

**CITY OF TRUTH OR CONSEQUENCES  
PLANNING & ZONING COMMISSION  
MINUTES  
MONDAY, DECEMBER 7, 2020**

**REGULAR MEETING**

Regular meeting of the Planning & Zoning Commission of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, via teleconference on Monday, December 7, 2020 at 5:30pm.

**CALL TO ORDER:**

The meeting was called to order by Interim- Chairman Rick Dumiak.

**ROLL CALL:**

Rick Dumiak, Interim-Chairman  
James Bush, Member  
Chris Sisney, Member  
Steven Zeschke, Member

**ALSO PRESENT:**

Morris Madrid, City Manager  
Traci Burnette, Grants/Projects/Zoning  
Jay Rubin, City Attorney  
Angela Torres, City Clerk

**1. APPROVAL OF AGENDA:**

Interim-Chairman Dumiak requested a motion to approve the agenda.

**Member Zeschke made motion to approve agenda. Member Sisney seconded the motion.**

**Interim-Chairman Dumiak asked for a roll call vote.**

**Rick Dumiak voted aye.**

**James Bush did not vote due to dropped call.**

**Chris Sisney voted aye.**

**Steven Zeschke voted aye.**

**Motion carried with a 3-0 vote.**

## **2. APPROVAL OF MINUTES:**

### **a. Regular meeting of Monday, October 5, 2020.**

Interim-Chairman Dumiak requested a motion to approve the minutes.

**Member Zeschke made a motion to approve the minutes. Member Bush seconded the motion. Interim-Chairman Dumiak asked for a roll call vote.**

**Rick Dumiak voted aye.**

**James Bush voted aye.**

**Chris Sisney voted aye.**

**Steven Zeschke voted aye.**

**Motion carried unanimously.**

## **3. COMMENTS FROM THE PUBLIC:**

No response from the public.

## **4. RESPONSE TO COMMENTS FROM THE PUBLIC:**

No response from the board to comments from the public.

## **5. PUBLIC HEARING:**

### **a. Public Hearing/Discussion/Action: Chapter 15 Subdivision Sec. 15-18. Vacation of plats. Applicant is requesting the city vacate a portion of Platinum Street that is adjacent 1300 Veater Street:**

City Attorney Rubin explained the process of the virtual public hearing by saying: normally we would all be together in one room. He would probably advocate what we call the Battershell Process. It is a little more of a completed procedure where he would suggest we put everyone under oath. It's almost like a semi-trial where we have opponents will give testimony, they would be subject to cross examination, and then the proponents would give their testimony and cross examination. To make it a little less formal, he suggests having the proponents go first under oath, and testify to what they are going to say. Staff would then give their recommendation, and then we will have the opponents go.

Interim-Chairman, Dumiak asked City Clerk Torres if we want swear in everyone over the phone all at once or swear everyone in one-at-time as they speak.

City Attorney Rubin recommended that they do it one-at-time due to the meeting being held over the phone.



Interim-Chairman opened the Public Hearing.

**Proponents:**

City Clerk Torres swore in Mr. Frank Luchini.

**Mr. Luchini:** He is Frankie Luchini, and he is the resident of 1300 Veater. He is requesting the City of TorC to vacate a portion of Platinum Street south of Veater. He is a resident of the 1300 Veater and the City of TorC gave me the address of Veater Street and not Platinum Street even though my driveway and meters are on Platinum. Along with the letter he submitted should include a recent survey of his property and an aerial map of one of his adjoining properties to the east of the said property of Platinum Street.

**Interim-Chairman, Dumiak:** He did not receive an aerial map or your survey. He did however go to the site today, and he also Googled it so he is very familiar with the properties in question.

**Member Bush:** He did not receive any aerial map, but I did also view the property.

**Member Zeschke:** He doesn't have an aerial survey, but he looked at the property today, and drove up and down Veater as far as Steel. So he is familiar with the area.

