis a question about this. She believes and wonders how worthy and transparent this company will be in the future.

Building Inspector Travis responded to her question about them having a permit before the soil testing. He said no they didn't and didn't know they were doing that. Mr. Brady gave him a call and he went up there and investigated so he told them not to do anything else until we have our hearing and this has been done. Mayor Green clarified work has been stopped. Building Inspector Travis confirmed that.

Mayor Green said next the proponents may question opposition. Mr. Basham had a question for staff and asked if a building permit is required for a soil test. Building Inspector Travis responded not a building permit but anytime you are going to do any activity or need a Special Use Permit, you shouldn't do anything until that's done. Mr. Basham said the question was, is a permit required. Building Inspector Travis responded no.

John & Paula Vincent, 206 Grape St. and owns property below that also. He's owned property here since the early sixties. With the view of the tower in his front yard, he can't think of anything uglier that he would want. And anything more that would devalue his property. He's a little upset that it's even thought about being put there. Off of Grape St. its going to be a straight shot to it. He says no, big time.

Martin Marsheak, first thanked the Commissioners and public servants, you don't get enough thanks. He agrees with the city that this doesn't make any sense. This is obviously a residential zoning so to have a big industrial cell phone tower is a violation. It's also more of a Historical District. The first time with Santa Fe, New Mexico he said what's wrong with this city, eventually he figured out the signs have a building code. All that junk food and gas stations are there but you don't see it so prominently. The building code entails of only three styles, and most people do adobe. Our town unfortunately is blight but why add to it. Especially in the Historical Center. The city has other water towers in other elevations and hills so why not put it in other locations. Apparently there is a revenue that comes from the use of the tower so why not put it on city land for revenue. On page two of the staff report there are the objections he read the provisions. He wonders if the old tower comes down does the new one have to put the microwaves on those straight lines. If an 80' tower falls, because it's like the Titanic and unsinkable, then its very clear it would be diminishing to health. The rest of the planet in Asia and Europe, you can talk about it because it's a significant concern. Beecause of our low budget and our Historical, E. says something about parks. And people do go up there and the thought of maybe making it more of an aesthetic addition to this historical district.

The people like the Healing Water Trails. Those are three things that are important to him.

John Brady, he and Jared Green own 411 W. Lincoln. Mr. Green was not able to be here today. They are 100% against the erection of any cell phone communication tower on private residential land. Especially on Water Tank Hill. It will provide a visual pollution to the area. It should be located outside the immediate downtown business district and other residential areas. In other words, the city located property on other sides of State Hwy 25. The FDH Engineering firm's application title assessor's parcel is flawed and misleading in observation of the 80' tower. He printed a form for them if they would like to observe it. The misleading information on this is indicating arrows going to the plot which is leading you to believe that's where the tower is going to be which is not correct. He also included a copy of the original plans that showed where the old tower is and supposedly where the new tower is going to be placed. He would like them to review this in proximity to their residence. They are the residence that is closest to the application for this tower. They had not been informed or notified that the current short tower was on the table for review and approval. Had they known that that short tower was going to take place they would have also opposed the application for its placement. Their retirement efforts have been to better the city, to better a historical piece of property and to live in Truth or Consequences for the last ten years doing so. This installation of an 80' tower equal to an 8 story building is an attack on all of our efforts and the reason they moved to Truth or Consequences. Before the Fastwave moved to the top of Water Tank Hill, the community view was mostly pristine and free of towers and antennas with the exception of those near the water tank itself. This is no longer the case. It appears as though an inch was given to the original Fastwave business and now they want a mile. This must be stopped, if it's allowed to proceed on a private R-3 residence, it may set a precedence on any city property to install an 80' tower on their R-3 zoned property. The effects of the original antenna have been many, not necessarily limited to the following: property values are affected by loss of value, visual pollution, loss of serene environment, health effects (and he knows he isn't supposed to mention it but the US Government still refuses to acknowledge the effects of Agent Orange in Vietnam, they are in denial). He thanked them for their time.

Mr. Basham asked if he or his partner have a cell phone. Mr. Brady responded they do not.

Kurt Manning, 402 Lincoln St. thinks he is closer than John Brady to this tower. He just wants to go on record that they are totally against it. The towers that are there now don't look good and this one's going to be terrible. And everybody from downtown can see it. He thanked them.

Sharon Manning, 402 Lincoln St. The City of T or C maintains the road to her house, they live directly under the tank. She wants to know if the water tank will be torn down if this goes through because its full of bacteria. There are foxes that live on the hill that keep the rattlesnakes under control and she personally had to bulldoze her road so she could

CITY COMMISSION MARCH 28, 2017 REGULAR MEETING MINUTES

get in her driveway. She moved her and bought her house to retire and this is devastating. She did not come to live in a construction site on an unstable road.

William West 913 Locust St. He will be speaking for the next person Julia Masso on their list because they are combining. He wonders if the cell phone tower company and maybe the only tool in their tool box is an 80' monopole or if they would be willing to build on the water tank with something that's not such an eyesore.

