

CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, JULY 26, 2023

A. CALL TO ORDER:

The meeting was called to order by Mayor Pro-Tem Hechler at 9:00 a.m., who presided and Angela A. Torres, 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. Rolf Hechler, Mayor Pro-Tem
Hon. Destiny Mitchell, Commissioner
Hon. Shelly Harrelson, Commissioner
Hon. Amanda Forrister, Mayor was absent
Hon. Merry Jo Fahl, Commissioner via teleconference

Also Present: Angie Gonzales, City Manager
Traci Alvarez, Assistant City Manager
Jay Rubin, Assistant City Manager
Angela A. Torres, City Clerk-Treasurer
Luis Tavizon, Chief of Police
Kristie Wilson, Finance Director

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

2. SILENT MEDITATION:

Mayor Pro-Tem Hechler called for fifteen seconds of silent meditation.

3. PLEDGE OF ALLEGIANCE:

Mayor Pro-Tem Hechler called for Commissioner Harrelson to lead the Pledge of Allegiance.

4. APPROVAL OF AGENDA:

Mayor Pro-Tem Hechler: Before we approve the agenda, I would like to request one minor change for item G7. I think we had a typo, G7 is supposed to be a discussion/action item which is not identified on the agenda, so when we get to number G7, that's what it will be.

City Attorney Rubin: I think that is appropriate, because even though it doesn't say discussion/action on the agenda itself, the purpose of having it on the agenda is to discuss the item and take action on it. It is not mandatory that discussion/action has to be present on the agenda so I think we can proceed.

Commissioner Mitchell moved to approve the agenda with adding discussion/action to item G7. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

C. PUBLIC COMMENT (3 Minute Rule Applies):

Randall Ashbaugh addressed the Commission with comments related to the water system. He would like the city to put together a mechanism for a department to work on the water lines and get them caught up. He proposed that we add a 3% to 5% fee on all utilities, electric, trash and everything.

Diane Gunning addressed the Commission with comments related to the 800 Block of Wyona variance. (Complete copy attached hereto and made a part hereof).

Gina Kelley addressed the Commission with comments related to adding the repairs to the Lee Belle Johnson Center on the top 10 of the ICIP list. She thanked the staff for working on that.

Rick Dumiak addressed the Commission with various comments. (Complete copy attached hereto and made a part hereof).

Alan Hansen Begg addressed the Commission with comments related to disc golf. He brought disc golf to the city golf course and in less than 6 months the baskets installed paid for themselves. Disc golf is profitable for the City of Truth or Consequences and the current expansion plans will include a second course which will give T or C the only two course facility in the state.

George Henson addressed the Commission with comments related to the 800 Block of Wyona variance.

Jim Row addressed the Commission on behalf of Ron Fenn with various Comments. (Complete copy attached hereto and made a part hereof).

Nate Stephens addressed the Commission with comments related to his development 800 Block of Wyona. (Complete copy attached hereto and made a part hereof).

D. REPORTS:

City Manager Gonzales reported the following:

- I am also frustrated with the water leaks, and I have only been here for 4 months. The water crew is burned out, and I am frustrated. I can't fix it. I was out talking with a community member, and that person mentioned something so obvious to me that I am frustrated with myself that I didn't think of it. If any community needs the service of a political lobbyist, it is Truth or Consequences, New Mexico. I envision bringing someone in who works with the Governor's Office outlay program and are excellent elected senator and representators as well as Senator Heinric, and Luhan. I want Truth or Consequence named in anything that involves infrastructure funding. I don't care if the funding is in an envelope or if it is in a bucket. I want the Truth or Consequences infrastructure in front of those people. I am tired of water rushing down the streets, and I haven't been here 40 years. I have been here 4 months and I am sick and tired of the water rushing down the streets. To the community, please be patient. It took us 60 years for this issue to break down. It will take us time to take measures to do an upgrade of the infrastructure. Please check your thoughts and be uplifting to the staff. They are the ones out at 6:30 a.m., 9:00 p.m. and 2:00 a.m. fixing leaks. If we don't take care of them, who will fix these leaks. It is not that easy to just go and get another contractor. My water crew is burnt out so my other departments have offered employees to help out in the true spirit of team work. Thank you to the departments. I am looking at the possibility of bringing a lobbyist contract to you for consideration. I think you can tell that I am passionate about that.