**Mr. Luchini:** His request is for them to vacate property. If you do visit that street, you can see the City. He is not here to point fingers or to create any conflict with the City. He is a resident of the City, and a part of the public and the City. Therefore, the City should take the best interest for the public wellbeing. If you drive down Platinum in front of his driveway, you will see some erosion that has occurred since July 26th. The City, there again, he is not here to point no fingers to the Street Department or the City of TorC, but that property has been in his family for decades, and you can see that the property has not been maintained. He has his property from fence west to the alley maintained. He does everything, and he feels the property is very well kept up, but the street is not. Since the July 26<sup>th</sup> flood, the City of TorC has been in that drainage ditch from Broadway since then to Veater along Platinum twice, and on July 29<sup>th</sup> and August 30<sup>th</sup> they maintained the drainage ditch from Simson to Veater Street. October 6<sup>th</sup> was the first time (in his memory) that the City of TorC has put any type of equipment in the drainage ditch south of Veater to the fence of the Rio Grande. He feels that the City failed to maintain the street and they have neglected and abandoned Platinum south of Veater to the bank of the Rio Grande. He wants the rest of the drainage ditch to his property of the green fence, and the City would maintain ownership of that drainage ditch. That's all he is looking for. Yes there is water running in that property on Platinum south of Veater. That water feeds his property and also feeds his neighbors to the left of the Teston's. He would provide an easement for the water run and for the electric line because the electric line runs on the south portion of his property and feeds the Teston's. He doesn't believe there is currently an easement for the city electrical line going through his property. He would provide the easement for the electric, water, and access to maintain that drainage south of Veater. I think we can all attest that the drainage ditch has not



been maintained in years and maybe even decades. So again going back to some of these letters that showed far access to the river but clearly there is no access to the river off of Platinum so the limit is already there and we are limiting the access to the base of the Rio Grande. Overall, the City abandoned south of Veater again. The City of TorC owns a lot of property right there so that is the most logical place to create access to the river. He talked to Merry Jo Fahl with the Rio Grande Trails and some people are concerned about the river trail access. According to Merry Jo Fahl, she is part of the commission that is developing the trails that are going to be by the Rotary Park. The trails will cross the river and will be on the Southside of the banks of the Rio Grande instead of them trying to get permission from all the land owners along Platinum to Coal down to Williamsburg. It would all be private property, and the City would have to access, and obtain that property from the land owners. Merry Jo told him that the trails will be deemed to develop a plan on the Southside of the base of the Rio Grande. So with all this said, and again going back to July 26 flood, the City has been in that area two to three times and has never gotten onto the City street of Platinum to maintain that street. If you visit that street today you should understand where he's coming from. There is still erosion 8 to 12 inches deep that he has to navigate through every day. In order to get his trailer out of his front driveway, he has to take the erosion out of his property and put it back into the erosion in order to get out of his driveway. And again, he hates to point fingers at any departments of the City because he has been an electrical contractor for the last 34 years in TorC and has tried to maintain a working relationship with all of the departments. He is not here to point fingers, but the City of TorC has failed. They have failed to maintain Platinum Street. Yes, it will cost several dollars to develop that street, but he is willing to take on that responsibility and develop it himself. He has also witnessed a homeless person taking a bath in his back yard. He has seen some homeless people taking a bath in the Rio Grande on the base of his property. He has Grandchildren that have been down there. He just wants a fair shake as a tax payer of the City, and as part of the public of this City. He feels that he could maintain and develop it, and it would look like what his property looks like, and he feels that his property is very well kept up.

**City Attorney Rubin:** The next thing that would be appropriate is for the board members to ask Mr. Luchini any questions.

**Member Bush:** It sounds like each of us board members have visited the property and speaking for himself, he thinks that Mr. Luchini has articulated very well his concerns and his argument for vacating that part of Platinum Street to the river. In his initial letters he has also stated that he will give fair value, will maintain, and will allow easements. He thinks that the City's response was almost just a wash. He feels that this is a very articulated and well thought out argument for vacating that portion.

**Interim-Chairman, Dumiak:** We are looking for direct questions to Mr. Luchini, not a statement.

**City Attorney Rubin:** Mr. Bush we are not really at a point yet where the Commissioner or Deliberator give their comments. Right now we are taking testimony. Mr. Luchini gave his testimony, and the board members have the right to ask him questions. Then when you're done, Mr. Dumiak could share what he calls the other witnesses, and then you can deliberate.