Mayor Green said the last person is Mr. Fenn and he believes he is not here. So that ends the proponents and opponents and now enters the public presentation. A gentleman from the audience said he signed up but it may not have been the right list. Mayor Green asked him to come forward.

Ken Merrick, asked everyone to keep their eyes on the prize because tourism matters. The 80' tower on top of a big hill is really just a 250' tower. That's something different than everybody has talked about. He thinks they should've included everyone on the upper part of Foch St. and the higher regions there that have a nice view of the mountains down here. It's not just the people that are 100' away, it's everyone who will have a view of the mountain and it will be obstructed. He feels the guests that come in and see the water tank, and remember that, no longer will. He asked the applicant if there is any other place that has a huge cell phone tower in a historic district. Because he can't think of one. Just so a few people can walk around town with their cell phones. There are enough walking around and we need them to not walk around with their cell phones and buy things in our stores and pay attention to what's going on, He can remember when you can drive from Albuquerque to Las Cruces and never see a tower or blinking light in the middle of the night. And you could also get in your car and people couldn't call you. They could site it on the outside of town and build a bigger tower and get the same results. He thinks this is bad for tourism and that's what gets us money here. Everyone will be impacted by this.

Mr. Basham asked Mr. Merrick what type of business he has. He responded it's a pottery business for over 40 years. Mr. Basham asked if his customers have cell phones. Mr. Merrick responded he doesn't know. Mr. Basham asked if he had seen a customer use a cell phone in his shop? Mr. Merrick said yes, occasionally they do. Mr. Basham asked if he had a cell phone? Mr. Merrick responded he does have a cell phone. Mr. Basham asked if he was aware of the Marcy tower in downtown Santa Fe? Mr. Merrick said he is not. Mr. Basham said it's in the historic district. Mr. Merrick asked how tall it is? Mr. Basham said it's about 65'. Mr. Merrick said that's not the same as an 80' tower on a big hill. Ms. Crowder added when she goes into town and she wants to look for a pottery business, she looks on her GPS and her GPS takes her there. She asked how many customers he thinks he will lose because they can't find him there. That can also be said for tourism, they can come into your town but if they can't find what they are looking for, they're not coming back. Or if they don't have cell service to reach out to their families, or in the middle of a storm. It could also be said that it would detract from tourism, instead of adding to the ability to reach out. Mr. Merrick added he was thinking of visually, because this is what people are going to see. It will become the predominant future in

the middle of T or C. He also agrees it's not a good idea to take a residential property and turn it into an industrial site. He feels it will be a problem for the city in the future.

Mayor Green announced before we close the public hearing are there any members of the public who would like to speak. Magie Powry and George Szigeti where both sworn in by the Clerk.

Magee Powry began by saying T or C and the County has lost population recently, they have not been a growing community. We know that in the last four years. We are primarily a community that attracts older people. She has 3g and doesn't think a cel tower Williamsburg boost our tourism or population. What will is recreation and as pristine as possible for people to come in and enjoy.

Mr. Szigeti feels the Commission is stuck between a rock and a hard place. The downtown area does have an issue with coverage and it needs to have good cell phone coverage when visitor's come to town. It's one of those things that is necessary. The downtown situation is we are on a low area masked on each side by hills. Anything to the north or south won't cover our downtown. If you want to have somewhere they can place a tower and to have access to utilities, one of the hills overlooking the north or the west are your prime locations. Another option would be to place the tower on higher ground on the other side of the river. But then you have to carry the utilities out to that site which adds to the cost. He can't say he's for or against it. He sees the need for it and knows the topography of the town, and he also understands about if we really want to look at a water tower up on the hill. There are pluses and minuses to this and he sympathizes with both sides. And would very much like to be able to use his cell phone when he calls home from downtown, which he cannot do now. Fortunately that's what the Commission gets paid the big bucks for, to make these decisions. He thanked them.

Commissioner Clark thanked Mr. Szigeti and commented to Ms. Crowder. He is so correct, there is a real issue with cell service in this community. And having a motel downtown, there are many people she has to send to the North side of town for reception. So it is a real difficult situation for them because there are a lot of tourists that depend on their cell phones. To follow up with some of the questions, she appreciates her offer to come back with some of the questions she's heard today. It is a real dilemma on how do we go into the future, knowing everyone is using cell phones with a couple of exceptions, and to protect the views we have learned to love in our community.

Mayor Green closed this portion of the public hearing.

G. ORDINANCES, RESOLUTION, & ZONING

1. Discussion/Action: Special Use Permit for Skyway Towers. Robbie Travis.

Building Inspector Travis stands for any questions they might have. He added they are not against cell phone towers, they just want to make sure they are placed in the right places and that we do get public comment on them on work with the public to do that.

CITY COMMISSION MARCH 28, 2017 REGULAR MEETING MINUTES

Commissioner Clark asked if he sent notices to everyone he was required to in the area. Building Inspector Travis responded he did, our Code requires it to everyone within 100 feet of the property.