City Attorney Rubin reported the following:

- At the last couple of meetings, I have been talking about litigation involving the property on Charles Street. The hearing will be on August 2nd. It is a status conference at 10:30. I will be appearing by teleconference.
- I want to address something that was said in public comment (*refer to Ron Fenn's public comment*) they indicated that we did something improper and incorrectly when we passed an ordinance delegating the authority from the Municipal Court to the Magistrate Court. Please let me remind everybody that we went through the procedures set forth by statute, and the ordinance was approved by the Supreme Court.

City Commission Reports:

Commissioner Mitchell reported the following:

- I also live right across Wyona, and I see a lot of increased traffic down there and I think that Rick's idea of getting more stop signs and stuff like that is a good idea because I lost my kitty to people racing down that strip so personally, I think that slowing people down across the board, especially with construction is a good idea.

Commissioner Harrelson reported the following:

- We have to do better and we need to be more positive.

Commissioner Fahl had no reports.

Mayor Pro-Tem Hechler reported the following:

- I would like to revisit the RV Ordinance regarding people that want to keep their RV's at their residences. We've had some complaints recently, and I think that the Ordinance that we passed a year or so ago was unduly restricted, and I would like to re-visit that a little bit, and maybe discuss it a little bit further to see if we can tweak it a little bit better for the community needs.
- Taylor Esthetics Salon will be having their grand opening and ribbon cutting on July 29th, so if you are available, please visit them and welcome them to the community, as well as the Magnolia Ellis building will be rented or occupied at 310 N. Broadway, and it is going to provide general counseling and their ribbon cutting is July 31st at noon, so if we can make either one of those, I think we should so we can support our new businesses in our community.

E. CONSENT CALENDAR:

1. **City Commission Regular Minutes, July 12, 2023**
2. **Acknowledge Regular Public Arts Advisory Board Minutes, March 15, 2023**
3. **Acknowledge Regular Public Utility Advisory Board Minutes, June 20, 2023**
4. **Acknowledge Regular Recreation/Golf Course Advisory Board Minutes, June 05, 2023**
5. **Subrecipient FY 22/23 4th Quarter Reports**
6. **Take Home Vehicle Form**

Commissioner Mitchell moved to approve the Consent Calendar as submitted.

Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

F. PUBLIC HEARINGS:

1. **Public Hearing/Discussion/Action: Variance Request for 800 Block of Wyona. Applicant is requesting a variance of Sec. 11-14-2. Standards for Districts, specifically related to required minimum side setbacks:**

City Clerk Torres swore in all those who spoke during the public hearing.

City Attorney Rubin: I think it is okay for us to proceed even in the absence of a Planning & Zoning Board recommendation. As you know, this issue came up before.

We had a period of time when we did not have an active Planning & Zoning Board, and I even got an opinion from the Municipal League on this issue. As long as the Commission makes the same findings that are set forth in the ordinance of findings and facts, in your determinations as to the property itself, you are ok to proceed. The Planning & Zoning Board is only there to make a recommendation to you.

Assistant City Manager Alvarez: The applicant submitted a variance request for his lots in the 800 Block of Wyona for a side setback of 5 feet. If the applicant, in the future, decides to sell each individual lot with each individual unit on it, then he would require a side setback variance. There should be 5 feet between the property lot lines, and currently the way it is structured, there is only about 3 ½ ft. between property lot lines, which would only leave about 7ft. between buildings, as opposed to the required 10 ft. for buildings per fire code. The applicant has met all requirements for the entire parcel for all side setbacks, rear and front. We are just looking at a potential of a future sale of individual lots at this point. He has met all requirements for flood and fire control, as well as full review and approval and he has proceeded to build. All persons within a 300 ft. radius were notified both of the Planning & Zoning public hearing which ended up being cancelled. We re-notified everybody by certified mail that the public hearing would be held instead at the City Commission Meeting. I received no emails or phone calls in regards to anybody within that 300 ft. radius, and all certified mailings were signed for and received back.

Commissioner Mitchell: You said that the 5ft. was required by a fire code? Is that the state code?

Assistant City Manager Alvarez: Its 10ft. between buildings per the municipal fire code and 5ft. for side setbacks.

Commissioner Harrelson: Have you allowed similar variances in the past?

Assistant City Manager Alvarez: We have had in the past, somebody who came through requesting a front setback variance where they were going to be a little bit closer on a remodel and both Planning & Zoning and the Commission approved that.

