

CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, JUNE 14, 2017

A. CALL TO ORDER

The meeting was called to order by Mayor Steve Green at 9:00 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
Hon. Kathy Clark, Commissioner
Hon. Rolf Hechler, Commissioner
Hon. Joshua Frankel, Commissioner

Also Present: Juan Fuentes, City Manager
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 and asked us to keep our veterans in our thoughts and prayers.

3. PLEDGE OF ALLEGIANCE

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

4. APPROVAL OF AGENDA

Mayor Green asked to have the presentation under E.1 to be next on the agenda and then public comments, response to public comments, then New Business Item No. I.1 moved up after response to public comments, before the Consent Calendar.

Mayor Pro-Tem Whitehead moved to approve the agenda by moving the presentation under E.1 to be next on the agenda and then public comments, response to public comments, then New Business Item No. I.1 moved up after

response to public comments. Commissioner Frankel seconded the motion. Motion carried unanimously.

E. PRESENTATIONS

1. Presentation of the Van Clothier Foch St. Water Retention Pilot Project.
Joshua Frankel, Commissioner

Commissioner Frankel welcomed back and introduced Mr. Van Clothier who will be giving the presentation.

Mr. Van Clothier presented some ideas he had for the drainage in the downtown area. It was in 2013 that Truth or Consequences hired him to do an assessment of the problem which he believes is still on the website. The typical engineering solution is to route that excess water to the nearest stream by concentrating on the streets and routing it to the Rio Grande. That is not necessarily good for the river because of poop and motor oil, and also in the summer the asphalt is hot. So in the summer you would have hot polluted water going into the river. He explained the City Manager from Silver City mentioned at one point when they have a pretty good monsoon, it costs \$10,000 to clean the sediment off the streets and that doesn't include private property damage. It could cost a lot more for a larger storm. These ideas are based on Rainwater Harvesting for drylands by Brad Lancaster from Tucson. Rainwater Harvest turns a problem into a solution. It turns flooding and traffic safety problems into valuable water in the desert. The simple description is the way the build their cities is that they are convex. The landscaping is higher than the street. And if we change that and make it concaved, we can put this water on our landscaping. Instead of accelerating it and sending it to places downtown. In Silver City, he has built 131 small projects so far, 80 of which have been funding by the New Mexico Environment Department. He showed some of the different projects. The first which is super basic is to cut the concrete curb, let water drain the streets into medians or parkways which creates green spaces. Streets will have less maintenance costs because water going down the street is what destroys asphalt and concrete. Top soil can bio-remediate the solution so it's not a problem for the plants. Mayor Mulcahy and he went around and found a bunch of places where water and sediment from private property to the public right-of-way. Water comes down Foch St and fills downtown. He showed an old retention structure that could be changed to have more capacity. Water currently comes and floods downtown because the streets downtown are shaped like water basins. He added it's easy to fix. All you do is reshape the intersections so the water crosses downtown and it can go all the way to the river or it can be collected in parkways to create green spaces. He showed a topo map showing how some of the downtown streets are designed like ponds. Mr. Van Clothier went on to present some of the projects he has done in Silver City. He teaches this and the New Mexico Floodplain Managers can receive credits for their certification also. He also showed a video of the project he did at the Guadalupe Montessori School in Silver City.

Commissioner Clark commented that years ago a presentation they heard encouraged a lady to write a grant which brought in about ten Water Harvesting Tanks. She had the

opportunity to go to Mr. Lancaster's house to see some of the things he has done which is really quite remarkable. At that time she had called the Office of the State Engineer about cutting into the curb and gutter so we could use that water. The answer she got was as soon as water gets onto a public right-of-way, then it becomes the property of the state. She understand that for us to cut holes into the curbs would be taking water that is supposed to be flowing into the Rio Grande and diverting it onto public property. She asked if he has had that issue and have had to deal with the OSE when he was diverting the water off of the streets onto private property or onto municipal properties.

Mr. Van Clothier responded he was doing stream restoration in a wildland setting for many years before he met Brad and realized that water harvesting is just a fractal or microcosm of what he has been doing on a landscape scale. With regards to the Office of the State Engineer, Silver City is in the Mimbres Basin which is closed and adjudicated. There are no downstream water users clamoring for that water. People had tried to get him in trouble but he did his homework and there were no problems. He received \$138,000 from the New Mexico Environment Department to do some of the work you saw, and they had to check to make sure it was ok for him to do what he was doing. You are in the Rio Grande Drainage Basin. You have plenty of places on Truth or Consequences Right-of-way and its okay to take water that is increased runoff due to increases infrastructure and allow to soak into the ground on city property. The prohibition is it cannot be put to beneficial use and has to soak into the ground within 72 hours, he believes. He has his explanation of the policy on his website which links to the OSE policy. They actually encourage water harvesting, but we can't divert it into someone's private property or garden. But we certainly can retain it on the right of way and cause it to soak into the ground and going downtown. The basins on Foch St. have been there a long time and there is no problem with that, we can increase the capacity of those and build more that will drastically reduce the amount of water that goes to downtown. There are plenty of places that get to the river where you could utilize that to grow mesquite trees that one day may even touch.

Commissioner Clark asked about the Foch St. retention, if we had the holes down lower it would probably be easier to put more, but she wonders if the integrity of the walls are strong enough to hold that extra amount of water. The other question would be going across Main & Broadway is a State Highway, so it's not like the city can just go in there and say we want to make a culvert or something. We have to have a deal with the State Highway Department when we want to deal with those things.

Mr. Van Clothier responded to her first question, the retention concrete walls are pretty stout and we are only talking about 18 inches of temporary standing water. He would much rather have it there than downtown where it's causing damage to everybody's building. It's a lot easier to repair a wall than the foundation of a building. Trent Botkin from NMDOT is working with him on two other projects, there are some changes where the DOT might be more amenable to move forward with this project.

Commissioner Hechler thanked him for his presentation. He asked if we have any increased issues with mosquitos in the ponding and about the increased maintenance with the sediment ponds.

Mr. Van Clothier responded with the mosquito issue, it takes two or three days for mosquito larvae to hatch out and water basins are designed to have a permeable bottom so the basins are soaking very deep into the subsoil. It's going to the river, just not all at once with unfiltered solution. And with the sediment, there are plenty of places where we know where it's coming from so we can keep it from the public right-of-way. We can scrap it out the next morning, or you may rather do it once or twice a year at your convenience when you don't have any other pressing matter. The amount of sediment is quite small. The basins on Foch St. have probably never been maintained.

Mayor Green asked about the funding from NMED. Is it still available? And was a match or in-kind service needed from Silver City. Mr. Van Clothier responded Stream Dynamics, Inc applied for an outright grant to do that work. The Town of Silver City has cooperated by allowing the project to take place on their right-of-way. The NMED is still funding restoration projects. He thought about this town with regards to the river and the Fish & Wildlife Services might be interested in funding for this town because of the flow into the river which would solve two problem.

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.

Carole Wheeler, Corbin St. addressed the Commission related to:

1) Dog Park. She has been working behind the scenes. We have a local person with experience in fencing to help Mr. Hendry's contract to continue with the fencing. They are working on getting the weeds taken care of. The park is being watered regularly, so the seed planted last year is taking over the weeds which they are pulling as we go. She is reapplying a grant for maintenance and dropped off the rules for the grant which will require city input. Mayor Green asked who the applicant on the grant. Ms. Wheeler said it will be PALS/MainStreet Truth or Consequences.

Sophia Peron addressed the Commission related to:

1) Lives near the Dog Park, and the Ralph Edwards Dog Park, and the fishing Dog Park, and the peace Dog Park and the street Dog Park. T or C has gone to the Dogs, the park is above the ponds and when it rains the remnants of the dogs poop and whoever else poops there go into the trout pond where people fish and eat those trout. Then it will go into the river. Mr. Van Clothier's beautiful study was done years ago when we had the hideous flood and people were walking up to their ankles on Broadway. And the city received the report a few months later and did nothing about it except throw it aside and say we are busy, we have the Spaceport, we have Nascar, we have the solar farm, and so many things. Dog Park, forget the children and no grass at

the park. There are trails of truck tires, pop tops, cigarette butts, remnants of poops, people are camping there, and that's what goes on in town. So you can clean and clean that park, it's not useable for human people. The tables are falling apart, everything is falling apart. But she does think Mr. Clothier has done a wonderful job, no matter how hard Mrs. Clark wants to stop it. She thinks it's a fabulous thing, and she sent it around to all of the Commissioners years ago and said please do something. Because the next time they evacuate Riverside, it will be a bad day. We could get it this year, so try to think forward. Monsoon season is coming in about 8 weeks. Thank you.

Klaus Whittern addressed the Commission related to:

1) He thanked Mr. Clothier for the presentation, it was very interesting and he was here when he did it the first time and probably had the same comments at that time. He thinks it is important and would help to assess the percentage of water that can be diverted. We cannot expect that all of the water that will accumulate in the downtown area will be able to be harvested under most optimum conditions. We need to do an integrated study before we do water pipe replacement, because ultimately we may have a need for putting underground water pipes. We should have the study done whether we do or whether we don't. That could be very expensive and inconvenient. Besides that he certainly supports using any resource we can use in the interim and he thinks it's important to attempt separate the oil and pollutant in the area. That always occurs after the first and second storm.

Ron Dankert, 910 Juniper addressed the Commission related to:

1) Jeff Lawton wrote books on how to slow down water and to create green spaces. If you look down Lincoln, it's all mud. As the water runs down we have arroyos taking the mud with them. He took debris and trees to slow down the flow and creates soil. It might be a good idea to follow that and look at the arroyos and slow down the soil. He thinks there is about 15 feet taken away from the yard on Lincoln. Years ago we created the 500 year flood irrigation. He owns property off of Post and right behind Post there were concrete posts put in and it was supposed to eliminate the flooding downtown. *He stopped to ask Mrs. Peron if she was ok, because she made a comment that was unintelligible.* He then continued it was supposed to eliminate the downtown from being in a floodplain and it may have not gotten finished or something. He called up to Santa Fe about money that should've been put into it. They said it should've been done and should have removed the flooding from downtown. If they know anything more about that, he'd like to hear it.

Ron Fenn, 316 N. Foch addressed the Commission related to:

1) He comes to speak to them about their resolution proposal for today. Resolution 39 16/17 for \$3.5 million bond issue to move our Police Station where it has been for ten years or less to up on the hill where there is Circle K and donuts, and coffee. Under the Constitution, the public that pays for this is due some level of benefit. And he wonders what benefit Truth or Consequences will get from this \$3.5 million, 1/8th% of GRT for thirty years. What can we expect? Please tell him, because personally he can't see it. Are we going to have reduced crime rates because of moving into that building? Will we solve Domestic Abuse issues, crimes against

children, motor vehicle accidents? Will this all be reduced because of moving into a new building at the cost of \$3.5 million? That's expensive servant's quarters and the masters cannot afford it. Please, are we going to reduce thefts, shop lifting, or how about Code Enforcement and require that the city obeys its own ordinances? The question again is, what do the people get for \$3.5 million? Wouldn't that be better spent on education, and education of the Citizens? Education on abusing drugs whether recreational or prescription. He doesn't know if they think about this but he thinks about it every night. As far as he knows, there's no reason to move on someone else's expenditures. He also asks that this is done by ordinance and not by resolution, so they can have a referendum.