**Member Zeschke:** He drove down almost to a head gate and made a 3 point turn, and it was kind of rough down there. There was a bunch of pea gravel that was dumped in. He asked Mr. Luchini if he dumped it, and is that what he's talking about the when he says erosion because it didn't look like it matched the rest of the stuff.

**Mr. Luchini:** He brought some of that material in to create his driveway with the erosion.

**Member Zeschke:** he just wants to make sure he has the right picture here. He also noticed that there appeared to be a cottonwood tree or two growing in the drainage ditch further down. He didn't really walk down towards the river, but he just wants to make sure he has the right picture in his head. He also asked Mr. Luchini if he owns the land east of the drainage ditch.

**Mr. Luchini:** No I do not.

**Member Sisney:** He asked Mr. Luchini if he plans on putting a gate there.

**Mr. Luchini:** It's hard to say. As of today he does not plan on putting a gate there.

**Staff Presentation:**

**Traci Alvarez, Grant/Projects Coordinator/Zoning Official:** The applicant is requesting to vacate a portion of Platinum Street adjacent to 1300 Veater Street. All applicable documents have been submitted, and appropriate fees have been paid. Certified letters were sent to all property owners within a 300 ft. radius. All departments who did an internal review regarding the request for vacation, was the Electric Department, Water/Wastewater Department, Streets Department, as well as Planning and Zoning. At this time the Electric Department, Water/Wastewater and Planning and Zoning recommend to not approve the application. There are concerns regarding access to utilities that are in that area, as well as potential access for future development. With future development, the riverwalk feasibility economic study does not have anything to do with the river trail crossing that Mr. Luchini referenced. It is a separate project being done and looked into at the city level. So at this time staff does not recommend approval of the application.

**Member Bush:** He believes that Mr. Luchini address all the city concerns.

**City Manager Madrid:** He knows you have all your information in all your packets and he is sure you studied it. He just wanted to point out a couple of things and respond to a couple of points that were brought up tonight. The initial letter that was written to the Mayor regarding the vacation of a portion of Platinum Street is not essentially a part of our process and is contradictory because it also has language that requests a sale of the property. I'm not sure whether that's still clear or not. His biggest concern is the vacation the property. Having someone privately acquire it could be an anti-donation issue. It could look like the city is abandoning a property to give it away. The language in some of these communications is not clear. Is this intended to be a purchase or an abandonment? It cannot be both. As far as some of the earlier statements in regards to the maintenance of the road, since he's been here this was not an issue until Mr. Luchini decided to try to acquire the property. And that's an entirely separate issue we can address internally with the maintenance for that area. In regard to the access to the river, that decision is to be retained by the city through collaboration with other an

invited sources. Ms. Fahl is a part of the task force we have organized in relation to both the economic development and the actual Riverwalk concept itself. We are way in advance of any decision to be made, and the city does prefer to keep its options open. In regard to any other conditions we have Law Enforcement, and Code Enforcement that can address those issues under their own accord. We do have the resources to address those.

**Opponents:**

**City Clerk Torres:** We received two letters opposing this request.

**Letter submitted by Eloy Armijo:** I write to you with respect and concern about this issue. When area subdivisions are plated, Platinum Street was extended all the way to the river so that property owner can pump water from the river. These water rights assigned by the United States of America and is on file. Platinum Street has a drainage ditch that runs along the said road. The vacation would stop City of TorC, Sierra County Flood Commission, and City Fire Department any access to provide maintenance and emergency services as needed. Platinum Street is one of the few plated streets in TorC that provides access all the way to the Bureau of Reclamation property via our rivers that may and can be used. Therefore, we ask the Planning & Zoning Commission that this request for the vacation of Platinum Street be denied. (Complete copy attached hereto and made a part hereof).