Mayor Pro-Tem Hechler: So just for clarification, there is no variance needed right now if he decides to sell the whole thing as a unit, it would only be needed if he were to sell them individually or in quarters?

Assistant City Manager Alvarez: Correct. There are 6 lots, and each lot has one unit with 4 dwellings on it. If he wanted to sell each lot separately in the future, then a variance would be required. Typically, what happens is that people go into the process of a sale, and then they realize that they have to come for a variance. You guys just recently had one where there was a unit that encroached on the city alleyway, and it gets held up in the sale, and you could potentially lose your person that is buying because they would no longer be interested. He is just trying to get ahead of the game

so if he does decide to sell them individually in the future, the variance is already approved.

Commissioner Fahl left the meeting at this point at 9:42 a.m.

Mayor Pro-Tem Hechler opened the public hearing.

Proponents:

Nate Stephens, applicant: We are looking for a variance for the side setbacks on the units that I am building on the 800 block of Wyona. So, we need to talk about the reason why the code exists for that setback between units and the reason for that is for the fire code so the firefighters will have time to stop the fire before it goes to the next dwelling, and because you are creating an impervious area. Your roof does not absorb water so you have to have a plan to do something with your water. If every house's roofline is so close to one another, then you can't really mitigate the water situation between one neighbor and the next. That is the reason why those codes exist, and those were approved on my plans that were approved by the city, and approved by the engineer and the state. We are doing a fire code sheetrock. It is a 5/8 sheetrock panel on the exterior of every wall that was in place from the very beginning. It has always been in place. Each 5/8 layer gives you one hour of fire rating so we are putting 5/8 sheetrock on the exterior of all of the joining walls, the ones that are closest to each other, so that would give you a 2 hour fire rating, so if a fire started in one unit, they would have 2 hours before that fire was able to get into the next unit. That was already in place in our plan, and we've already achieved that goal. I did that from the very beginning because I wanted safety over everything. Now we are going to talk about the impervious area which is the amount of water runoff that I am creating. In the plan that was approved, we have gutter systems, underground drainage ditches, we have a canal put in that is going to convert that water taken from the roofs and take it out and dispel of it properly. All of that is in the plan already. There is nothing in the plan that doesn't already check all of these boxes. I did that based on the correct way to build something of this statute. The plan was approved as one development which has 24 units, regardless that there are 6 lots. Anywhere that you build in this city, it was subdivided long ago so you have multiple lots no matter what so even if you built a 100 unit apartment complex, you would be building that complex on multiple lots. What we are asking for the side setback variance is, in the event that somebody wants to buy a fourplex from us which is basically what we are building, we would be able to see them a fourplex and be able to divide it out of the 24 development plan that we have. The way that it was approved was as the development, which would mean, we would have to inform the condo association and we would have to go through all of that stuff, and have a board of trustees, and do all of those things which we are willing to do, and that was the plan from the beginning. Then the idea came up, what if we were able to separate these and sell them individually, but in order for me to be able to achieve that, if that becomes the way that we want to sell these things, then that is where this variance would come in. This variance is not going to stop the development as it was approved. The development is going to go on and we are going to build these things just the way that they were approved. However, if we can in the sale of them, we would be able to divide out and

sell a fourplex. What that would do for someone is it would give them the ability to reside in one, and rent out the other 3. So someone who could previously not afford a mortgage payment would now be able to afford a mortgage payment because they would have subsidized income by the other 3 rentals. So that is what it does for the community and people who previously wouldn't be able to afford a home. They would be able to afford these because the other 3 would be subsidizing their income. We are going to propose plans for this in different places in the city. We are going to try and make this a goal of ours to create this multi-family dwelling situation to where a school teacher or a nurse or someone who could not afford a home would then have this subsidized income be able to afford the homes. This is going to be a plan you guys are going to see come before you again and again because we think that it is a great way to offer homeownership to people who previously would not be able to achieve that.

Commissioner Harrelson: So, what I'm hearing you say is that the plans have been pre-approved by the safety commission and all of that through Santa Fe? So beyond us, it has been approved on a bigger scale than just our community.

Nate Stephens, applicant: Yes ma'am. With inspections and everything regarding those things happening as we go along through the process.

Mayor Pro-Tem Hechler: So, the smallest unit you will sell is a fourplex?