Linda DeMarino, MainStreet Truth or Consequences addressed the Commission related to:

- 1) She is happy we are talking about Water Harvesting. MainStreet applied for a \$179,000 Grant for Rain Water harvesting in the downtown area. She thinks this would make a huge impact for downtown. From here we are invited to do a full application and we also have a site visit from two representatives from Art Place America. For those not familiar with Art Place America, it's a ten year collaboration among sixteen partner foundations, eight federal agencies, six financial institutions that work to position Arts & Culture as a core sector of Comprehensive Community Planning and Development, in order to help strengthen social, physical, and economic fabrics of the community. This would basically utilize our Arts & Cultural people in our community to help solve this problem we have been having. Artists look at things in a different way and we can access their knowledge for this. We are exciting about this and looking forward to the project. And they are happy to hear about the progress on the presentation that was made as well.

Mr. Brady, Corner of Foch and Lincoln addressed the Commission related to:

- 1) He would like to address the water situation and the pond that is at that same corner. He agrees the exit hole on that retention pond is terribly low and not allowing the right percolation. There are other problems in that area. When they first moved here water was undermining the red rock wall. He has photographs during the storms showing it coming out of that wall into the actual pond wall. This needs to be addressed in a more permanent way. The City workers have come out and addressed some concerns he had. There are some things that potentially need to be looked at. That wall has been surveyed and is on city property. Underneath the dirt is the original street of Foch. The blacktop is still there and there were actually sidewalks were there before it was originally realigned. And he feels it needs to be looked into.

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

- 1) He would also like to continue the discussion on the Water Harvesting issue. A significant runoff is water that falls on paved streets and is collected and runs down that way. However, this is also a significant portion that runs off onto private properties. We need to address both of those issues. A couple of years ago, Elephant Butte passed laws concerning drainage from properties, especially those

which were higher up and creating significant erosion and sediment on other properties and streets. Anyone who has lived here for any amount of time, can probably point out several spots where after any heavy rain, water is washing off onto the streets. While it is the cities responsibility for the streets, it's also the responsibility of the property owners. In many communities, they encourage the placement of small gardens and catchments basins to collect the water and help with the problem. He's in the process of doing some regrading in his property to either divert the water into his back yard or putting a small water garden to capture that on his property. He thinks it's important to partner with the property owners to look at their own properties which will cut down on drainage issues and the amount of sediment that also has to be cleaned up.

Julie Durham, 2785 Carter St. addressed the Commission related to:

- 1) She wanted to point out to the Commission when Bountiful Alliance did a wonderful job when they bought tanks. She was a recipient of one of those tanks which has caused a lot less flooding on her street. She thanked them for working with the Bountiful Alliance for one of the tanks which is operating great.

Louie Gonzales, 400 West 2nd Avenue addressed the Commission related to:

- 1) He wanted to express his concerns about the Special Use Permit. Mayor Green let him know that would be brought up during the Public Hearing.

D. RESPONSE TO PUBLIC COMMENTS

Mayor Green responded to Miss Peron. He doesn't see the connection where a City Commissioner asks a question for point of order, clarification, how anyone can make a jump that they are against a specific project. Second, he responded to Mr. Szigeti to see if we could go to the county to see if we can get a tax credit for home owners who may be doing that. It would add value to their property and he will talk to City Manager Fuentes to see who we can approach to get that ball moving.

City Manager Fuentes responded to Mr. Fenn about his comments and let him know he was incorrect in using the \$3.5 million figure. The Resolution before the Commission is for \$2.5 million. He feels if he would stick around and hear the presentation before the Commission, it will address some of the issues and bring some clarification of the benefits of the project. *Mr. Fenn commented and Mayor Green responded there is no cross conversation to Mr. Fenn. Mr. Fenn walked to the podium stating "Don't forget the interest" and then walked out of the meeting.*

Mayor Green apologized for that interruption.

Commissioner Hechler thought Mr. Fenn had some very valid points. However, he has been sole searching about this too and having to see us go into so much debt over this facility. He was able to partially justify it this way. People are always recruiting Police Officers, and nowadays recruitment is very difficult and one way to do that is to increase facilities and increase morale. And you do that by increasing the facilities where they

can do their work. You also have the ability to retain officers when you have a good workplace. He feels that if the Commission supports this, we should expect our crime rate to go down and we should expect our community to be safer. We are going to be able to hire better recruits and retain those people, and we won't always be searching for other officers. With that in mind he was at least partially able to justify those comments.

I.1 Discussion/Action: Foch St. Water Retention Pilot Project. Joshua Frankel, Commissioner

Commissioner Frankel said the proposal is to start the initial pilot project, addressing some of the flooding downtown by utilizing the existing structures on Foch St. he explained what that might entail including cutting some curbs for the flow. The budget comes around at about \$8,000 and as soon as they can get the go ahead on it, they can start on the project.

Commissioner Clark asked how much it costs us to clean up the streets each time it rains and whether it would be similar to the amount of time Silver City takes. City Manager Fuentes said we have not estimated the cost but we do spend quite a bit of time on the clean-up and resources and equipment removing rocks on our streets and the state highway. Commissioner Clark asked if he feels we would make the cost of the project in not having to clean it up. City Manager Fuentes thinks it's a worthy project

Commissioner Clark moved to approve that we wholeheartedly move forward with the \$8,000 for this project and for a small services contract. Mayor Pro-Tem Whitehead seconded the motion.

Commissioner Hechler asked if the \$8,000 includes all cost of city resources and labor or is this volunteer work. Commissioner Frankel said it's the complete job including materials as well.

Mr. Van Clothier wanted to be clear he would not be able to work on this for this monsoon season because he has projects stacked to the horizon, but he will get it scheduled before next season.

City Attorney Rubin asked if we would be doing this by an agreement before we go ahead. City Manager Fuentes responded this would be with a small purchases agreement and we have a little time to work the logistics on that. He feels it's understood to have a small purchases agreement. City Attorney Rubin said if we are comfortable with that he's fine.

Mayor Green thanked Commissioner Frankel for taking this and moving it forward. And if this is approved, he would feel comfortable with one of the Commissioners to work with Mr. Van Clothier to look for money for a small grant through NMED and to get the process going to look for additional monies to expand it. Also locally, Mark Hedges from the Science Club to get involved. The Bountiful Alliance could use monies specifically for the youth to help with this project.

Motion carried unanimously.

F. CONSENT CALENDAR

1. City Commission Regular Minutes, May 9, 2017
2. City Commission Regular Minutes, May 24, 2017
3. Golf Advisory Board Minutes, February 1, 2017
4. Accounts Payable, May 2017
5. Approval of the Audit Contract with Patillo, Brown & Hill, LLP
6. Authorization to open separate interest bearing accounts for all Impact Fees collected by the City of Truth or Consequences

Mayor Pro-Tem Whitehead moved to approve the Consent Calendar. Commissioner Frankel seconded the motion. Motion carried unanimously.

G. PUBLIC HEARINGS

1. Public Hearing for Final Adoption of Ordinance No. 682 amending the code to allow camping in certain city parks and the Airport. Jay Rubin, City Attorney

City Attorney Rubin gave an overview of the ordinance and the revisions included.

Mayor Green thanked him and asked if there are any questions from the Commission for the attorney. He then announced we have no proponents, and we have only one opponent. He invited Ms. Peron to make her comments.

Sophia Peron commented she is surprised nobody is here from the lodging industry. Or any professionals aren't here. But, if we going to start letting people squat in the parks, that goes perfectly with the beggars that beg at the corner of Ashbaugh and Date from dawn till dusk. She loves it. Then you can go and camp in our town. Is it going to cost to camp? Will it be free? Where are you going to go potty? Is this for tents or RV's? What is this for? If you need a flop house, we have flop houses. We have nice places and we have everything in between. We do not need camping in our parks. It just brings bums and more people to squat in our empty buildings, our empty houses where people are racing to get out of here. Those that can afford it. Thank you. And she added will you collect Lodger's Tax from these campers.

City Manager Fuentes responded to her comments, this will be specifically for special events. It is not a blanket overall for anyone who wants to go camping. He explained specifically for the pilots at the Airport and the new stalls at the Rodeo Grounds, we had an event not too long ago where we had RV's setting up there for the rodeo weekend. But it is specifically for special events and is not a blanket ordinance that allows camping at a whim. Sophia Peron said she has been living by Ralph Edwards Park for ten years and they have had camping at Ralph Edwards Park for Fiesta for years. And no one has asked the adjacent neighborhood if they would allow camping there at any time. We do not have a Planning & Zoning Board or a way to communicate to the

property owners. They are not being notified. So in the end it's your decision and we have to swallow it. Thank you.

Mayor Green said this is not an open invitation to use any piece of city property land. It specifically says special events, airport, rodeo grounds, Rotary Park. Ms. Peron mentioned Ralph Edwards Park. Mayor Green responded that is not in the ordinance.

Mayor Pro-Tem Whitehead called for a point of order. Mayor Green announced since no one else has signed up, he will close this portion of the public hearing.

2. Public Hearing for Final Adoption of Ordinance No. 683 related to short term rentals within the city limits. Renee Cantin, Clerk-Treasurer

City Clerk Cantin referred to City Attorney Rubin for some main points and comments that he put together for this ordinance.

City Attorney Rubin gave the overview of the one page summary that was handed out to the Commission. He presented the purpose of the ordinance. 1) Short term residential rentals provide a community benefit by expanding the number and type of lodging facilities available to seasonal visitor's. 2) Short term residential who are not commercial are strictly for residential use of the property in the municipal code; and 3) the provisions are necessary to protect the city's lodging industry and to prevent a burden on city services and impacts on residential neighborhoods posed by short term residential rentals. He should've preference his comments by saying, this ordinance was prepared by an existing ordinance by the City of Ruidoso which we borrowed. What you have is a draft that shows what Ruidoso did and what we suggested for the City of Truth or Consequences. He then went over some of the specific changes outlined in the ordinance.

Commissioner Clark asked if we will be requesting them to notify their neighbors the same way we do for a homebased business. City Attorney Rubin responded it's not specifically stated here. Commissioner Clark spoke to someone in Santa Fe and they were required to notify their neighbors. She thought that would be a courtesy to our neighbors and she asked if it could be part of the permit process.

Building Inspector Travis said right now for a Home Occupation Permit we do not require them to notify their neighbors. We do make sure there is a level one, two, or three and level three requires it to come to the Commission. Commissioner Clark Police Chief Alirez said certainly it is a concern if we have a spring break issue with young people. But it's a coin toss, he agrees if it was one of his neighbors he would like to know. The Clerk's Office sends applications now so they are aware of it. He can't see if being an issue now, but at some point in time we may want to notify the neighbors if it's a special event.

City Attorney Rubin read one of the sections that could refer to this. The ordinance includes an application shall be denied if... and one of the grounds is for outstanding property nuisance or building code violations on the property. So it's touched on.

Commissioner Hechler asked if there is a renewal a neighbor could protest if they have grounds so we could factor that into the decision.

Police Chief Alirez wanted to add. If they do get an application and it's approved is the Police Department can do a response call check to keep track of how many if any incidents we have had in the past at that location.