Commissioner Hechler asked if he had any recommendation for an alternate site. Or is there anything else available. Building Inspector Travis said they haven't looked that hard to see where else they could go or what they can do. He added there really isn't because the downtown is in that coverage area and it's a tough place to find something. We thought the water tank because there was already a tower there and it might be able to be grandfathered in. But if the public doesn't want that, we might have to find something else that will work. But that's all he has.

Mayor Pro-Tem Whitehead mentioned there was a suggestion to put some kind of a tower on the water tank. She asked if anything like that has been looked into. Building Inspector Travis feels that's a good suggestion of what they can do. And also there are a lot of towns that make them turn them into something that looks like a tree. He thinks there are ways they can accomplish that or something Skyway could look at.

Mayor Green has the same concerns as some of the others. We are a tourism destination and that's a Catch 22. We want to make sure we have the asset for tourism. In relationship to other land the city owns that is not in a residential area. He asked if we took the Historic Downtown area off the table, could we work with them on another site. Building Inspector Travis asked if they could get out towards Poplar St., the issue is its still Residential Land and would still need a Special Use Permit. He said we are glad to work with them to find something suitable. Mayor Green asked about the area on Morgan St. Building Inspector Travis thinks that's too far, but off of Poplar St. there is an area that might look.

Commissioner Hechler moved to postpone this discussion to a further date to allow Mr. Travis to research further sites and talk with a representative to see if there is any potential for additional sites and bring it back to the agenda at a future date. Mayor Pro-Tem Whitehead seconded the motion. Mayor Green would like to point out as to the Attorney's point, "time is money". And if it's the will of the Commission that staff work diligently and as timely as possible, to see if there is another alternative with less of a negative impact on our historic Hot Springs District and that we bring it back to the Commission, post haste. Motion carried unanimously. Commissioner Clark abstained from the vote.

Commissioner Hechler also would like it to be known he has lost his connectivity on his computer.

H.5 Discussion/Action: Subrecipient Grant Allocations. Juan Fuentes, City Manager

City Manager Fuentes presented the applications are in the packet. We received a total of nine applications for a total of \$100,135. The amount of funds we have available is \$43,000. We have a lot of representatives from the organizations in attendance.

Commissioner Hechler said as he was going through these he noted a couple of things. He's hoping the \$43,000 isn't a hard figure or it will be extremely hard for the allocations. He certainly appreciates with the SJOA does for this community, as well as, Matthew 25. He hopes the Commission finds it within themselves to look at that a little more strongly and consider those as more of a benefit for this community.

Commissioner Clark is in total 100% agreement with him. She even asked our Manager if there was a possibility of raising the amount we can give. Every one of these organizations deserve the funding. She would like to believe that somehow we can manage to come up with what's needed to keep these organizations operating in our community.

Mayor Green has a sense that if we were to lose these organizations, we would lose our community. He also has a sense if the city was to take in and do what these organizations do, we would also lose our city, because we couldn't afford it. He had one comment of record and mentioned what he is a little disappointed that when we go through these applications, we are the only funder of record. We are the only community that is funding the Animal Action Team and other organizations with limited resources, he doesn't think it's fair to ask us to carry them 100%. And next year on the question on the application when they talk about other sources of funding, they should reach out to other communities for funding. Other communities have generating capacity also and just because we are the big dog, there are other dogs as well.

Mayor Green moved to approve the subrecipient awards to:

Companion Animal Action Team (CAAT) – \$1,500;

Domestic Abuse Intervention Center (DAIC) - \$2,500;

Matthew 25 Food Pantry – \$7,200;

Sierra Joint Office on Aging (SJOA) - \$40,435; and

The Bountiful Alliance – Bountiful Babies - \$1,500.

For a total of \$53,135.

Mayor Pro-Tem Whitehead seconded the motion.

Commissioner Frankel was concerned about MainStreet. Mayor Green responded that will be voted on later.

Commissioner Clark is in complete agreement with him in these. But she knows this will put some hardship on some departments with desperately needed funding and equipment requests also. We are tasking our city Manager to find an extra \$20,000 and it will have to come from someone else. It needs to be noticed that someone else has to give up for that. If that's absolutely not possible, she would like the City Manager let us know. Mayor Green responded that is fair enough, he wanted to point out to Commissioner Clark that if he's reading our presentation properly, that there is \$43,000 for the grant fund. So basically, if we do not support these, we will not support the population that needs these services. These assets and organizations are part of that overall plan to support this.

Mr. Rubin commented and clarified these are done by agreement. And what we do in the agreement is set forth services that are being provided in exchange for the funds. And that is important so we don't get in the situation where somebody sees this as a donation.

Mayor Green amended his motion to task the staff and City Attorney to create the documents to be presented to the subrecipient and would not obligate anyone until both signatures appear on those documents. Mayor Pro-Tem Whitehead seconded the motion. Motion carried unanimously.

Mayor Green went on the next portion is for the Lodgers Tax for Operations & Maintenance.