Nate Stephens, applicant: That is correct. The only way we would sell it individually is if we condo the whole thing, which we would then have a condo and be back to the original development plan (*process for that was explained in earlier testimony*) and I would obtain ownership of the land, and the owner would own the space inside the walls. This just gives us different avenues and allows us to get more interests in bringing new people to the city.

Commissioner Harrelson: I spent a majority of my adult career living in Albuquerque, and this is a very common way of living in Albuquerque. It makes it easier for ownership, and for you to keep your community growing, and I do think that is very necessary in our community. Being a teacher, we have struggled to find nice places to live that are equipped appropriate, and our teachers are struggling, as well as anyone who is coming into our community that is middle income.

Nate Stephens, applicant: In Albuquerque, they just passed a new ordinance that you can build a new casita on your residential property so they are now allowing for multi-families even in R1 zoning.

Opponents:

Diane Gunning: Testimony attached hereto and made a part hereof.

City Clerk Torres addressed her comment regarding the posting of the notice. It was sent to all of the adjacent property owners well within the 15 day requirement. We published the notice in the newspaper and we posted it in all the required places.

Assistant City Manager Alvarez: Mr. Henson was mailed twice for the public hearings by our Municipal Code we are to mail these to the mailing address on record at the Sierra County Assessor's Office, and both notices that were addressed to Mr. Henson were signed for. They were mailed to the address on record in Colorado Springs. That is the address for his property under his name.

Rick Dumiak: You really need to table this item. If you look at your packet, look at the site plan which is supposedly is a site plan, and according to our code, that site plan is supposed to list 7 specific items, and they are not shown on the site plan. Therefore, we are not following procedure right from the get go. Forget about that. Let's go back to the variance. The developer is asking this simply for one reason; profit. He wants to sell these four units, and we were led to believe that there was going to be a Condo Association, and we were also told that there would not be BRBO's in there. All of that goes out the window now if these are sold as a quad unit. There is no Association. The owner does what he wants. The side setbacks are there for more than just fire safety. They are there for safety as well. I admire that he is doing the fire retardant that he is required with the 5/8 sheetrock on the exterior. I was a developer for 20 years and this sounds like poor planning to me. Never in my life, in all of the developments I did, did I go and ask for a variance after the units were built. This is just wrong. We are not following procedures. I am a guy of literal law. Follow the law. The law is there for a reason. We have these procedures and we need to follow them. Alright, you got a gray area where you are letting P & Z go by on it. I get it because we didn't have a P & Z at times so the Commission did do it, but we do have a P & Z now and they should hear this first, and then all of the documentation should be correct. When I look at this packet, I am looking at a site plan that says grading and drainage. There is no parking or turnaround shown. There is no turnaround shown. There is no landscaping shown. There are no isles shown. None of that is on this site plan that you are basing this decision on. You are basing a decision erroneously with incorrect information. This won't stand. There will be a suit guys. Don't do this to yourselves.

Mayor Pro-Tem Hechler: Assistant City Manager Alvarez, I seem to recall initially when we went through this process, all of these items were addressed by a previous Commission, and I think I was part of that Commission back in 2019.

Assistant City Manager Alvarez: Typically, the Commission wouldn't approve the plans. What was brought to you is he had to do a public hearing for a summary plat when he re-did his lots, and he also did a public hearing for, I believe another variance request. I would have to look back on my records, but I know that this has been to the P & Z and the Commission two other times. All of those times, he has taken the time to explain to the Commission and the P & Z exactly what he was building there even though that wasn't a necessity per say. The only time the Planning & Zoning and the City Commission would approve plans would be for a full subdivision development, not the

development for homes per say. Within those public hearings that we had, there were various site plans that were pertaining to whatever you guys were hearing. The site plans that Mr. Dumiak is referencing are site plans that are submitted for the whole development, not necessarily just for the public hearing portion.

Mayor Pro-Tem Hechler: Attorney Rubin, do you have any concerns with what we just discussed?

City Attorney Rubin: The one question that I had was the issue of the notice, and the City Clerk addressed that issue. Ms. Torres do you have the dates when the posting occurred.