Commissioner Hechler asked City Attorney Rubin if we have any requirement for insurance that we should consider. City Attorney Rubin asked what we have in mind. Commissioner Hechler is not sure if the city needs any additional insurance.

City Manager Fuentes feels that would be outside the scope of us getting involved with private property. Ultimately, it's the property owner's responsibility to get their own insurance and he would be cautious to us having any other involvement.

Commissioner Clark asked Mr. John Appel if he has seen any areas where this has been done. City Attorney Appel responded he is familiar with this issue. He has seen other communities who have looked into this include notifying the neighbors. The fact is there is a number of properties in Santa Fe, which are used primarily on a short term basis. So they may be occupied 90% of the time with folks cycling in every 3-4 weeks. He suggests seriously looking at having them post signs for contacts or efforts are made to notify the neighbors.

City Attorney Rubin added the definition of short term residential which talks about not less than one night or more than 20 nights of a consecutive period.

Mayor Green closed the public hearing.

3. Public Hearing for Special Use Permit – Skyway Towers

Mayor Green explained the Battershell procedures.

Sophia Peron made a comment. Mayor Green directed Ms. Peron, if she cannot be quiet, he will ask her to leave.

City Clerk Cantin did the swearing in for Staff which included Robbie Travis, Building Inspector.

Building Inspector Travis said before you is the Special Use Permit with Skyway Towers. It's on city property off of West 2nd Street, next to the Water Tank. This property has other towers on it and staff recommendation is if the Special Use Permit is approved, staff has no objection to this request. In addition, this property could be

grandfathered in because of the prior use of towers. The applicant has paid the required fees. We have notified all neighbors within 100 feet and the applicant submitted a comprehensive plan, site plan, as well as, an elevation plan. We do have a staff report that provides the provisions for special use. He read the section stating it shall not be issued where the negative impacts substantially out weight the positive impacts of use. The history of the property there with the tower and the tanks that exist now. They recommend if it's approved, they do not have any objections to it.

Mayor Green knows this is the second time this is before the Commission. The first time they asked staff to work with the applicant to see if we could show other pieces of property that might be appropriate. He asked if that was done and what pieces of property were shown and if they were turned down.

Building Inspector Travis responded they did contact them and they referred them to two specific properties. One by Poplar and 2nd St., and one by Cielo Vista Subdivision by the other water tank. But none of those were satisfactory to them or the Engineers.

Mayor Green said the proponents may cross examine.

City Clerk Cantin did the swearing in for Mr. Mark Basham

Proponents:

Mr. Basham said if he heard him correctly, staff will support this permit. Building Inspector Travis responded yes.

City Clerk Cantin did the swearing in for Ms. Shirley Crowder

Ms. Shirley Crowder, FDH Velocitel began by handing out some information. She said sometimes she has been to these hearings and she found it's a big benefit if they educate the public as much as they try to get proposals passed. Much of the resources they provide will help the public see the facts to keep the rumors at a minimum. On this paper there are different time periods that are called out on the fact sheet. Some begin in 2007, extend to 2015. In her opinion, it lends to the credence of the numbers called out and the growth of the cellular use and connectivity. She went on with her actual presentation. The initiative here is to get a Special Use Permit to show they will not negatively impact the community by increase the population to utilize technology. She is here to enhance the infrastructure of the town and will benefit the town in emergency situations by filling the gap in the current existent system. FDH Velocitel is representing Skyway Towers in this matter, and at this time she would like to call out that they are not representing Verizon Wireless, AT&T, T-Mobile. However, because Skyway Towers is called a "Build-to-suit" company, they will be soliciting the business of all major carriers to help occupy space on the tower, they are proposing. Tower is at West 2nd Street and is zoned R-3. It will consist of an 80' pole. The monopole will be stealthy designed to comply with all city design guidelines regarding wireless communication facilities. The proposal is for 80' and based on the new proposed location on the city parcel and its relationship to the water tower and the existing height of the water tower, the pole will have to be at least 80' tall in order for the carriers to be able to see over than the water tower. They can't see through the tower so it will have to be over the tower. She

explained the equipment will be enclosed. Outside structure can be changed to match the color and brick or other design that is deemed warranted. At this time, she would also like to point out that stealth designs can mean many things. She has observed the mural and understands it has a lot of sentimentality to the City of Truth or Consequences. She would like to propose they could paint the tower the same color as the tank. She has looked at other properties at 9th & Foch and on Juniper and she has taken photos from all of these vantage points where the water tower is in relationship to not only the town but to the views of the mountains that sit behind it. Some sit above the mountain, some sit between the mountains, and some sit below the mountain. In each one of these photos she's taken, she personally did not observe that the addition of a wireless communication facility would deter the access for the citizens to view their water tower. We can help blend in the tower from certain vantage points through camouflaging. There's shrubbery which will also lend to help camouflage the tower. The object is they will solicit carriers. One of the benefits of a build-to-suit tower is that this goal is to bring multiple carriers to one location. This will minimize the necessity for additional towers to your city, and will minimize those towers coming before you to be built on other locations. Because they will be servicing three carriers on one tower, instead of three towers for each individual carrier. The objective is in response to Skyway Towers commitment to providing better service throughout the area to existing and potential wireless customers. There is a drop in capability in this area. And with this wireless communication system facility, they'll service the surrounding areas and fill those gaps in coverage. This is the most suitable location and is a proposed co-location site. She believes Building Inspector Travis has also supported that they did look at other locations and based on the science of radio frequencies, this location serves the of road frequency that would best cover the gaps in your coverage.

Ms. Crowder went on to present the benefits of having the towers. This would be better reception for calling. There would not be as many dropped calls. E-911 capacity and clarity for emergency services. She has also had conversations with some people in town. Some had concerns about this tower interfering with the existing tower for emergency services. She called their Engineer and he said they transmit on a different frequency than they would. And the FCC has particular guidelines related to interference. So she wanted to put that to rest. They will not be interfering with the existing services. The date of demand for your community will be fulfilled. For example the maps, when they are downtown and they are looking for a hotel, restaurant, the Lake, or the Golf Course. These needs will be better fulfilled because you'll have better capability. 75% of people do not have land lines anymore. And children who have to be home alone while parents are at work, will have the ability to effectively reach out in an emergency. Today she heard testimony that our community suffers from monsoons. During monsoons, in the city of Phoenix, they have outages and cell phones are a necessity in those situations. Television services, Ipad's, and wireless services will all stand to benefit the citizens of this town. She would also like to touch briefly on the monetary gain to the town. She heard testimony today that you have a park that needs benches and picnic tables. There are needs that this tower and the financial lease dollars will bring to the whole town and will be a benefit and can be resources to help your projects with resources. It's something for the Commission to consider. The

monetary gain to the city and the citizens. She also pointed out there is an existing verticality that is approximately 70'. So an 80' tower is not a stretch here. And they are also willing to paint it to match and put a CMU wall that will also match your water tower. So they are doing what they can to help accommodate the needs and concerns of the community. They also provided an Elevation Plan when they submitted their application, they did an aerial view as well. They also provided a rendition of what the tower could possibly look like if it has multiple carriers on it. One of the things she has requested from Skyway Towers is that the arrays on this tower be kept tight to the tower. Because she truly understands the concerns of the city and citizens in regards to the visual impact. She just finished a product in the town of Fountain Hills, and one of the things the citizens did there was requested a Third Party EME Study to be conducted by the vendor. So if that is something that you would like to make a condition of this approval, by all means, please do so. They will provide them with that study.

Mayor Green asked on her sworn statement of March 28, 2017 where the minutes read, *"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."* and further down on the minutes it stated, *"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. Ms. Crowder explained the need to have the tower height now to 80".*

Mayor Green understands this is a new application and this is a different location, but where original tower you proposed had that tank there also. So now, are we back at 80' where you basically guaranteed us that if we passed this we would be looking at a 60' tower plus a 5' lightening rod. Ms. Crowder responded he is right, she "almost" guaranteed it. That was a statement she said she would attempt to make happen. They are a lot closer to the tower than they were before and since they have determined the tower is taller than they thought before. When speaking to one of the land owners in that area, they said the water tower itself was only 50' tall so we thought we might be able to reduce the height. But after the survey, that tower is actually taller than they had originally understood the tower to be. Therefore, they have to have a taller tower to see over the top of the existing tower. That's why she stands corrected and they have to have the 80' tower for this location.

Mayor Green said his last question is, she said "tight" to the tower is that 10' or 2'. Ms. Crowder told him that most jurisdictions in the State of Arizona require the T arm, that attached to the array, not extend more than 30" from the tower. Others say it cannot be more than 24" from the tower. Part of the conditional use permit is that the carriers that may request space on this tower can't go more than 24" or 30" out. In the instance where you have three per sector it's not as hard to accommodate for the sector. She can't tell you what the carriers will be requesting because she doesn't know. She does know she made a call this more to Justin Jones and asked him if he was soliciting all of the carriers for this tower, and he responded yes, they were. She has worked with all of them and explained some of what they choose to use which can vary. There is a ray visible compliance they can grant to the city. But she can't say for sure or promise that it will be four or three antennas, because she is just here to do site acquisition.

Mayor Green asked if the 24-30 inches will be on either side of the pole. Ms. Crowder said you have the pole and for each one of the arrays, generally there are three; Alpha, Beta, Gamma, then each one of those would be the 24" from the pole. Because that is what the antenna is attached to on the outside.

Commissioner Frankel had a couple of questions and concerns about camouflaging or hiding an 80' tower. You had mentioned shrubbery, what kind of shrubbery is that tall. Ms. Crowder responded, there isn't any shrubbery, but if you look at where the proposed tower is supposed to sit, there is a wall of shrubbery right there which is maybe six to eight feet tall. Regardless of what, shrubbery will help camouflage the tower and the height. And you're not going to be able to see the equipment at the bottom.

Commissioner Frankel said his concern would be the eight or ten feet height of the shrubbery which is really just hiding the base of the tower. So the visual impact would benefit by any type of camouflage or shrubbery. Ms. Crowder agreed it was nothing about 10'. Commissioner Frankel added if you are above sea level, and you're looking up to Water Tower Hill, You're not going to see the base level of the tower, you will see the other 70' of the tower. It's the rest of the tower that needs to be addressed. Ms. Crowder said the tower can be painted a color. A community in Arizona requested the tower to be painted blue, so they have a blue tower. So it will blend in with Verizon. Commissioner Frankel asked if she knows that the death rate of birds is, in that area? Ms. Crowder has no idea.