Mayor Green made his comments and let them know he thinks Geronimo Trail needs more money for postage. He would like to see a list of who a relocation packet is sent to so we can follow up and give them a call. He questions what other community Commissioners, Mayor's, or City Manager's call them to find out more and tell them our story.

Mayor Green suggested giving more to the Geronimo Trail Scenic Byway to increase the postage for mailing relocation packets. So

Friends of Elephant Butte State Park – \$1,000

Geronimo Museum - \$3,500

Geronimo Trail Scenic Byway - \$4,000

MainStreet Truth or Consequences - \$35,000

Mayor Green moved to approve the above amounts.

Commissioner Hechler seconded the motion.

Discussion was held.

Commissioner Clark also thinks we've seen an enormous benefit to those who stepped up as our point of location. They have probably generated far more than the \$5,000.

Mayor Green agrees with her and amended his motion to state:

Friends of Elephant Butte State Park – \$1,000

Geronimo Museum - \$3,500

Geronimo Trail Scenic Byway - \$5,000

MainStreet Truth or Consequences - \$35,000

Commissioner Hechler seconded the motion. Motion carried unanimously.

The Commission discussed what items will be discussed and we will break for lunch at 11:45 and reconvene at 1:15. City Attorney Rubin has to be in court this afternoon. Mayor Green understands that and appreciates that. City Manager Fuentes suggested when we break and come back we have two Executive Session items that City Attorney John Appel is here to speak to them about.

2. Discussion/Action: Ordinance No. 679 16/17 for publication related to the Public Utility Advisory Board. Juan Fuentes, City Manager

City Manager Fuentes added we are proposing the attached ordinance as proposed by the Public Utility Advisory Board to amend Chapter 4, Article 6 under the Impact Fees to put an Advisory Board in place. The change will make it into a seven member board which will consist of the five member Public Utility Advisory Board, plus two members. If approved we will proceed with the appointment of these two new members and we can begin to start reviewing the documents and the Impact Fees.

Mayor Green asked under Section 1.6 it should be changed to the Impact Fee Board. So we would change it to the Public Utility Advisory Board to the Impact Fee Board. Commissioner Clark thought they were supposed to be one in the same.

Mayor Green clarified it's more like a secondary board where when there are any items to do with the Impact Fee Board, they would meet to discuss them.

Commissioner Hechler asked for clarification if the PUAB was acting as the Impact Fee Board. City Manager Fuentes confirmed they were acting as the Impact Fee Board. We have consulted with our Legal Counsel and staff have a good grasp on what we have now so we will be able to proceed forward. Commissioner Hechler said so his thought is we are in compliance with the Impact Fee Board as he can see. City Manager Fuentes said we were in compliance, there just isn't a whole lot of activity.

Mayor Pro-Tem Whitehead moved to approve Ordinance No. 679 16/17 for publication related to the Public Utility Advisory Board. Mayor Green seconded the motion. Motion carried unanimously.

3. Discussion/Action: Ordinance No. 680 16/17 for publication amending Chapter 2, Article IV, Division 6 and 7 related to Boards, Commissions, and Committees. Juan Fuentes, City Manager

City Manager Fuentes said in the past we have talked about some boards which have not been filled. One of the board is the Industrial, Economic Development Board, this board has not existed for many years. In the past, the city has participated with other organizations for economic development efforts. We also collaborate with other state agencies to promote economic development. We are also participating with the Middle Rio Grande Association of which Sierra County is also a member. The city also participated in the formation of that as well. So there are other avenues to promote economic development and there is no real reason to have this board. The second board he's proposing to repeal is the Convention and Entertainment Board. This board has the jurisdiction over the Convention Center, the Recreation Center, and Civic/Activities Center for recommendations of programs to be carried out. Currently we have the Recreation Advisory Board and Gloria Franke on staff and we are looking at a Tourism/Event Coordinator, as well. He feels this is another board that has not existed for many years. And it's not needed because we don't have the resources to make things they may want to have, happen.

CITY COMMISSION MARCH 28, 2017 REGULAR MEETING MINUTES

Commissioner Frankel said in regards to the Convention Center Board we currently have taxes that are collected. So it seems to him, there would be a pool of money that would need some oversight, and he doesn't understand why this board was never filled in the first place.

City Manager Fuentes responded the reason for that is he will be presenting the Tourism/Event Coordinator position. That person will have direct oversight for those fees so there is no need to have a separate board for the oversight.

Commissioner Frankel asked if the funding collected for the Convention Center fees, will be used to pay for this new position. City Manager Fuentes confirm that is his recommendation and it will still need to be discussed and approved by the Commission.

Commissioner Clark said maybe it's not a bad idea until we determine how we are going to handle that convention center fee before we do this. She understands Commissioner Frankel's point if we don't hire someone for the oversight, maybe a committee would not be a bad idea. But we haven't really made that decision yet and maybe we should waiting until we resolve that issue before we do anything with this board.

Mayor Green is hearing we could move to vote on Section 1 and leave Section 2.

City Manager Fuentes said we are not in a rush to get this done, so maybe we could postpone this until his presentation on the new position.