Assistant City Manager Alvarez: The public hearing meeting change was posted in the designated location and on the website on July 10th, sent to the adjacent property owners on July 10th and published on July 14th. The meeting was originally posted for the Planning & Zoning Commission, and it met the public meeting posting requirements for that and then we had to change the meeting. As I said, there was a miscommunication, and that Planning & Zoning Commission meeting was cancelled, and the reason why it was re-scheduled to be heard here is because this is the date that the recommendation from the Planning & Zoning would come to the Commission. It wasn't the applicant's fault that the Planning & Zoning Commission meeting was cancelled. Therefore, requesting that they wait another 30-45 days, would be unfair to them, due to the fact that we only have 3 members right now on our Planning & Zoning Commission, and at the last public hearing we were almost unable to have a meeting even though a lot of the public showed up, because we almost didn't have a quorum. We had to wait 45 minutes for one member to arrive so we could have a quorum. We did not feel at this time, since this was previously scheduled, that it was worth re-scheduling all of that for the applicant to have to wait that long.

City Attorney Rubin: So, anybody who was interested party defined by our code would have received more than 15 days' notice to attend this public hearing, so I think that sufficient notice has been given, and the fact that we are doing the public hearing notice with the battershell process, and based upon what I have heard, I think you are legally ok as far as the notice is concerned.

Mayor Pro-Tem Hechler: Do you have any concerns with Mr. Dumiak's testimony regarding the plans and things of that nature. Are there any potential violations that we should be concerned of?

City Attorney Rubin: I think it is to the Commission's discretion. You have the right to request whatever information you need in order to make a decision. There are a couple of ways that you can do this today. One you can go through the public hearing and vote on it, and you can also just do the public hearing today, but you don't have to take action. You can take action at the next meeting if you wish to do that and do some more investigation on this. That is to your discretion.

George Henson: To address what has just gone on is a lack of a lot of communications. I have had two communications with Mr. Stephens, and the first one was that I hoped that his timing was better, as far as the economic situation goes. The second time was about the insurance on the bridge he built. To address the idea of setbacks, the ditch was actually altered to make room for the two houses next to the ditch. The maintenance on those ditches are quite lacking causing plants and salt cedar that burns readily, and somehow those being in the ditch and close to that fire fuel source is not a good thing. The idea that this is a hybrid motel with duplexes and fourplexes, whatever they plan to do. Everything has changed. It was first affordable housing tiny homes, and it is not the same size. It is two stories, and it has extras that make it more expensive to build.

Mayor Pro-Tem Hechler: Mr. Henson, would you address the variance request please.

George Henson: That is what I am saying. I am talking about the drainage off of the roofs that he says is figured out. The drainage that he says carries water away is plugged. The access on that far side is non-existent for fire and other maintenance. It is just too intense to be a tiny house development that is always a surprise. I was going to say, prove that I had notice. I guess it was still sent to my people who help me in Colorado, and they signed for it not knowing why or what, and I never heard about it. The idea that there should be some plans so people would know what is going to come up instead of just going by tiny affordable houses. I am hearing rumors that it is \$150,000, and now a guy that says he knows Nate says oh it's \$200,000. He can't sell the last house down the block, and so the idea that this intense thing is needed with no economy. We have some infrastructure being put in, but it is not going to fly. His idea that taxes are going to flow in. The variance is a hybrid motel.

Diane Gunning: It is only a couple of weeks until the next Planning & Zoning Meeting, and if I appeal this, which I will, that will add another 30 day wait until this would be heard again so I suggest that you go ahead and go with the Planning & Zoning Commission and let them go over carefully in advance and look at all of the plans, and all of the pertinent data, and all of the violations in code so they can make a recommendation to the City Commission.

Nate Stephen: I think we need to stay on topic for the variance. None of those things Diane mentioned exist right? The development plan has been approved. Everything has been approved from the state, and so all of the other quote on quote code violations don't pertain to what we are here today to discuss, so if we are just going to discuss the variance or the setback on the side blocks, I think you guys have all of the information that you need.

City Attorney Rubin: I think one thing that we need to put into the record is maybe we need some testimony from Mr. Stephens or Ms. Alvarez, but again, I am talking about the Planning & Zoning Code that Mr. Dumiak is referring to, we do need to make findings as to whether the granting of the variance would cause any adverse effects on property owners and whether there is going to be any increase to the congestion as a

result of this setback variance. We might want to make sure that somebody makes a comment about that whether it be Mr. Stephens or Ms. Alvarez.