Commissioner Clark presented her questions to Ms. Crowder. She asked about the FCC Wireless rules. It has the tower regulations, the right to build a tower, 10% or 20' higher than the highest tower in the area. Ms. Crowder agreed that is correct. There is a modification ordinance that says if you have an existing tower, then they can go up there and make those modifications and they can add height by 10%. Commissioner Clark asked if the new tower still has the 10% or 20'? Ms. Crowder said the new towers go basically by the height of the jurisdiction. Commissioner Clark asked if we have a regulation on height, Ms. Crowder said not that she's aware of any restrictions based on the structures that are up there. Commissioner Clark said her understanding is the

water tank is 67 feet high and if you go to 80', how many new carriers can they put on that pole. Ms. Crowder responded two. Commissioner Clark also asked if we needed three, how high would they need to go above that tank? Ms. Crowder said we would have to go approximately 90-100 feet. Commissioner Clark then asked is it her understanding that if there's a gap in service that the FCC wants to have that gap closed? Ms. Crowder agreed, that is the truth. Commissioner Clark then said with that being said, if it's in the best interest of our community, you could have more than just Verizon for example, that can do good service in our community that we might be best served by going a little bit higher and making it available for more than just one or two carriers. Ms. Crowder agreed that is correct. Commissioner Clark then asked is it her understanding that the only way out of something like this if there's not an ordinance in place, is to use substantial evidence on the decision to deny this permit? Ms. Crowder agreed. Commissioner Clark added a substantial evidence normally has to do with aesthetics. Ms. Crowder responded yes. Commissioner Clark added the aesthetics need to be determined already in advance by ordinances of the city. Ms. Crowder responded yes, Ma'am. Commissioner Clark believes we have not put Water Tank Hill into our Historic District or into our MainStreet District. Ms. Crowder said that is correct to her knowledge. Commissioner Clark understands there is a concern with our Fire Department about interference with the tower up there for service. She also understands that the FCC requires that whatever tower you construct would absolutely no interfere with that radio. Her understanding is that they would consider a different location possibly up on that hill apart from the one they proposed. For the purpose of this, the one that they proposed is city property that is sheltered by some trees. Ms. Crowder agreed. Commissioner Clark said it's an old story that for hiking purposes on that hill, that there would be a location where we can put picnic table in the summer time. Is it possible you may consider moving it on the other side of the water tank since that's where the other two are? Or would you see that aesthetically unpleasing? Ms. Crowder said, yes, she has looked at that tower. She has been up there and she's seen where there is flat area that's actually available behind the tower on the NE side on the flat area. Since currently there is not a circular road in that area, they would not be blocking access. And they could also lend for better height and for opportunity to camouflage the tower. Commissioner Clark asked if they would consider the NE or SE corner and not blocking the mural. For example, she showed them on the map where the most direct was available and there would still be walking room and where she feels it could be put. The people who live on the West side could probably not even see it. Ms. Crowder said she hasn't looked at that side of the tower to see if there is access. She showed the area they looked at. Since there isn't a circular drive in place, there is a possibility that could be a second option for them. Commissioner Clark said she suggested the SE because you can still drive it as oppose to blocking that walkway. Ms. Crowder suggested after this meeting is over, we go to the site and look at the site.

Commissioner Clark feels as far as she can tell, they have met all of the criteria they have in place to put a tower, based on the FCC Rules & Regulations. And the discussion we have would be either aesthetics is the only way with evidence to shut this down or you're willing to work with us on a different placement. She asked if that is correct. Ms. Crowder responded yes, on that particular parcel because of the Radio

Frequency Needs it would have to be on that particular parcel, but they would work on the color and the design to make sure it's not cheap chain link fence that goes up there but it's actually a nice CMU constructed wall. And she would really recommend and suggest we go up to the site and look at this to save time and understanding to see what we have to maybe work with. Commissioner Clark said her last question is this water tank hill as opposed to the other location which you basically would have preferred, is that this gives a circular broadcast to the entire city. So it's not just the downtown benefitting, it's North, East, South, and West. Ms. Crowder explained the placement of the Alpha, Beta, Gamma rays and if the Commission would like she could ask their Radio Frequency Engineer to do a propagation map for them and show them how it could work.

Mayor Green has a follow up question. When she went around with Building Inspector Travis did she have in mind a 60' tower in mind or 80'. Ms. Crowder responded 80'. Mayor Green mentioned the need for a higher tower. There are other areas in the community where additional height would not be intrusive. It would also give their customer the opportunity to solicit more dollars and more carriers on a place that's less intrusive. He made a point to why are we putting ourselves in a box on this Water Tank Hill, if we were to assure them are that there would not be kick back if they went to a 90' tower that is a more economical advantage to them and makes both happier. So he's questioning if that's a possibility.

Ms. Crowder responded at this time she does not believe it is. She is provided a search ring. The Radio Frequency Engineers have done studies based on science to where they can best fill the gaps that are needed by the community. The RFE provided them the search ring in the area of the Water Tower. It's a very descript area to find potential candidates for the industry. They don't look for any area outside of the search ring because it's the area that will fill the gaps for the prospective areas. So the answer the question, they are looking for a higher tower and not just conducive with the needs or offloads of a Radio Frequency Engineer.

Commissioner Clark asked if we gain 150' from downtown before the Water Tank Hill, if you put a tower any place else in the city, you would be putting a 200' tower just to broadcast over that hill itself. So you're looking at a several hundred foot tower to accomplish what you can accomplish on water tank hill. Ms. Crowder said even if that, we can't accomplish what we could on the hill because the sending capacity is based on frequency and engineering. She looked in the search ring area because she understands it's just that area that services the needs of the area for that time. She can very seldom present something that's 300' outside of that ring to see if the sight might work. Based on her professional experience, they don't go outside of the ring. That's why this site is specific. Commissioner Clark said that brings her back to her question, if we put it in some other location and didn't meet that height requirement we would still not have reception in some area. Ms. Crowder responded that would be a question best answered by a Radio Frequency Engineer. In her understanding they have a specific area they can place the tower so they can accommodate the offloads of the

Radio Frequency Engineer. Commissioner Clark responded so we are obligated by the gap in service. Ms. Crowder responded that's correct.

Mayor Green was wondering when she was driving around she probably saw the hill on the West side of our community and the new wing of the Veteran's Hospital. That is city land and it's pretty high over there. There are no residents, whatsoever. And if you get up there and walk to the State Police barracks, you can literally see over the top of the water tank. His question again is if you have a hill in the downtown, why are you so married to that hill, as opposed to, a hill that is on the border of our Hot Springs District that gives you the height, is not intrusive, has no homes around it. Why was that not considered? Ms. Crowder said because it's not within the area that the Radio Frequency Engineers have requested them to investigate.

Building Inspector Travis asked if she can provide us with that ring to show us what that was. Ms. Crowder responded yes, she can. She can even show the propagation. Building Inspector Travis asked if she can provide it right now and not have to go and create one. Ms. Crowder said she can go into her laptop and see if she can pull it up. He can tell them the height is not an issue, because the one property they showed them is higher than Tank Hill. His second question was are they telling us, if the Commission were to approve the tower, they could come in and put any antenna's they want? Ms. Crowder said no, they would have to go through the zoning process. She is just proposing the monopole itself. In regards to their antennas and types of antennas and technology that will go on the pole, she can't speak to that. That would come back to you with the company. It's all based on science, radio frequency, and the spectrum and band the carrier's broadcast in. That's why they are here, the search ring encompasses this property. Building Inspector Travis then asked if that's the case and we say we only want one carrier on this pole, are we approving multiple carriers or just the pole and carriers have to come back to us. Ms. Crowder responded this a co-locatable pole. The objective is that there be at least two carriers on that pole. What two carriers, she can't say. It benefits the town because you don't need multiple poles erected.

Mayor Green asked if he would be correct to authorize them to do a search ring with a tower situated in another location that would give them what they want, and need, is that a possibility? Ms. Crowder responded she doesn't know. It's a question she can't answer. Mayor Green said he is talking about the area that is basically southwest of downtown, right on the cusp of the hills. Because right now, you have given this Commission and opportunity to choose one location, it's take it or leave it. He doesn't think that serves their interest or the interest of the Commission or the citizens. He suggests that we might want to consider taking a big deep breath and seeing what we can do to get this to happen. He's not hearing people don't want it to happen, he's just hearing not in their back yard. So he's suggesting maybe we have made the pool too small and taken the easy way out by getting a hill that's downtown, where we can show another location that's maybe 1,500 – 2,000 feet away that may not have this many opponents.

Mr. Mark Basham asked to respond. He's been involved with the attorney situation since 2000 and it has changes and people want more rapid service. Putting something 1,500 feet away is not going to fill the gap. The RF Engineer tells you this is where we need to be. First we were there and now we are back here. They are not trying to box you in, but this is science and setting something 1,500 feet away at a higher height doesn't fill that gap. Ms. Crowder said her as well is assigned a geographic location based on studies conducted by the engineers. That's her job to find candidates for wireless services. Her understanding is the answer is no. It's a science and that's why this area has been selected because it will best fill the gap.

Mr. Basham said last time a man came up to testify as a proponent. He said when he is downtown, he wants to call home on his cell phone and he can't. This shows there is a definite need in this area. Mayor Green said no one disputes that at all.

Opponents may cross examine the proponents. He asked Rhonda Brittan, John Brady, Jered Green, Luis Gonzales, Gary Aschbacher, Traci McGowan, and Ron Dankert to please stand up to be sworn in. City Clerk Cantin did the swearing in.

City Attorney Appel said this is the chance for opponents who may want to cross examine Ms. Crowder.

Mayor Green recessed the meeting at 11:21 a.m. and reconvened at 11:27 a.m.

Mayor Green announced we are going to finish with this portion of the public hearing and then take a lunch break. He said right now we are at the point where opponents who have been sworn in can cross examine Ms. Crowder.

Traci McGowan, lives at 1700 Corzine Street.

She asked what the highest tower they are capable of doing. Ms. Crowder does not know, she can call and ask them. One of the tallest ones she has done is 150'. But she can text and ask them. But she doesn't know if that's the highest they can go.

Ms. McGowan said that would be good information if they look into the other site they were talking about. The other question was if it would be possible in talking about the place next to the Veterans home, is it appropriate to request that we go ahead and have that done, so they can compare the information between the two and look at the possibility of being able to build obviously, an even higher tower within the capacity to do. Ms. Crowder said the only thing she can do is ask. She has never done it before, and this is the first time she's been asked to do a second search area. But she can definitely ask.

Ms. McGowan asked how much money you are saving by using that hill if it's a consideration. Ms. Crowder responded again the position selected was the position the Radio Frequency Engineer selected that will best serve the need of the community.

Ms. McGowan asked if there are any monetary figures that are taken into consideration. Or is there a medium tower they are looking at, in order to make that determination?

Ms. Crowder responded no, not that she's aware of. She has been involved in a lot of projects where the Radio Frequency Engineer gives her a request for a 50 foot tower or a 150 foot tower.

Mr. Basham said there is monetary consideration, this is an investment to be made and they are making money back. Now are they making bookoo money, they really aren't. Ms. Crowder thanked them for answering her questions.

Ron Dankert said she had stated she had a map of the ring. She pointed that out earlier and he would love to see it. Ms. Crowder said she is trying to access it and doesn't have Wi-Fi access here.

Mayor Green said seeing no others for cross examination. He moved on to Opponents. He let Fire Chief Tooley

Fire Chief Tooley read his comments on his opposition for this special use permit. As fire chief of the City of Truth or Consequences, he has some concerns about Skyway Towers placement of another facility on Tank Hill on West 2nd Street. The location has been the home of all Emergency Communication frequencies for the T or C Fire and many other agencies for at least the last 50 years that he knows of. The top of the hill is very congested and not much room to get service vehicles and man power to the location with the current towers and buildings at the site. This location is the hub of Public Safety communications and he doesn't want to see it compromised in any way. He attached a couple of other sites that do not have Emergency Communication towers on them. He believes the city owns them and currently have only one tower located on them. These sites have more room for expansion than Tank Hill on 2nd Street. Please consider this letter as the Fire Departments opposition to the Special Use Permit for Skyway Towers on Tank Hill located on West 2nd Street.