**Letter submitted by Fire Chief Tooley:** Board Members. The Truth or Consequences Fire Department is against vacating Platinum Street adjacent to the said property. The vacation would restrict fire apparatus access for fire suppression and limit access to Bureau of Reclamation property along the Rio Grande. The vacation of said property would also limit the City of Truth or Consequences to maintain the drainage arroyo along Platinum Street that empties into the river as well as limit private water rights of neighbors that would not be able to access their water from the Rio Grande. If you have any questions, please call me at (575) 740-1640. (Complete copy attached hereto and made a part hereof).

**City Attorney Rubin:** It is an interesting point that Mr. Luchini in his letter does talk about paying fair market value for the property. That was something that Mr. Madrid mentioned in a paragraph in the letter and would make it a totally different situation. If that's what we're talking about I think the City Commission would still like your input.

**Interim-Chairman Dumiak:** That's exactly what I was thinking. It sounds like a proposal for a sale. None the less, we should go ahead with the process as we are into right now and the City Commission can get our recommendation.

**City Attorney Rubin:** Agreed with Mr. Dumiak.

**Member Bush:** Mr. Rubin made a good point just now. Mr. Madrid, however reading the letters from Mr. Luchini, and then reading the concerns of the city and obviously the department heads, he thinks Mr. Luchini has addressed everything. He is willing to maintain, give the easement, and he's willing to give fair market value. Mr. Luchini is taking the first step and trying to correct some problems with his property via Platinum Street all the way to the river which as he



maintains. He thinks Mr. Luchini has addressed the concerns of this City, and we need to go from there.

**Member Sisney:** He understands where Mr. Luchini is coming from. If it was his property he would do the same thing. However, he might want to put a gate up because people drive around all over the place, and people will be driving down that road for sure.

**Member Zeschke:** He kind of agrees with the Fire Chief Tooley as far as access goes, especially with wild fires. He knows it's down by the river. Access down to the river is important for fighting any wild fires. He is also a big proponent of public access down to the river. He knows that's not much of a street, but he's certainly concerned about those gates because he drove down and noticed that Copper Street is blocked by two gates, and the next access down to the river is all the way down to Steel. His third point would be, if you vacate that street, who ever owns the property east of the river (which he's assuming is the Armijo's) they wouldn't want to put any houses there, because there's no street. He also has public access concerns, fire safety concerns, and the right of the property owners on the east side of the drainage ditch. Although he would like to say that maybe the city could cut down some of the trees growing in the drainage ditch.

**Interim-Chairman Dumiak:** He drove down there today and looked at the property. He looked at river access, and there is indeed river access, but it's blocked somewhat by that berm that's in place. None the less, there is a public street that does give us river access. He's not a big fan of vacating property, especially a public road way. The Fire Department is saying they need access and would not have it if this is vacated, as well as the Utilities companies.

Interim-Chairman Dumiak closed the Public Hearing.

Interim-Chairman Dumiak called for a motion.

**Member Zeschke made a motion to deny the vacation of a portion of Platinum Street that is adjacent 1300 Veater Street. Member Bush seconded the motion.**

**Rick Dumiak voted aye.**

**James Bush voted nay.**

**Chris Sisney voted aye.**

**Steven Zeschke voted aye.**

**Motion carried with a 3-1 vote.**

**Interim-Chairman Dumiak:** The Planning & Zoning Board has voted to send it to the City Commission with the recommendations to deny the vacating of this road. I thank you very much everyone. Moving along next on the agenda item.

## **6. NEW BUSINESS**

### **a. Discussion/Action: Appointment of Chairman:**

Prior to starting, Rick Dumiak clarified he would consider the Chairman position if asked. Madam Clerk advised the board that the Code of Ordinances requires a 2nd Chairman. However they can wait on that item until the board is completely filled.

**Member Zeschke made a motion to nominate Rick Dumiak as Chairman. Member Bush seconded the motion. Motion carried unanimously.**

### **b. Discussion/Action: Appointment of Vice-Chairman:**

**Chairman Dumiak made a motion to nominate Member Sisney as Vice-Chairman. Member Bush seconded the motion.**

**Madam Clerk called roll.**

**Rick Dumiak voted aye.**

**James Bush voted aye.**

**Chris Sisney voted abstained.**

**Steven Zeschke voted aye.**

**Motion carried.**

### **c. Discussion/Action: Appointment of 2<sup>nd</sup> Vice-Chairman:**

This item was tabled.