Assistant City Manager Alvarez: Approving or denying, either one, this variance request will not change anything to do with the traffic. The buildings are still being built. They meet all requirements within the code. This is only a request on whether or not he sells the lot individually or keeps it as a whole for the variance request. It doesn't change any of the traffic pattern whether he sells it that way or not. It will not impact anything surrounding either.

Rick Dumiak: I am not arguing the approval of anything that is already there, and is going forward. I have no problem with that. This variance that is being requested is not following procedure pure and simple. The site plan is erroneous. I would like to know who submitted the site plan, and why wasn't the correct site plan submitted with this application packet for a variance.

Assistant City Manager Alvarez: I am the one who puts the agenda packet together and I might have added the wrong plan. I was working from home that day. However, there is nothing within our Municipal Code that says what I need to provide in my agenda packet. They only have to submit it to my office for my review. Anything that I include in the agenda packet for the Planning & Zoning or City Commission is just to assist in you guys making your decision. The only difference in what you guys received vs. the full set of plans might have been the notation of how many feet there were between the lot lines which is about 3 ½ ft. between each lot line from the building to the lot line, and about 7ft. between the buildings on the interior side. Nate has submitted everything to my office for this variance request. There are 36 parking spaces. There are 28 in front and 8 on the side and that meets the 36 required parking spaces. There is a notation that was referenced pertaining to a rear setback on a review. On the review sheet it shows review and it says conditional and then it is slashed after that is approved once those items were identified on the overall plans. There is a 5ft reference in the rear and that is 5 ft. from the building to a walkway. Then there is the walkway portion, and after the walkway portion yet another section of property over 15ft. in the rear. It is just the way it is noted on the plans, and we have to pull up the Assessors and go over stuff with Nate. All of the issues and concerns that were on the review sheet, that are reviewed by our engineer to make sure they meet our Municipal Code were approved. Everything on this development as it sits right now has been approved and meets everything within our Municipal Code. The variance is only if he wants to divide this parcel with the lots and sell the lots individually.

Mayor Pro-Tem Hechler closed the public hearing.

Commissioner Harrelson made a motion to approve the Variance Request for 800 Block of Wyona as presented by city staff. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Public Hearing/Public Input: Public input for the City of Truth or Consequences and Senior Center Infrastructure Capital Improvement Plan (ICIP).

Assistant City Manager Alvarez: This is just a public hearing to receive some public input regarding our Infrastructure Capital Improvement Plan (ICIP) for the City and SJOA. We posted it on Facebook and via the newspaper and city website, and I have mentioned it in a couple of different Commission Meetings requesting some public input. To date the only public input that I have received is a request that we put the Lee Belle Johnson Center somewhere in the top 10. Other than that, I have not received any public input on my side.

Crystal Walton, SJOA Executive Director: As far as for the City ICIP I do feel that infrastructure is still very much needed and she knows that the city is moving forward with that, and I would like to continue to see those items being put on your top project lists for your mega infrastructure items which would be water, sewer and electrical. I hope that those items are able to be funded. As for the Senior Center, we are moving forward with some of our renovation projects. We look forward to being able to make a few additional upgrades to the building so that it is more ADA assessable for our seniors to be able to come in.

G. ORDINANCES/RESOLUTIONS/ZONING:

1. Discussion/Action: Resolution No. 02 23/24 for the Sale of Surplus Property to be sold at the August 19, 2023 Auction through Willard Hall Auctions.

City Clerk Torres: Pursuant to Section 3-54-2 of the New Mexico State Statutes, 1978, Annotated, the City of Truth or Consequences has property that is no longer needed. The items presented to the Commission on 5/24/23 to be sold at the June 24th Willard Hall auction were not sold at said auction. We are requesting approval for the same items to be sold at the August 19th Willard Hall Auction at the Sierra County Fair Barn, plus some additional items that are listed on the attached property disposal forms.

Commissioner Mitchell moved to approve Resolution No. 02 23/24 for the Sale of Surplus Property to be sold at the August 19, 2023 Auction through Willard Hall Auctions. Mayor Pro-Tem Hechler seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Discussion/Action: Resolution No. 03 23/24 to accept the final 2023-24 Budget.

Kristie Wilson, Finance Director: This is a Resolution to accept the final 2023-24 Budget. In your packet you have the changes that were made for the interim budget to the final. She reviewed some of the changes included in the packet.