City Attorney Rubin suggested they allow cross examination. City Attorney Appel agreed and added since we are so close to lunch, it would be better to cross examine each one as we go.

Commissioner Clark was reading something and she mentioned it earlier through FCC that any placement of the tower, the city cannot regulate placement. She read the FCC regulation where it says "Cities may not regulate placement, construction, or modification based on Radio Frequency Emission, if the proposed wireless facility complies with FCC RF Emissions Regulations. The city may also not attempt to regulate the operation of WFC's based on these concerns by conditioning a permit. It sounds like the FCC is very on top of however they are going to construct this tower so it wouldn't obstruct emergency towers. She added we have been hog tied by some of decisions they can make based on the Federal Government's FCC trumping us. Fire Chief Tooley said the thing about up there is everything is FCC certified except some of them which are unlicensed. That is our secure public safety area. Of course everything has changed and everything is there. The more noise you put up there, the more you have to be above that noise. He feels there are more places you can put one. He said

when they get up there now, they can only get one or two vehicles up there to get any work done. Then of course, if you have to bring up a bigger truck, you have those issues. He just feels as a Fire Department, the less we can keep up there, the better it will be for our communications. Commissioner Clark asked if they moved the location to the Mayor Pro-Tem Whitehead corner of the dead-end where you can drive around to get to the tank, would that make a difference for access for him. Fire Chief Tooley said well the biggest obstacle is the tank, their stuff is on top of the tank. There's another 100 foot tower and a smaller tower with the rest of the communications. A lot of that signal is microwave and is the origin for the SCRDA. We need to keep in mind there is radio to be transmitted on Tank Hill.

Commissioner Hechler asked if there is any way to combine the uses of these towers and eliminate one or two to put them on one tower. Or is that even feasible. Fire Chief Tooley responded as to what is on the existing towers. On the top of the water tank is the T or C Fire Department and State Fire. The 100 ft. tower is he believes the Police Department. The other tower is the SVH for ambulance, County Sheriff, County Fire Department. That's why there are so many there. But if we combine them, you have to look at it.

Building Inspector Travis said the one to the Southeast they eliminated that one because we weren't interested in putting anything in that area. Because we wanted to do the Geronimo Trail. They want to keep that as a public area. As long as they had access on the North side of the tank, they didn't mind using the North end of the area.

Ms. Crowder received a text message from Skyway Towers, Mayor Pro-Tem Whitehead said point of order. Mayor Green let her know she will be next.

Fire Chief Tooley said it is awful narrow up there. You may have 8 feet and you're off the edge of the mountain. So it's already very tight and congested up there in that section. So from his perspective, they try to keep the emergency services as isolated and secure as we can up there.
Proponents may cross examine.

Ms. Crowder asked if the Chief has been involved in any other wireless communication facilities where his frequencies have been interrupted. Fire Chief Tooley responded yes at times, yes.

Ms. Crowder asked if they are local. Fire Chief Tooley responded there was a local issue that they resolved with an internet company that was walking on their frequency, but they resolved it. But they weren't at the same locations. Mrs. Crowder said an internet provider is different than a carrier. She asked if he is familiar with or has had negative experience with a carrier itself in regards to interference. Fire Chief Tooley responded no, because of where they are located. Is so far away from where they are actually transmitting. Ms. Crowder said she just needed to establish if he's had experience with a previous carrier.

Rhonda Brittan, she owns Black Cat Books & Coffee at 128 Broadway. She said it's bad enough having the ugly towers that are next to the Water Tower now. We have had 3G, now 4G, when will it stop. Will we have 5, 6, 10 or 50 G? Will it stop only when we get fried to a crisp downtown? Check the warning on your cell phone. It says to keep it so many feet away from your body. It has health aspect and she knows it's been proven health is not a detriment for these towers. Having a little spotty reception is fine for a quirky downtown, it's a bit unique, you walk ten feet over and it's fine. So she thinks having perfect reception, all the time, is something that people are trying to escape from when they come to visit a funny little town like ours. It's a bit inconvenient sometime. She has a cell phone and does not have a land line. Having a huge tower appear over the Historic District is offensive. What if it needed to be illuminated and it sounds like it will need to be? It will be winking and blinking over our downtown evenings. Please find another if even inconvenient location which may be on a commercially zoned property. She also recommend the city creates some ordinance to protect our downtown district from things like this. From science. It sounds like we're all subject to the whims of science and the economies of companies and corporations. She doesn't need her gaps filled. Please ask the Radio Frequency Engineers to look at the different site Mayor Green has suggested.

Mayor Green asked if there are any questions for the Ms. Brittan. With there being none, he moved on the next opponent. He announced in the interest of time, if something has been said before, please just say you agree with them so we can move forward.

John Brady, he and Jered Green reside at 406 W. Lincoln. Mr. Green is ill and cannot attend. They continue to be 100% against the erection of any cell phone communication tower on private, residential, or city owned property located on Water Tank Hill. Their presentation on March 28, 2017 still stands. With the use of an Altimeter, they have found the following: Base of Water Tank: 4,372' above sea level; Broadway (downtown): 4,234' above sea level; for a difference of 138'. What has Skyway Towers offered in compensation for that additional 138' (or total of 218'). \$100,000, \$200,000? Or they want it for free? Should Skyway Towers be approved for the 80' tower, has the City Commissioners considered the real cost, or loss of revenues as they pertain to the cell phone towers? Once Skyway Towers receives a contract, or permit, with the city, that will end the cities limited income, based only on land rent. What is the value to the city at the end of the day? An eyesore that towers over T or C's old town and its residents. The real money lies in the rental of the tower space to their subscribers. The subscriber's revenue is based on all cell phones that transmit through their antenna. This should generate many thousands of dollars each month. What percentage of these revenues will the city receive? Will Skyway Towers provide documents as to that income? Do each of our Commissioners have a complete copy of the Federal Regulations as they pertain to Cell Phone Towers? Each Commissioner should have a complete and comprehensive understanding of those regulations before entering into any further negotiations. He reminded the Commissioners of the past projects: The Shutter Factory; Hot Springs Land Development; and Motor Quest, just to name a few. Those Commissioners serving the city before you were ill prepared and

have left this Commission the responsibility to clean up their uneducated handling of many projects. Don't let those happen to this Commission, protect the future of this city. Thank you for listening to our many concerns. They trust this Commission will make the correct decision and deny this application to install any tower on Water Tank Hill.

Mayor Green asked if there are any questions for Mr. Brady. Mr. Brady then showed a picture of what we would be looking at downtown and he put it in the box for the record.

Mr. Louie Gonzales, lives at 407 W. 2nd St. He has a concern about this tower at this specific location. He is for a cell phone tower somewhere in T or C, and he sees it as a needed service. However, this one is not only blocking access to the water tank but to his property as well trying to get into his driveway. As you know, they are not only applying to build an 8' wall, right around the pavement but they are also asking for future expansion. He showed on the map right above the legend goes right up to the driveway which is the only way he can access the property. There is no way to go down there, it's a pretty significant drop going up into the property and going to his home. He also wants to touch on services for the city. The Waste Management goes up there to pick up the trash and use the area to back up into it and turn around to go back down the hill. If there was an 8' wall they would be reversing back on a pretty steep hill with a heavy truck which poses a big risk. He feels it would affect their quality of life up there, he has children that play around the yard and looking out the window it's really close to the property line. An 8' wall will be hard to work around and to get vehicles in and out. He asked them to please consider not passing this Special Use Permit, and looking elsewhere.

Mayor Green asked if there are any questions for Mr. Gonzales.

Commissioner Clark asked if he looked into the FCC wireless facility section and read where there is a possibility because of the safety hazard or risk, a municipality could turn down an application. Mr. Gonzalez responded no, he's just concerned because it's near his property. Commissioner Clark reiterated, she didn't expect him to have the answer.

Building Inspector Travis asked the first proposal was near his property. How far away was that tower from his residence? Mr. Gonzales said the other proposal was right behind his garage and it wouldn't have been blocking any access to the building it's behind the garage. We are looking at something behind the garage versus something potentially blocking the driveway. Building Inspector Travis responded he said this was in his view, and the other tower was only 40' away from his home. He just wanted to say, it is farther away than the other tower was. Mr. Gonzales said their living area is in the front of the home and they were talking about the back of the home. So the back is not somewhere he would sit and drink coffee and stare at the garage. But he will sit back and drink coffee over the hot tub area and look over the city or to the water tank.

Ms. Crowder asked Mr. Gonzales about them talking about this issue and making a revision so it would not block his access, is that correct? Mr. Gonzalez agreed they did

discuss one of the issues. Ms. Crowder asked him if they did sit down and came to an amiable resolution to that access being blocked, correct? Mr. Gonzalez said they did, but that's not what she's proposing here. Ms. Crowder said but they can do an amendment and did she not tell him they would remove that for your access and move it back. Mr. Gonzalez appreciated her coming and talking to him and the gesture, but if that's the case then she needs to resubmit the permit and not just change it on the fly. Ms. Crowder said she agreed they would submit a revision and would talk to Robbie about that and would move it back and he was happy with that. Mr. Gonzalez said he was not happy with that, he said he appreciated you making the change. Ms. Crowder asked if the resolution they had does not block his access? Mr. Gonzalez responded not the driveway access, but you're still going to have an 8' wall looking east.

Mr. Gary Aschbacher, owns six lots on the West half of the hill of 400 West 2nd Ave. His opposition as more of a process, the March proposal was to be on his property which half of the hill on Eastside is city property. He owns the other West half. If you look at area where the wall is proposed, when Shirley came out and approached us, we have three different locations on our property. He showed the areas on the map that was in the packet. He provided some pictures showing where the proposed wall is, of Louie's house standing right at that wall. It's a big open space right now and the facility is right in the middle of the area where all of the trucks and vehicles go. Standing at the proposed wall, he showed the view of the wall and some other pictures of the area. The original proposal was to build a retaining wall so Water Tank Hill keeps all of the dirt on the hill because none of them wants erosion. This proposal has all of the utilities there and the original did not have them there. He's never talked to an engineer because they keep them tucked away because they don't want the design influenced by any other people. When they draw the tower, that's the area it's going in. The question is where is it going to be? His concern in this process is the application on his property was tabled and it was brought back on city property. So he feels they need to deny them both or accept them both so it's fair competition.

Mayor Green asked if there were any questions. He asked Mr. Aschbacher to please leave the pictures in the box. He called on Ms. McGowan if she would like to make a comment.

Ms. McGowan said ten of the things she had listed have already been addressed and she just has one consideration which is a safety consideration. It sounds like there is a proposal for future access for visitors to go up on the hill perhaps for the Geronimo Springs Trail, is what she's gathering. What that means is you have a whole lot of foot traffic on a pretty steep hill. And in the event and ambulance would have to get up there or other emergency vehicles to get someone out of there in the event they were injured, should be taken into consideration. What is the access there and liability of opening that up for something that totally benefits the community? Again she's advocating for looking at the other circle so if it costs them more money to go back and look at the other circle. They will still get the money if the circle is a possibility. It should be okay for a community to ask the company to look at more than one circle. And if they say well this is it, it's a gross misapplication of the FCC law that was put in place. She's not

even sure these towers were available at that point. In 1983 Verizon would come in and build a tower that at this point could go to 5G and it's you folks that set the criteria. She would like them to set the height of buildings in the downtown area. If we had that, we wouldn't be having this conversation and wasting people's time over questions like this. She thinks we are a growing community. She would like them to go back and look again because it costs money when they make money on this. She urges the Commission to require that they do this other study.