Commissioner Frankel moved to postpone Ordinance No. 680 16/17 for publication amending Chapter 2, Article IV, Division 6 and 7 related to Boards, Commissions, and Committees. Commissioner Clark seconded the motion. Motion carried unanimously.

Commissioner Clark asked to have the Commission reconvene at 1:00 p.m. for the Executive Session.

Mayor Green recessed the meeting 11:45 a.m. and reconvened the meeting at 1:02 p.m.

J.1 and 2 EXECUTIVE SESSION

1. Threatened or Pending Litigation (Alley behind Theater; Hot Springs Land Development; & Wastewater Treatment Project Phase 2A) Pursuant to 10-15-1(H.7)
2. Acquisition, Disposition or Sale of Real Property (1310 Nickel & 613 Gold St.) Pursuant to 10-15-1(H.8)

Mayor Pro-Tem Whitehead moved to approve going into Executive Session at 1:03 p.m. to discuss Threatened or Pending Litigation (Alley behind Theater; Hot Springs Land Development; and Wastewater Treatment project Phase 2A) Pursuant to 10-15-1(H.7); Acquisition, Disposal, or Sale of Real Property (1310 Nickel & 613

Gold St.) pursuant to 10-15-1(H.8). Commissioner Frankel seconded the motion. Roll call vote was taken by the Clerk. Motion carried unanimously. Commissioner Clark was absent for the vote and executive session.

Returned to open session at 2:01 p.m.

Mayor Green certified that only matters pertaining to Threatened or Pending Litigation (Alley behind Theater; Hot Springs Land Development; and Wastewater Treatment project Phase 2A) Pursuant to 10-15-1(H.7); Acquisition, Disposal, or Sale of Real Property (1310 Nickel & 613 Gold St.) pursuant to 10-15-1(H.8) was discussed in Executive Session and no action was taken.

ACTION ON ITEMS DISCUSSED DURING EXECUTIVE SESSION, if any.

Mayor Pro-Tem Whitehead moved to authorize staff to reach out to Susan Lowe to continue to advertise 1310 Nickel for an additional 45 more days. Commissioner Frankel seconded the motion. Motion carried unanimously.

3. Discussion/Action: Resolution No. 07 16/17 Parks Fees. Renee Cantin, Clerk-Treasurer

Mayor Pro-Tem Whitehead suggested we take Item G.5 and move it until Linda DeMarino is available for comment. With no objection, Mayor Green said we will move her item until she get's here.

City Clerk Cantin gave an overview of the Resolution that started back in September and was taken to the Recreation Board in January, after that it was brought to the Commission again and the changes the Commission suggested have been included. Attached in your packet is the original redline version and one final version with a few more changes that we are proposing today for final approval. She met with Gloria, the Parks Supervisor, and Commissioner Hechler and they decided to go ahead and combine the changes with the old version and to remove the Rodeo Arena fees to do those separately. She added under Tennis Courts that we had gone back and forth for the fees for the use of them, and we completely removed the fees for the use of the courts but included a fee for the use of electricity and the \$25 key replacement fee. With the new key replacement, we will need to change the locks to a special key that cannot be duplicated. We felt it might be a good idea to add certain hours for the evening hours. The other thing we are proposing is \$75 per team per season which includes electric. Additionally, we are proposing \$40 per team per season for the Youth Leagues and that will include electric fees.

Commissioner Hechler gave a background that what they thought were in the past fees were not being charged, but we didn't want to charge too much and wanted to set the bar low at \$75 per team per season and after the first year if we need to make an adjustment to it if we need to. If you look at the fees, for a 10 person adult team it would be \$7.50 per person which is the price of a fast food meal which isn't too much per person. Doing

CITY COMMISSION MARCH 28, 2017 REGULAR MEETING MINUTES

more research on the Rodeo aspect of it, we felt that could be too complicated to be on the same form so we will look into it at a later date.

Commissioner Frankel mentioned the section on the Non-Profit organizations, we talked about organizations which are not consecutive but like the Farmer's Market has events every Saturday. Commissioner Hechler said on the actual dates of the application, there is a section where they can put the actual dates of their events and he asked if we can take care of that on the application or do we need to change the wording. Clerk-Treasurer Cantin added it would not be that hard to add the wording that Non-Consecutive day events could be considered.

Commissioner Clark asked about an exception that we wanted to include to allow the City Manager to make exceptions. Clerk-Treasurer Cantin noted at the top of the second page, has a statement that reads, "the City Manager or his/her designee may impose other use regulations and other exemptions as he/she may deem necessary as long as those do not subvert the intent of this policy." Commissioner Clark clarified we could just put that information in there to have freedom and leeway to make the decision. Clerk-Treasurer Cantin added currently when we have an unusual situation, we go to the City Manager anyway. So that's why we added the City Manager or his/her designee to clarify that. Commissioner Clark included the mention of a time frame and that could lead to disappointed people in the summer and asked if we can leave that time frame off. Clerk-Treasurer Cantin agreed we can do that.