Commissioner Mitchell moved to approve Resolution No. 03 23/24 to accept the final 2023-24 Budget. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Resolution No. 04 23/24 approval of final 2022-23 Budget Adjustments.

Kristie Wilson, Finance Director reviewed the final budget adjustments for the fiscal year that were provided in the packet.

Commissioner Mitchell moved to approve Resolution No. 04 23/24 approval of final 2022-23 Budget Adjustments. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. Discussion/Action: Resolution No. 05 23/24 approval of FY 22/23 4th Quarter Report.

Kristie Wilson, Finance Director reviewed the FY 22/23 4th Quarter Report that were provided in the packet.

Commissioner Mitchell moved to approve Resolution No. 05 23/24 approval of FY 22/23 4th Quarter Report. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

5. Discussion/Action: Resolution No. 06 23/24 South Central Council of Governments Annual Dues.

Assistant City Manager Alvarez: This resolution is for the annual dues to South Central Council of Governments for the 23-24 fiscal year.

Commissioner Mitchell moved to approve Resolution No. 06 23/24 South Central Council of Governments Annual Dues with Mayor Forrister as the member and Commissioner Mitchell as the alternate. Commission Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

6. Discussion Action: Approve Resolution 07 23/24 Infrastructure Capital Improvement Plan (ICIP).

Assistant City Manager Alvarez reviewed the top 10 city recommended ICIP projects. (List of projects attached hereto and made a part hereof).

Commissioner Mitchell moved to approve Resolution 07 23/24 Infrastructure Capital Improvement Plan (ICIP) and rank the top 10 items recommended by city staff, and to add recommendations suggested by the Commission. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

7. Discussion/Action: Resolution No. 08 23/24 in support of the Infrastructure Capital Improvement Plan (ICIP) for the Sierra Joint Office on Aging (SJOA).

Crystal Walton, SJOA Director: You have a list of our ICIP projects. We do feel that there is still a definite necessity for the items that are listed. We also presented this list to our Board of Directors and they are in agreeance of the listed items.

Commissioner Mitchell moved to approve No. 08 23/24 in support of the Infrastructure Capital Improvement Plan (ICIP) for the Sierra Joint Office on Aging (SJOA). Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

H. NEW BUSINESS:

1. Discussion Action: Accept Junior Bill Appropriation.

Assistant City Manager Alvarez: This is the annual \$35,000 appropriation that SJOA has received in the past. It is to offset their expenses for meals, supplies, and things that they normally purchase. They now get to submit those receipts and get \$35,000 back.

Commissioner Harrelson moved to approve Accept Junior Bill Appropriation. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Discussion/Action: Approval of Purchase Requisitions over \$20,000.

Kristie Wilson, Finance Director reviewed the Purchase Requisitions over \$20,000 provided in the packet.

Commissioner Mitchell moved to approve Purchase Requisitions over \$20,000. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Approval of 2023 Contract with Coppler Law Firm.

Assistant City Manager Alvarez: This is our annual contract with Coppler Law Firm for legal services. This is the other law firm that the city uses for certain matters.

Commissioner Harrelson moved to approve the 2023 contract with Coppler Law Firm. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. Discussion/Action: Re-appointment of David Dawdy to serve a 2 year term on the Recreation/Golf Course Advisory Board.

City Clerk Torres: David Dawdy is a current member on the RAB/GCAB. The board recommended the re-appointment of David Dawdy to serve a 2 year term on the Recreation/Golf Course Advisory Board.

Commissioner Mitchell moved to approve the re-appointment of David Dawdy to serve a 2 year term on the Recreation/Golf Course Advisory Board. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

5. Discussion/Action: Re-appointment of Ingo Hoepfner to serve a 2 year term on the Recreation/Golf Course Advisory Board.

City Clerk Torres: Ingo Hoepfner is also a current member on the RAB/GCAB. The board recommended the re-appointment of David Dawdy to serve a 2 year term on the Recreation/Golf Course Advisory Board.

Commissioner Mitchell moved to approve the re-appointment of Ingo Hoepfner to serve a 2 year term on the Recreation/Golf Course Advisory Board. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

6. Discussion/Action: Appointment of Audon Trujillo to serve a 2 year term on the Recreation/Golf Course Advisory Board.

City Clerk Torres: The Recreation/Golf Course Advisory Board has a vacancy on their board. On June 5th the board made a recommendation to appoint Audon Trujillo to fill the vacancy on the board for a two year term.