Building Inspector Travis responded as far as having public in this area, they don't want the public in that area. The trail they are planning is below the hill the top of the hill and they don't want the tower on the corner to allow that. They don't want the public on that hill because of safety concerns.

Ms. Crowder asked if she is aware that the discussion she had with Mr. Gonzales would reduce any access issues for safety? Ms. Crowder is curious about the safety concerns if they have already worked that out earlier. Ms. McGowan said her concern was on putting a public access trail in the future as part of an extension of our historic district trail, but not on the hill.

Mayor Green said the next portion is for public participation and that was Ms. Sophie Peron and she is not present. So with that he closed this portion of the Public Hearing for this item.

4. Public Hearing to Vacate the street and alley at the West End of 3rd Street and alley. Robbie Travis, Building Inspector

Building Inspector Travis presented this item. The street and alley is on a hill and cannot be developed. Both property owners have asked for the vacation and they both live on opposite sides of the alley. They did send out notices to all property owners in the area.

Commissioner Clark asked if they can put a tower on that? Mayor Green said not a bad idea.

City Attorney Rubin reminded him there were no opponents.

Mayor Green said there were two proponents to support this. One was Ms. Peron who is no longer here.

Proponents:

Rhonda Britton, 314 Kopra St. there is a problem with people driving up Third St. and across the private property, it is now blocked by some rocks to keep people from driving up there to party, or whatever they do there and she's in support of the vacation of the access for this.

Mayor Green closed the public hearing.

He suggested that we break for lunch and reconvene at 1:30 after lunch.

Recessed at 12:15 p.m. and reconvened at 1:30 p.m.

H. ORDINANCES, RESOLUTION, & ZONING

1. Discussion/Action: Final Adoption of Ordinance No. 682 amending the code to allow camping in certain city parks and the Airport. Jay Rubin, City Attorney

City Attorney Rubin has nothing further to add other than we had one proponent and her concerns were address, so he recommended final approval.

Mayor Pro-Tem Whitehead moved to approve Ordinance No. 682 amending the code to allow camping in certain city parks and the Airport. Commissioner Frankel seconded the motion. Roll call vote was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Discussion/Action: Final Adoption of Ordinance No. 683 related to short term rentals within the city limits. Renee Cantin, Clerk-Treasurer

City Clerk Cantin said the only thing she wanted to add was she had not received a response from Karina from the Town of Taos about their process for putting this in place. And she did forward what she received from Gina Kelley from the Village of Ruidoso and some of their concerns about putting forward their ordinance. She just wanted to add when we proceed with this to please bear with us, the process has taken years in Ruidoso and it's still not fully in effective. It may not be done overnight, but we can start by notify residents in the utility bills.

City Attorney Rubin said he recommends getting going on this and we can always come back and make amendments if we need to. What we discussed during the public hearing is the issue about the notice to the neighbors, but he thinks that is something we can handle administratively without having to revise anything in the ordinance. The only thing he would suggest is what we talked about is deleted the word "seasonal" in Section A.1, aside from that he thinks we can go forward.

City Clerk Cantin added in addition to that, we will have to put a resolution in place to set the fees.

Commissioner Frankel asked about part of the process for the review in Section G.1, will City Manager Fuentes complete the review, is there an entity, or the Commission? City Attorney Rubin said we didn't discuss that but in his mind he was actually thinking Mr. Travis would do that.

City Clerk Cantin added the plan was to include it with our Business Registrations, and we changed it to only one year instead of three years so we can do it the same time as Business Registrations. We do run the application through Mr. Travis before we

proceed, so we would include the Police Department, as he mentioned and also the Fire Department. We figured that would be the easiest process.

Commissioner Frankel said so if someone was denied. City Clerk Cantin responded yes, then they would take further action for denial.

Commissioner Clark asked if we can put the notice of neighbors into the resolution. City Attorney Rubin responded he will give it some consideration to put that in the resolution.

Mayor Pro-Tem Whitehead moved to approve Final Adoption of Ordinance No. 683 related to short term rentals within the city limits. Commissioner Hechler seconded the motion. Roll call vote was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Ordinance No. 684 for publication related to manufactured homes. Robbie Travis, Building Inspector

Building Inspector Travis read the background from the Commission Action Form and reviewed the changes in the ordinance. Essential we have been getting older mobile homes mainly in our Mobile Home parks and RV parks. Right now our code specifies it has to be compliant with HUD and theirs can be as far back as 1978 where you can get into a 39 year old mobile home. We have people bringing the older ones in and our code doesn't say anything where we can stop it. Secondly, we did 20 year old and he believes Elephant Butte and Williamsburg does ten years old.

City Attorney Rubin added included in Section E. 3 for damaged units it states, the city will not allow those to be installed within the city limits period.

Commissioner Clark mentioned years ago there is a requirement by the state where people have the right to put any house where they want it, correct? All we can do is state the age of the mobile home, not anything that already exists. Building Inspector Travis confirmed that is correct.

Commissioner Hechler asked if they have to obtain a permit to move the mobile home. Building Inspector Travis confirmed that is correct. It's included in the permit. Commissioner Hechler also asked, what if they have a mobile home within a trailer park that has to be moved and if it goes through the same process? Building Inspector Travis responded yes we want to do it for any moving. If they move it, they will have to get a permit. Even from one space to another. Building Inspector Travis said we have this issue with New Haven and he explained some of the issues there.

Mayor Green asked under non exposure of under carriage in E. General Conditions under C. Would he be correct in stating if they did not comply within that time period it would be in violation of the city code. City Attorney Rubin confirmed it would be violation.

Mayor Pro-Tem Whitehead moved to approve Ordinance No. 684 for publication related to manufactured homes. Commissioner Frankel seconded the motion. Motion carried unanimously.

4. Discussion/Action: Resolution No. 38 16/17 to accept the LGRF Project No. SP-1-18(920), Control No. HW2L100321 for Installation of sidewalk on North side, curb & gutter, base course, and new asphalt for 350 feet of East 7th St. from Tingley to Kruger and chip seal for Veater Street from Iron St. West to the arroyo for around 800 feet. Don Armijo, Public Works Director

Public Works Director Armijo addressed the Commission this is the project that was selected in March as to what street to do this year and this is the next part of the process for the funding. He asked if they had any questions.

Mayor Pro-Tem Whitehead moved to approve Resolution No. 38 16/17 to accept the LGRF Project No. SP-1-18(920), Control No. HW2L100321 for Installation of sidewalk on North side, curb & gutter, base course, and new asphalt for 350 feet of East 7th St. from Tingley to Kruger and chip seal for Veater Street from Iron St. West to the arroyo for around 800 feet. Commissioner Hechler seconded the motion. Roll call vote was taken by the Clerk-Treasurer.

Mayor Green commented on how he appreciated how the Commission handled this item when it was brought to us previously. We had a couple of different opinions and he feels we made a compromise through the teamwork where everyone was happy. **Motion carried unanimously.**

5. Discussion/Action: Resolution No. 39 16/17 declaring the intent of the City Commission of the City of Truth or Consequences, New Mexico, to consider for adoption an Ordinance authorizing issuance and sale of up to \$2,500,000 City of Truth or Consequences Municipal Gross Receipts Tax Revenue Bonds for the purpose of constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to a Law Enforcement Facility or purchasing or improving any ground relating thereto, including but not necessarily limited to acquiring and improving parking lots, or any combination of foregoing; and directing the Mayor and City Clerk to publish notice of intent to consider an Ordinance Authorizing such bonds in a newspaper of general circulation within the city. Juan Fuentes, City Manager

City Manager Fuentes started by going over some quick slides presented in January 2012 from when this was first a vision and the plan they had received with Chief Mullins. A task force was put together for the Animal Shelter. Shortly we should also have an Animal Control Manager. The next step was the Law Enforcement Complex with a one stop shop, where all agencies could be included. Since Dispatch has decided not to be a part of it, they are really focusing on Law Enforcement and Animal Control. One of the issues with the current building were included in the original vision, including

weapons storage, records storage, communications, security expansion, and parking. So one of the reason she said this option should be considered is because of location. We have used the Band-Aid temporary approach with any changes that have been made over the years. The current building is limited as to what they can do with expansion. He asked Police Chief Alirez to address some of the general layout other safety issues. Then we will go into the financing of the proposed project.

Police Chief Alirez reviewed each section of the new building for the Commission. He went on to let them know the great need for this building. It will be a great networking to be able to do our jobs. It's on high ground and if they have a major emergency or situation, they will have the ability for all agencies meeting together. Starting July 1st Code Enforcement will be at the Police Department and we will need a functional place to do these things. Some services and things we don't have include: Youth Services; Police Activities League to partner with organizations for Quality of Life issues; Reserve Program; Block Watch Captains; Coffee with the Chief; Police Explorer's Programs and a Civilian Volunteer Program.

City Manager Fuentes wanted to add on Monday morning they had a Staff meeting at the Police Department. He asked the Chief to share the thoughts they had when he showed them the plans. Police Chief Alirez first of all wanted to say this has been a collective process that Chief Mullins started. This was the first time they saw it on paper in a more finalized format. He said they were overwhelmingly excited and emotional. One of them said, he feels like a cop. This really sets a tone as who we are and will improve our services. They thanked the City Manager for coming to the staff meeting. That was the first time a City Manager has ever come to a staff meeting.

City Manager Fuentes added with this project, he doesn't think we have anything this modern anywhere in the county. For a public building this will be the most modern and best looking building. Just like the Solid Waste Collection Center, this can become a model. He asked the Commission to keep that in mind. He asked Mark Valenzuela from George K Baum to come forward to present the financing options.

Mr. Valenzuela began by handing out a presentation to the Commission. He introduced Ryan Overstreet who is an intern with New Mexico State University. He's a Senior in the Business program and they have been here in New Mexico for 40 years and it's a way to bring in new talent to their investment bank. He went on to say her serves as their advisor to make sure they get the best rates. To summarize this scenario, he started with slide 9 of the presentation which showed the summary of the financing options. There are three different possibilities to take a look at to see what we want to do. It's really a \$2 million project and is a public offering of bonds. In, the first scenario we may be able to do it without a reserve fund. The second scenario is working with the New Mexico Finance Authority which is hard to beat, but they require a reserve fund. The total interested is \$3.4 million. It's the best deal out there at this point. Scenario three is financing through USDA in which you are also providing the reserve fund. You're also providing a renewal and replacement fund which they require. So total financing there is \$6-\$7 million. If you approve this resolution, they will go out there to

find the best option and bring it back for you in the form of the ordinance with the lowest cost financing. Some of the key things is how much revenue do you have related to the debt payment. He also showed the debt service coverage. In every scenario you have two times the revenue to pay the debt which is very strong for the debt service. Again, this Resolution is just to start the process.