Mayor Green thanked staff and Commissioner Hechler. This is what he loves about this Commission working with staff to bring a product we seem to be comfortable with.

Mayor Pro-Tem Whitehead moved to approve Resolution No. 07 16/17 Parks Fees as presented with the amendments noted. Commissioner Clark seconded the motion. Roll call vote was taken by the Clerk. Motion carried unanimously.

The Commission went to #G.6 since Mrs. DeMarino isn't here yet.

G.6 Discussion/Action: Resolution No. 30 16/17 Budget Adjustment. Melissa Torres, Finance Director

Finance Director Torres presented the increase and decrease for the local reserves requirement. DFA is really structuring and making different reporting than municipalities are required to do.

Mayor Pro-Tem Whitehead moved to approve Resolution No. 30 16/17 Budget Adjustment. Commissioner Frankel seconded the motion. Roll call vote was taken by the Clerk. Motion carried unanimously.

H. NEW BUSINESS

CITY COMMISSION MARCH 28, 2017 REGULAR MEETING MINUTES

1. Discussion/Action: Request related to Utility Bill penalties. Sid Bryan, Requestor

Commissioner Frankel recused himself from the meeting for this item.

Mr. Sid Bryan requested the removal of the penalty fee of \$128 for his bill. He will pay those this week if he can get the penalty fee of \$128 removed.

Commissioner Clark wanted to make sure that she understands this correctly, when we went to the new accounting system there were numerous accounts which were put into payment agreements.

Mr. Bryan said the balance he owed in July was about \$14,000. He got it down to \$7,000, then to \$4,500 as of this week which was well ahead of the schedule he was given. He went over the page in the packet which was about the agreement. When he called her she said she had written it up so it should be fine. It was a bookkeeping nightmare so we agreed I would pay \$1,000 a month until I caught up. He paid off one account and then another, and another. It was expressed to him that there were no exceptions that no one would get a credit. But he feels he paid way ahead of his schedule.

Commissioner Clark added both the Finance Director and Utility Director were both aware this had been an oral agreement. Mr. Bryan agreed that is correct. Commissioner Clark continued he has followed the agreement he made with these people in good faith, is that correct. Mr. Bryan agreed.

Commissioner Hechler said the only concern he really has is the \$128 isn't going to break us. The other issue is what is the criteria that we would waive someone's fees? In his mind, it would be a catastrophic event or an event that occurs where you are not able to pay those fees. He asked City Manager Fuentes to explain that a little bit. City Manager Fuentes said we will look at the customer's account and depending on their history we make a recommendation to staff on how to proceed. In the past there were some dealings that were inconsistent. And now we are really working on being more consistent and treating all of the customer's the same. We judge them on a case by case.

Mr. Bryan would also like to say that in Lori's letter she mentioned he was to keep current on his regular monthly bill and he understood there would be no penalty fees and late fees if they had an agreement. It was right in the middle of the winter where the bills had doubled and the payments doubled. One of the bills didn't come until it was very late and when you own a hotel or properties that can be a huge burden. He had worked with Lori and Korie to make sure the bills were paid off. He thought he would be contacted if there was going to be a change.

Commissioner Hechler asked what staff's recommendations on this. He would like to hear the whole story on both sides.

Finance Director Torres went over the summary of what happened. The arrangement that was made was not in writing. They did look, review, and research they did not miss anything. Their research did show the email in the packet from Ms. Montgomery showing that she may have made an agreement. But it does not indicate waiving any penalties or late fees. They do not in any agreement waive any penalties or late fees. Another thing they have been seeing is the city recognizes their issues with the new system. But one of the things they addressed is the red tags and late fees. They gave customers' months and months to pay and many were behind. They empathize with Mr. Bryan and his situation, however, if we start waiving penalties because we're in a minimum situation we will start setting the culture to waive the fees. We've got to set standards and stick to them and model that.

Commissioner Clark appreciates what she's saying. Her concern as a business person is we did have the problem with the penalty fees and we voted to put that accounting system into place. During a period of time when they absolved the interest or penalties and if she had a deal in place and was following through with that deal. She would operate on the agreement that was made and she would feel if penalties were put in place she would feel it was a violation of his rights. When he made the deal, she believes it was done without the penalties and she feels the time period existed.

Mayor Pro-Tem Whitehead pointed out Ms. Montgomery's email. She put it out there to communicate that they were working on it so he wouldn't get "dinged" or penalized. She feels she agreed on this and we need to do right by Mr. Bryan.

Mayor Green asked if we have a lot of customers who have made arrangements. Everyone should be treated equally and unfortunately, you have inherited someone else's solution to work out a payment program. He agrees that a deal is a deal, is a deal. But he doesn't want to open up a can of worms to our customers for this issue. He asked if this a stand-alone instance.

Finance Director Torres thinks that's a very good inquiry. We could have more come forward who may have had a verbal agreement. Because there is nothing in writing that showed the actual agreement. There was nothing noted on the account either. It will open it up to other customer's to say there was an agreement. They have people coming in on a weekly basis saying this is how it was done in the past. That's not good business on our part to say there is no documentation.