## **7. COMMENTS FROM THE PLANNING & ZONING COMMISSION:**

Member Zeschke made reference to Copper Street south of Veater towards the river that has two gates on it. He wanted to know if that portion has been vacated. City Clerk Torres recommended questions be directed to Traci Alvarez in the Planning Department.

## **8. COMMENTS FROM STAFF:**

City Manager Madrid congratulated the newly appointed Chairman and Vice-Chairman. He looks forward to working with them both.

City Attorney Rubin agreed with City Manager Madrid, and acknowledged how well Mr. Dumiak handled this meeting. He also looks forward to working with the Commission.



## **9. ADJOURNMENT:**

There being no further business to come before the Planning & Zoning Advisory Board Chairman Dumiak asked for motion to adjourn meeting.

**Member Zeschke moved to adjourn meeting. Chairman Dumiak seconded the motion.  
Madam Clerk called roll.**

**Rick Dumiak voted aye.**

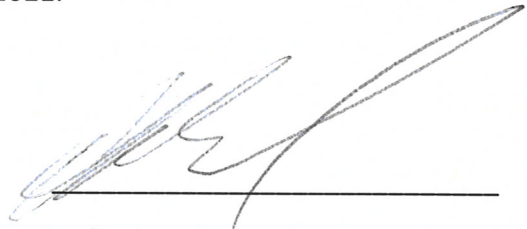
**James Bush did not vote due to dropped call.**

**Chris Sisney voted aye.**

**Steven Zeschke voted aye.**

**Motion carried.**

PASSED AND APPROVED ON THIS 5<sup>th</sup> DAY OF JANUARY 2021.

A handwritten signature in blue ink, appearing to read 'RD', is written over a horizontal line.

Rick Dumiak – Chairman  
Planning & Zoning Commission

November 13, 2020

Re: Proposed Vacation of Portion of Platinum St

Dear Truth or Consequences City Planning & Zoning Board

I write to you with respect and concern about this issue.

1. When area subdivisions were Platted (McElroy & Currey -Laiminger ) Platinum St was extended all the way to the river, so that property owner could pump water from the river. These Water rights assigned by The United States Of America and is on file.
2. Platinum St has a drainage ditch that runs all along the said road. The vacation would stop City of T. or C, Sierra County Flood Commission and City of T or C Fire Department any access to provide maintenance and Emergency Services if needed.
3. Platinum St is one of the few platted streets in T. or C that provides access all the way to Bureau of Reclamation property (BOR) rivers that may and can be used.

Therefore, We asked the Planning & Zoning Commission that this request for, Vacation of Platinum St be **Denied.**

This letter is supported by:

Eloy Armijo  
1410 Platinum St.  
1412 Platinum St.

Alfred E. Armijo  
1413 Tin St.

Respectfully,  
Eloy Armijo  
1410 Platinum St  
T. or C. NM 87901  
575-894-3760  
[simba@valornet.com](mailto:simba@valornet.com)



TRUTH OR CONSEQUENCES  
**FIRE**  
DEPARTMENT

December 1, 2020

Planning & Zoning Commission  
Truth or Consequences, NM 87901

Board Members,

The Truth or Consequences Fire Department is AGAINST vacating Platinum street adjacent to said property. The vacation would restrict fire apparatus access for fire suppression and limit access to Bureau of Reclamation property along the Rio Grande.

The vacation of said property would also limit the City of Truth or Consequences to maintain the drainage arroyo along Platinum street that empties into the river as well as limit private water rights of neighbors that would not be able to access their water from the Rio Grande.

If you have any questions, please call me at (575) 740-1640 or e-mail [chief@torcfire.com](mailto:chief@torcfire.com)

Paul Tooley,



Truth or Consequences Fire Chief

**VOLUNTEERS**  
BACKBONE OF America

Email: Traci 12/1