Commissioner Clark said it seems like 4.35% is a higher interest than any of the debt we are holding. Mr. Valenzuela responded we are assuming the current financing at a rough bond rating rate of single A credit which would be in line with other communities of this size in the State of New Mexico. So at that rating, the market currently is at about 4.35%. Commissioner Clark said so we are going on market rate on this and not a special rate on anything. Mr. Valenzuela confirmed that.

Commissioner Clark also asked if there is any particular reason we would go the 20 year instead of 30. Mr. Valenzuela responded affordability to ensure the GRT that would be used to pay these bonds has sufficient left over for the operations. Commissioner Clark mentioned if we are paying for it from our GRT, then Santa Fe will see that money before we see it. Mr. Valenzuela said it depends on who you sell it to. If you go to the public market Santa Fe would not be involved. If you finance through the NMFA, they would intercept your GRT and make the payment first on a monthly basis and then distribute after that. Commissioner Clark said so the 20 year option saves us about \$650,000. Mr. Valenzuela agreed. Commissioner Clark asked if we have a choice. Mr. Valenzuela confirmed they do have a choice. Commissioner Clark asked other questions about the difference in the payment. She would like to see a breakdown and maybe the option to buy down the interest rate. Mr. Valenzuela responded we are actually seeing 30 year bonds come in lower than 20 year bonds.

Mayor Green first asked about the payout which is not from the General Fund, it's from a dedicated ¼ of 1% GRT for the Police Department and would be paid out of their operating budget. And he's assuming City Manager Fuentes has spoken to the Chief and whatever it generates and was intercepted it would not interfere with the operations of the department. Police Chief Alirez agreed that is correct, the department is running very fiscally responsible and this last operating year, they fell within the baseline budget.

Mayor Green added if we approve this today and need to get our hands on it, can this process be stopped? Or once we vote today are we can't back out. Mr. Valenzuela responded this is not an obligation to move forward it's a step in the direction to obtaining the best funding. If you change your mind next month, there is no cost incurred on anybody's part.

Mayor Green added the Chief forgot to say one word. When he ran into him after the staff meeting, he mentioned they were stoked about the project. Police Chief Alirez responded Truth or Consequences has been one of his greatest challenges and one of his greatest satisfactions in his career. We have a great group of people here and he means it. They have great values, work hard, and don't complain. They left so excited because the Big Boss came as said, what do you guys think about this? Captain James

Morgan added they were extremely excited. He may not even be here then, but he's been in several of the buildings over the years and he's excited for this building. He think it will augment our abilities in the future and help this community.

Mayor Green asked him about having a different form of a department with less top heavy and more boots on the ground. Would that philosophy actually reduce your operating costs? Police Chief Alirez confirmed it would. And it's a fair statement that is would reduce costs? He also added the organization chart will change and the call volume will work into play to that. He's a working chief who delegates a lot and also does a lot. He expects all of them to do the same. He explained some of the differences they have in the department.

Commissioner Clark asked if they are going to have some skylights. And if we are going to the ¼ GRT increment are we using the extra funding for financing the police department. City Manager Fuentes responded we wanted to make sure we had sufficient revenue from the GRT to cover the debt service. Then we leave the Police Department additional revenue for vehicles and equipment. The revenue he has now will cover the debt service. He understands reducing the number of years but it reduces the availability of the funding for replacement. The goal was not to take away everything. The goal is to find a way to have the new building and still have the other resources.

Police Chief Alirez added they had many discussions over this and the numbers they came up with were extremely conservative. Years down the road has been a huge consideration. With the skylights, he's glad she brought that up. He visited other facilities to see what works or what they would have differently. They are going to work on natural light in there and cost efficiency.

Commissioner Clark asked for clarification on the financing. Mr. Valenzuela responded it's only for the construction. Commissioner Clark said we are doing two things here.

Mayor Green asked for clarification on the two things. Commissioner Clark responded we are going for revenue bonds and raising our GRT. Mayor Green corrected her that the GRT was passed four years ago. He explained that we are not raising the GRT. Mr. Valenzuela explained they show the revenue to show the ability to make that debt payment. He reiterated how the revenue bonds work. City Manager Fuentes also clarified now we are going out to get the funds allocated to the city for the construction for this project. We do have the money which has been coming in for a number of years. Mayor Green added the bottom line is we don't have \$2 million sitting in the bank, so we have to go out and borrow it.

Attorney Appel said the reason the tax is mentioned is because it's a revenue bond, so you need to identify what revenues are being pledged to pay off the bond. Commissioner Clark asked if it will cut into the Chief's budget. Attorney Appel said yes, and he heard him assure you, he will still have the money to operate.

Mayor Pro-Tem Whitehead moved to approve Resolution No. 39 16/17 declaring the intent of the City Commission of the City of Truth or Consequences, New Mexico, to consider for adoption an Ordinance authorizing issuance and sale of up to \$2,500,000 City of Truth or Consequences Municipal Gross Receipts Tax Revenue Bonds for the purpose of constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to a Law Enforcement Facility or purchasing or improving any ground relating thereto, including but not necessarily limited to acquiring and improving parking lots, or any combination of foregoing; and directing the Mayor and City Clerk to publish notice of intent to consider an Ordinance Authorizing such bonds in a newspaper of general circulation within the city. Mayor Green seconded the motion. Roll call vote was taken by the Clerk-Treasurer. Motion carried unanimously.

Mayor Green thanked the Chief, and his staff for seeing the need and giving up a bit of their budget for the benefit of the entire community and our youth.

6. Discussion/Action: Special Use Permit – Skyway Towers. Robbie Travis, Building Inspector

Building Inspector Travis reiterated if the Commission decides to approve it they could with conditions such as the height of the tower, and other issues

Commissioner Clark spoke about our Fire Chief having a problem with interference for the access for emergency vehicles. She would like us to consider a different location. She would like her fellow Commissioners to look at the height of the tower so they can house three instead of two service providers and we might not be thinking far enough into the future. And we should take it 60-70 feet as originally understood. The other thing is she would like to take Sherry up on her offer to paint it to blend it. And one other thing is she appreciates Johns comment about having the regulations.

Commissioner Hechler said considering the public opposition to this and in light of this being called the best location, tells him there may be alternate locations. We may have to compromise with the alternatives and he would like to put a percentage as to how optimal it may be at a location. We need to listen to our constituents and approve the best options that we can.

Mayor Green said he can't vote for this the way it's situated right now. One is because of the safety issues; two is the concern of the citizens; he questions the due diligence if you look at the March 28th comments. To him that means you can put the tower in another location, and he thinks it opens the door for other locations. He didn't hear anyone say we don't need better cell service, obviously there is a need. We need to do what's in the best interested of both the company and the citizens.

Commissioner Hechler moved to delay this one more time. He's not convinced that's not the best location here, which means it's not the only location. He would be open to revisiting this down the road if we had an alternative sight.

Commissioner Hechler moved to postpone this item to a future date.

Commissioner Clark asked Mr. Travis, if she understood, they did look at a couple other locations. Building Inspector Travis called her with two different locations and she looked them up and it gives them the elevation and only 1500 feet away. And the other was by the Veteran's Home. He thinks really, it was the engineer who said where the spot was that would work. He knows part of the problem is the hill in the downtown area. They are trying to get an area that will catch the dead zones in the downtown area.

Commissioner Clark seconded the motion.

Mayor Green asked Robbie to make sure to take the two more sights for consideration from Chief Tooley who has space here in town.

Motion carried unanimously.

Mr. Basham said the prior motion was to go to alternative city sights. He wonders if this motion is an alternative to that motion. Mayor Green said that is something he can discuss with the Attorney.

7. Discussion/Action: Vacate the street and alley at the West End of 3rd Street and alley. Robbie Travis, Building Inspector

Building Inspector Travis had nothing further on this. He stands for any questions.

Commissioner Clark mentioned on the application, there is only a signature for one of the property owners and the other property owner didn't sign it. Is that an issue? Building Inspector Travis responded, we have an old form he applied with. Then we did a newer form and he was out of town and not able to sign this one. He does have his signature on the other form.

City Attorney Rubin added it should be noted, this was advertised and there was no opposition to this. Building Inspector Travis confirmed, he had two people contact him about it, but once they found out where it was, they were fine with it.

Mayor Pro-Tem Whitehead moved to approve vacating the Street and alley at the West End of 3rd Street and alley. Commissioner Hechler seconded the motion.

City Attorney Rubin said we will want to prepare the actual notice of vacation to be signed and recorded. **Motion carried unanimously.**

I. NEW BUSINESS

1. Discussion/Action: Foch St. Water Retention Pilot Project. Joshua Frankel, Commissioner

Was moved to after Response to Public Comments.

2. Discussion/Action: PUAB recommendation for changes to the electric pass/thru change. George Szigeti, Chairman

Chairman Szigeti gave the presentation. Every Electric Utility has a surcharge which helps account for the volatility in prices. Their suppliers generating cost and fuel, etc. So everybody does this because costs are volatile. There is a formula for calculating the variation in cost and adjusting their rates to keep them at a stable level. From our municipal code in the Electric Division, there are two paragraphs of automatic rate increases. The first one says anytime there are rate increases which are charge to the city, such wholesale rates may be passed on to the customer on a pro rata basis except for the written contract for life. The second paragraph says automatic pass through, at any time there is increase in the wholesale cost of gasoline, diesel fuel or other energy charges necessarily used by the Electric Dept. in the operation and maintenance of the Electric Utility Department which are charged to the city, such wholesale cost or increase shall be automatically passed through to the customer on a pro rata basis. We have something we call a pass-through charge and that complicated looking formula is how we calculated pass-through charge. To sum it up, that formula compares the amount of money we pay for electricity to Sierra Electric and compares it to how much we pay to WAPA and calculated the difference between them. It does not say anything about the purchase of electricity. First, he wants to point out, if we are looking at this kind of formula, we should not be calling it a pass-through. The last time it was calculated was 2009, then we came back and checked it in 2011 and it was so close we let it be. However, that calculation has not changed in years. Almost all of the other electric utilities calculate their cost adjustment on a monthly basis. He summarized the cost for electricity purchase for August 2016 which is the month we use more electricity. He showed what was purchased from Sierra Electric. We have seen any cost increases because they froze our rates until next year. He explained the cost for that month including for Solar and the WAPA calculation. We also have to pay the transmission capacity to get it to our system. So there's another charge to Tri-State. He explained the numbers in the presentation to include the cost for purchase of power. He then explained the monthly values in the pass-through charges. There is quite a bit of variability in that. Most of the values fall within that \$0.0414 per KWH we are charging but most of the board feels we should not be charging that month. Changing the name will better describe it as an energy cost adjustment. It's the board's recommendation to ensure that we are appropriately billing customer's for the variation and the energy that the city purchases, the Energy Cost Adjustment should be calculated and sent out each month.

Commissioner Clark asked if he got an opportunity to see what the effect would have been if we used the ECA as opposed to the pass-through. It doesn't look like it would be very much. She wanted to make sure Electric Department Director Easley is comfortable with this and if he's been a part of this with the PUAB Board. The other comment is she has paid a pass-through since she moved here and she still hates it and it's one of the most confusing verbiages she's ever heard in her life. ECA would be so much easier to explain and if it's making such a little difference, she would be fine to go with it.