Commissioner Clark responded and she totally agrees with her but where she would go with this is if someone came to her, she would ask for some proof. If they can show they have gone along with the payment plan and have been making them regularly. She feels Mr. Bryan is on a stand-alone as far as she is concerned. The difference is Mr. Bryan showed that he had been making those payments and has shown he was following an agreement.

Mr. Bryan wanted to note that Lori said she put notes in each of the accounts. But he notified her there were no notes in the account. He also added if you look at his last bill it says \$0 for penalties and interest. He will just pay it off this week and get out from it.

Commissioner Clark moved to provided that Mr. Bryan comes in to pay the balance due this week of the \$4500 and get rid of the \$128. Mayor Pro-Tem Whitehead seconded the motion. Commissioner Hechler mentioned as a side note, what we've learned is we won't make any agreements unless it's formal. If anything has been agreed to, we should adhere to them. We will not honor an agreement unless it's in writing. Mayor Green wanted to make sure we are not in and Anti-donation if we waive this. They agreed we were not in violation. **Motion carried unanimously.**

Item No. G.5 Discussion/Action: Resolution No. 28 16/17 supporting a Public-Private Economic Development MainStreet project. Linda DeMarino, MainStreet T or C, Executive Director

Mrs. DeMarino said every year they get this agreement from the State Economic Development Department. It's an agreement between the City, New Mexico Economic Development Department, and MainStreet Truth or Consequences. We are looking at approving the agreement for the next two years. She gave an overview of the accomplishments they have made since MainStreet Truth or Consequences was put together in 2009. They have gotten almost \$300,000 in grants and thousands of volunteer hours. They were able to help get the Healing Waters Plaza, business support services, Hot Springs Festival, assisted a new business in getting the LEDA funding, and many other things. Working on two façade improvement projects right now, and other annual events that have been put into place.

Mayor Pro-Tem Whitehead moved to approve Resolution No. 28 16/17 supporting a Public-Private Economic Development MainStreet project. Commissioner Clark seconded the motion. Roll call vote was taken by the Clerk. Motion carried 4-0-1. Commissioner Frankel abstained because he's a MainStreet Board Member.

2. Discussion/Action: Approve the Job Description for the Animal Shelter Manager new position. Lee Alirez, Police Chief

Police Chief Alirez said before you is a job description as a result of a lot of research for the new Animal Shelter Manager position. As we get closer to opening the new shelter, we will need this position in place to oversee some of the policies and procedures and getting the new shelter in place.

Commissioner Clark asked whether this position will be reporting directly to the Chief. Police Chief Alirez responded he will oversee the Animal Shelter but there may be someone they report to as far as the day to day issues. There will be some areas he will be up front on, but he may have a designee to take care of the supervision.

Commissioner Clark was asking because the flow chart may change after we get this person in a comfortable position. Police Chief Alirez agreed and he has looked at our culture and the industry standard for this position. He tailor made this job description to make it interested. He's already been contacted by potential candidates. Commissioner Clark asked what the budget is for this position. Police Chief Alirez said the pay grade is \$17-\$20/hour which is industry standard for this area. \$30,000 is budgeted. Its comprehensive and competitive.

Mayor Green said you said this is a perfect time because we are in transition. He asked if that's because of the new Safety Complex or other problems we are not aware of. Police Chief Alirez said it's actually a stepping stone whether there are people who want to move to our community or want to move up in our department. The people we have here love being here and have taken ownership in being here. Our experience level is growing quickly. It's a perfect time to work on the transition of moving our Officers up.

Commissioner Clark moved to approve the job description for the Animal Shelter Manager new position. Mayor Pro-Tem Whitehead seconded the motion. Motion carried unanimously.

3. Discussion/Action: Memorandum of Understanding with NMSU for Special Events. Lee Alirez, Police Chief

Police Chief Alirez was approached by Chief Lopez from NMSU while he was in Santa Fe. They have 21 sworn officers and by signing this MOU, they have resources that we do not have. This opens the door for us in many way. By engaging this MOU, it opens us up to resources we do not have. For example, they have a Mobile Command Center which can handle a natural disaster for an extended period of time. They also have inner operability communications. So if we have something happen here, we have the local police, state police, and we may have to draw resources from other departments depending on what the issue is. We would not have the operability to plug in all frequencies to have communication with one another. We have three agencies here and nobody is on the same frequency and we don't have the ability to get them on the same frequency. The MOU is for a simple event in case we need four or five officers, then they will send them down and we will reciprocate that. It will open the door for more training. It gives an additional resource. We've also been given a generator for the new Animal Shelter. Should they have a special event and a need for a few officers, it gives people the opportunity for growth and helps with retention by creating overtime opportunities. They will reimburse us for the overtime and use of vehicles and equipment.

Commissioner Clark thought we have had something like this before haven't we? Mayor Green said to the best of his knowledge, we have not. Mayor Green just to clarify, they will pay the overtime for the positions. Police Chief Alirez said the only ones applicable are those who are off duty. It would not affect those who are on duty.

CITY COMMISSION MARCH 28, 2017 REGULAR MEETING MINUTES

Commissioner Clark asked who covers the insurance for our officers. Police Chief Alirez responded it's covered under our policy, that's why there's an Admin. Fee attached to that.

Commissioner Hechler said this is a two way street. He asked in what capacity that would be? Police Chief Alirez it would be done by request. If we have a big parade that would be a mutual aid request and they also have a Reserve Program he would like to put into place. He said it's a two way street that will really benefit us.

Commissioner Frankel moved to approve the MOU with NMSU for Special Events, NMSA Section 29-8-8. Commissioner Hechler seconded the motion. Motion carried unanimously.

4. Discussion/Action: Authorization to enter into a Small Services Agreement with Hot Springs Cemetery. Juan Fuentes, City Manager

City Manager Fuentes notified them the reason for bringing this item up was because in the past the Hot Springs Cemetery Association has taken care of the Hot Springs Cemetery. Last year they didn't make the deadline for the applications on the subrecipient grant funds. After looking at it, we have other similar agreements for others to take care of our parks and facilities. It makes sense to have that agreement with the Hot Springs Cemetery to move forward in future years. He wants to make sure there was a break in the services so we will not have to bring this to them in the future.

Commissioner Hechler asked what he considered the value of this contract. City Manager Fuentes said we have provided about \$4,000 and they buy all of the supplies to maintain it and water it. The only duty we have is to open the gates and assist with the burials. We may have to prorate that for the end of this fiscal year but it would be the full rate for next year.

Mayor Pro-Tem Whitehead asked if the signs at both cemeteries say they will be open at 8:00 a.m. till Sunset. They weren't open this weekend. She knows they are being closed at 5:00 p.m. Police Chief Alirez added that as a duty along with closing the bathrooms at the Parks. If it's not open on a weekend, please call him. They are working on the schedule to make sure it's getting accomplished. He will reemphasize that to his staff.

Mayor Pro-Tem Whitehead thanked the chief and would like them to communicate that. She knows a few months ago someone stopped at the rectory to see why the cemetery was closed. She called Dispatch and they didn't know about it. Police Chief Alirez will be sure dispatch is notified. Mayor Pro-Tem Whitehead asked that it please be opened according to the sign.

Commissioner Frankel suggested signage at the cemetery giving a contact number for dispatch so someone can call if they want to get in.

Mayor Green added \$4,000 to an outside entity for maintenance is a great idea. He appreciates staff taking this out of the subrecipient grants.

Mayor Green moved to approve the Small Services Agreement with Hot Springs Cemetery Board. Commissioner Frankel seconded the motion. Motion carried unanimously.

I. REPORTS

a. City Manager

City Manager Fuentes said for the sake of time, some of his report items will be covered under closed session.

b. City Commission

Commissioner Frankel asked about the Tesla Charging Station. City Manager Fuentes responded they had a meeting and looking into the permitting we will need to be involved. The stations will be behind the Holiday Inn Express. Mayor Green said it's not a done deal yet, but at the meeting we found out it is strictly for Tesla vehicles, you cannot use a Volt for these charging stations. He would like to identify logical locations for other charging stations. This could be a revenue opportunity for businesses. He will report on it when he has more information.

Mayor Green called attention to the Sentinel Newspaper about the Miss Fiesta Pageant. He congratulated Rotary who stepped in to partner with MainStreet to put this event together. He encouraged everyone to get involved and contact them if they want to help. City Manager Fuentes specifically wanted to thank Frances Luna for stepping up to make it happen.

J. EXECUTIVE SESSION

1. Threatened or Pending Litigation (Alley behind Theater; Hot Springs Land Development; & Wastewater Treatment Project Phase 2A) Pursuant to 10-15-1(H.7)
2. Acquisition, Disposition or Sale of Real Property (1310 Nickel & 613 Gold St.) Pursuant to 10-15-1(H.8)
3. Limited Personnel Matters (City Manager Evaluation). Pursuant to 10-15-1(H.2)

Mayor Pro-Tem Whitehead moved to approve going into Executive Session at 3:28 p.m. to discuss Limited Personnel Matters (City Manager Evaluation) pursuant to 10-15-1 (H.2). Commissioner Frankel seconded the motion. Roll call vote was taken by the Clerk. Motion carried unanimously.

Mayor Green stated that the Commission was now in Open Session at 5:12 p.m.

CITY COMMISSION MARCH 28, 2017 REGULAR MEETING MINUTES

Mayor Pro-Tem Whitehead certified that only matters pertaining to Limited Personnel Matters (City Manager Evaluation) pursuant to 10-15-1 (H.2) was discussed in Executive Session and no action was taken.

K. ACTION ON ITEMS DISCUSSED DURING EXECUTIVE SESSION, if any.

None.

L. ADJOURNMENT

Meeting was adjourned at 5:12 p.m.

Passed and Approved this 9th day of May, 2017.


Steven Green, Mayor


ATTEST:


Renee L. Cantin, CMC, City Clerk