City Manager Fuentes feels Commissioner Clark asked the right question in the dollar amount and what that is. Essentially you are reducing the pass-through charge.

Whether you change the formula, or however that came about, it's been in place for many years. Any change would definitely affect it. It seems to him that the Electric Department would be held harmless, in the sense that they are the revenue generating division, so they take priority over whatever is transferred to the General Fund for all of the other governmental services. In regards to doing it monthly, he would refer it to Finance Director Torres and Utility Supervisor Williams to chime in. Because we have four billing cycles, to calculate it every single month would open it up for errors. Commissioner Clark said but we still calculate the pass-through every month. Chairman Szigeti said it has not been calculated since 2011. City Manager Fuentes added the ordinance says it will be reviewed annual, and that's what they recommend is annually.

Commissioner Clark said so with that being said it might be better for us to have a dollar figure so we don't create an issue for the electric department and their funding.

Mayor Green loves the name change and it makes it understandable. What he didn't hear is the cost of staff's time which has a value and has to be factored in also. If we have four different billing cycles, that's 48 different changes a year and 48 chances for human error. Chairman Szigeti responded this was discussed at their meeting and the invoice they get are for a calendar month within a week to ten days of the next month. If you calculated it once a month it would get into all billing cycles.

Utility Supervisor Williams let them know we do prepare it once a year, if we were to do it once a month per billing cycle, it would be a lot more work and a lot more room for error. She explained the difference between the cycles. After Cycle C & D, they would have to do it, then they would have to do it again for Cycle A & B, and start all over again. Finance Director Torres added that it also has to be determined when we receive the bills to determine when we make the modified changes. They did the research for other communities with the fuel charges. The companies do the fuel adjustments and the utility companies also have service charge fees for their administration. We are not factoring in what it will cost us on a monthly basis. On top of that, the Utility Office is climbing up a huge hill that we were in. We still have a lot of that mountain to climb and correct. They can't stand before them and say they are perfect in the utility office, there still needs to be improvement. And this is concerning because they would have to manually enter this in the system which will open us up to human error.

Utility Supervisor Williams added for something that's done annually, there is a lot more time to prepare and make sure when it's done, it's done correctly. Her concern is the time it's going to take to do it on a monthly basis on top of everything they already have to do.

Mayor Green asked Finance Director Torres if she would take the average of the 12 months to charge the next 12 months. Finance Director Torres responded yes and their recommendation would be in July when they do the sewer and the trash.

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Commissioner Hechler also likes the idea of annually to take the average, but he would like the capability of doing it as needed if the fuel drops we would like the ability.

Chairman Szigeti ran the numbers between the two values the 18th month difference would be over \$35,400, so it would be \$23,000-\$24,000 a year which is not a big hit.

Mayor Green appreciates all of the work that goes into this. We appreciate the efforts and work of the Public Utility Advisory Board. But we've got to take into consideration the staff and not having them so overloaded. Chairman Szigeti responded he understands that but the Tyler System should be able to punch out the two numbers of Total Cost and Kwh. And you could plug in those two numbers into a spreadsheet and let it calculate the values. He doesn't see that as a huge investment in time. And if it would be done at the end of the month rather than the 15th it would not be as much.

Commissioner Clark would ask Tyler if there is something they can do. Utility Supervisor Williams responded the actual bills they get from Tri-State and Sierra Electric are not entered into Tyler. So it would still be matter of them having to figure out the amounts and hope they are right to plug them into the system.

Commissioner Hechler asked how the PUAB Committee would feel about trying it and down the road see if we can work it out with Tyler. Chairman Szigeti said he can see that as being a compromise. They are frustrated with the fact that this goes on as a constant surcharge. If we want it to be a true cost adjustment, it has to be calculated periodically. This is something that any accounting system should be able to do. It's just a matter of learning how to do it. He had not heard before that these invoices do not get put into Tyler. He's kind of disappointed, because he figures they should be.

City Manager Fuentes clarified none of the payables are input into Tyler. We pay them as a requisition and payment, but the details do not get put into Tyler. Even other municipalities who use the Tyler, do not enter the bills into the system. If you enter the vendor, amount, and address, but you don't enter the information of the kWh hours or details of payables.

Mayor Green likes the idea of changing the name and revisiting this on an annual basis. He liked the idea that we should be aware of the gas prices where it should be looked at.

Mayor Green moved to approve changing the name to the Energy Cost Adjustment and authorize staff to visit this on an annual basis starting July 1, 2017 and to be cognizant of rising and diminishing costs that we want to try to capture for the benefit of our citizens. Commissioner Frankel seconded the motion. Motion carried unanimously.

3. Discussion/Action: Request related to the Tennis Court Fees. Margaret Speer, Sierra Racquet Club

Beverly Turflote, 170 Juniper began by saying thank you. If every citizen would attend a meeting once in their life they would have better idea of what you go through. She thanked the City Manager for meeting with the group. She went on to request the Commission to vote on removing the light fee for the tennis courts for at least two years to rebuild the use of the courts in the community. They actually have their own set of keys now which has worked since the last Commission meeting. They even went back on Monday and got their own keys. One of the things they are suggesting is the two West Courts to be unlocked for three months to try it. They would suggest the two East courts continue to be locked and they would request the new nets to be given by the city so they could hang those. That would help so tourists and new residents could use those courts. The lock currently on the West courts could be the light put on the lock box so all with keys to the East court could lock it up when they are there. The Sierra Racquet Club want to commit themselves to the maintenance of the courts and would like access to water once a month so they can hose the courts down. They would like to put some kind of signage up so people could contact them. Their mission is to get people of every age and sex to use the courts.

Commissioner Hechler said one of the things he thought about is removing the keys all together and put a timer on for an hour or so. Which would mean they wouldn't have to be involved with a key. People could just drop by and use the facility by turning on a timer for an hour that would automatically turn off. He doesn't know what the cost would be to the city and he would like to have Electric Department Director Easley check that out. Ms. Turflote thinks the light on the timer might work. But keeping a key on the light pole would also work. Their goal is not to have to request city time to keep up with it. Mayor Green thanked her, but the reason we did lock them was because the youth were using that as a skateboard court, it wasn't to deprive the citizens, it was to protect the facility. Beverly responded they do have trepidation, the two best courts are the East courts. Those courts need to be preserved and they have made it a goal to invite other communities to come here. They still have concerns but that's why they are suggesting a 3 month trial.

Commissioner Clark wonders if we should wait until school starts. Then you have a timing period of when kids are out of school. If you want to give it a shot, it is city property and would be easier to have the Police Department cruise by there from 4:00 pm to 8:00 pm. Ms. Turflote said they are concerned that kids and people aren't always going to get a key. They are just trying to respond to Commissioner Hechler to just unlock them and trust everybody, but they are not that trusting at this point. They would rather preserve the good courts. Commissioner Clark mentioned about just posting a number they can call to unlock the courts, such as, the City Clerk's number. Ms. Turflote said that could be a compromise with a combination lock.

Mayor Green added it's great when citizens take ownership and become a part of our facilities. He mentioned how great it would be to have tournaments here.

Ms. Turflote is impressed with how much history a number of people she plays with has. Within the group they have a lot of experience and they hope they can put something in the paper.

Commissioner Hechler asked City Manager Fuentes if we have to revisit the resolution to drop the electric fee. His thought is the \$5 is really nominal and he doesn't think the city makes any money on it.

City Manager Fuentes responded because it is a resolution we would have to bring it back, however, during the interim, we are not charging right now.

Commissioner Hechler moved to approve to leave the two west tennis courts place a combination lock and make it available to the Clerk's office and we leave the two East courts locked for special events have staff research the timer on the lights and we revisit the resolution the next time we meet and discuss removing that fee. Mayor Pro-Tem Whitehead seconded the motion. Motion carried unanimously.

4. Discussion/Action: City Utility incident which occurred January 13, 2016.
Ellishia & Freddie Bierner, Requestor

Ms. Bierner stated they are citizens and business owners in the city. They also own a rental property on 5th and Foch. She reviewed what happened on January 13, 2016 with a fire hydrant that burst. All the water entered her apartment. They had to hire a contractor to remove all of the water. They filed a Tort Claim as directed. They received a response from the state saying they were denied. She is confused whose responsibility this is. She mentioned four months prior a car hit the fire hydrant. She wants to know if the city can do anything and she wants the fire hydrant moved in case it breaks again.

City Manager Fuentes responded he doesn't recall the conversation she is referring to, but he can tell them anytime someone comes in and wants to file a claim, the instructions we give, is they have to fill out the paperwork and we send it in. As she mentioned the New Mexico Self Insurer's Fund did receive the claim and after researching, they denied the claim. Ms. Bierner has sought legal counsel, so he will defer to legal counsel here, but his recommendation is being cautious if this is something that will be litigated.

City Attorney Rubin will have to agree with the City Manager on that. It would not be appropriate for the city to comment on this.

Ms. Bierner asked if she can civilly sue you. How can she be liable as a citizen? She doesn't think this is the way people should be treated. She tried to get legal counsel and nobody will take the case. She just wants the carpet, the rent, the tile and she doesn't think that's unfair. She hasn't sought legal counsel, this is a citizen asking them to do what's right.

Mayor Green asked about the Police Report. She gave them a copy of the report which was four months prior to the hydrant and the pictures. Mayor Green read a portion of the report where it doesn't mention hitting the hydrant. Ms. Bierner responded she feels it had to of hit it and the hydrant should've been checked out. It was compromised four months prior.

City Attorney Rubin sympathizes with Ms. Bierner but reiterated this should not be discussed in open session.

City Attorney Appel agrees with City Attorney Rubin. The situation could arguably create a situation where there is negligence on the part of the city or the part of the driver and those are matters that have to be handled through mediation. He mentioned if her damages are not in excess of \$10,000, she can file in magistrate court.

City Attorney Rubin said you have the right to consult an attorney and he can't advise her any further.

Mayor Green thinks the advice of counsel is right on and would think if this gains traction, they would take it to Executive Session.

5. Discussion/Action: Revisit Lodger's Tax Guidelines. Steve Green, Mayor

Mayor Green requested to pull this item in the difference of time and will ask the City Clerk to put it on the next meeting.

J. REPORTS

1. City Manager

City Manager Fuentes wanted to remind the Commission they have the JPC meeting tomorrow at 11:15 a.m.

- 2. City Attorney -None
- 3. City Commission - None

K. EXECUTIVE SESSION

1. Sale or Disposal of Real Property (1310 Nickel), *Pursuant to 10-15-1(H.8)*

Mayor Pro-Tem Whitehead moved to approve going into Executive Session at 4:06 p.m. to discuss Sale or Disposal of Real Property (1310 Nickel). Pursuant to 10-15-1(H.8) as posted in the meeting notice. 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 4:27 p.m.

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Mayor Pro-Tem Whitehead certified that only matters pertaining to Sale or Disposal of Real Property (1310 Nickel) pursuant to 10-15-1(H.8) was discussed in Executive Session and no action was taken.

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

Mayor Pro-Tem Whitehead moved to authorize staff to proceed with the sale of 1310 Nickel St. Commissioner Clark seconded the motion. Motion carried unanimously.

M. ADJOURNMENT

The meeting was adjourned at 4:31 p.m.

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


Steven Green, Mayor

ATTEST:


Renee L. Cantin, CMC, City Clerk