Commissioner Harrelson made a motion to appoint Audon Trujillo to serve a 2 year term on the Recreation/Golf Course Advisory Board. Mayor Pro-Tem Hechler seconded the motion. Roll call was taken by the Clerk-Treasurer.

**Hon. Shelly Harrelson, Commissioner voted aye
Hon. Rolf Hechler, Mayor Pro-Tem voted aye
Hon. Destiny Mitchell, Commissioner voted nay**

Motion failed with a 2-1 vote out of a 5 member Commission. 2 votes proposed and 1 vote opposed.

7. Discussion/Action: Re-appointment of Suzanne Carlstedt to serve a 4 year term on the Public Arts Advisory Board.

City Clerk Torres: Suzanne Carlstedt is a current member on the Public Arts Board. The board recommended the re-appointment of Suzanne Carlstedt to serve a 4 year term on their board.

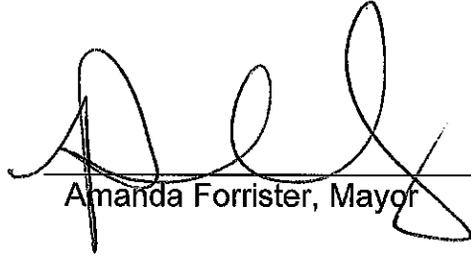
Commissioner Mitchell moved to approve the re-appointment of Suzanne Carlstedt to serve a 4 year term on the Public Arts Advisory Board. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

J. ADJOURNMENT:

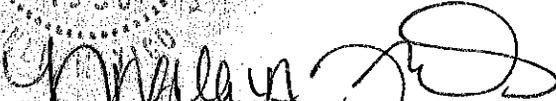
Mayor Pro-Tem Hechler adjourned the meeting at 11:14 a.m.

Passed and Approved this 9th day of August, 2023.

CITY COMMISSION JULY 26, 2023 REGULAR MEETING MINUTES



Amanda Forrister, Mayor



Angela A. Torres, CMC, City Clerk

2/27

Public Comments. Nate Stephens, the owner and developer of the 800 Block of Wyona St, has disregarded the city codes from the minute he planned and and began to build his homes on the 6 Tracts. Eight of the proposed 24 houses are already built now.

as well
By doing so he has set a precedent for all other citizens of this town. These are some of the codes he has disregarded that out of fairness you will now also be allowed to disregard:

- The code states that he needs **4,500 sq ft** minimum area per unit of Single-Family home, but his homes, being four to a lot of 5,400 sq ft, have only **1,350 sq ft** of area each.
- There is supposed to be a minimum of **10 ft** between structures on the same tract, but he has only 6 feet separating his homes on each tract.
- He is supposed to have **1.5 parking spots** for each home, which would mean 36 spots for 24 homes, but he has only 27 parking spots.
- He has no room on his building plans for emergency vehicle and garbage truck turn around. Our street will have resident and visitor cars parked on both sides up and down the street due to this lack of adequate parking. As it is now, the garbage truck has to back all the way out to the intersection.
- Traci Alvarez was told on May 5 by a consulting firm that Nate needs to get a variance for his rear setback, it is only 10 ft now but needs to be 15 ft. I thought that was the variance Nate must be asking for here today. But I was wrong.

I was planning to ask today that rather than build on them, Nate use the last of the 6 tracts to provide adequate parking as well as a vehicle turnaround. Now that it turns out that he will be asking for a variance later today which will permit him to break up all his 6 tracts in order to be able to sell them individually, it seems that is unlikely to happen.

Greed, disregard for the codes and lack of common sense has kept Nate continuing with his plans no matter what we neighbors say. I wonder what it is that has kept the city so determined to allow him to do whatever he wants.

For July 26 2023 City Commission meeting

Diane Gunning

Diane Gunning

709 Wyona St

Truth or Consequences, NM 87901

diane.tominaga@gmail.com

8 pages total for inclusion with minutes

District	Lots: Minimum Area	Lots: Minimum Width	Dwelling: Minimum Area	Maximum Height
R-1	9,000 s. f.	60'	1,200 s. f.	26'
R-2: Single-Family	5,000 s. f.	60'	900 s. f.	26'
R-2: Two-Family	4,000 s. f./unit	60'	650 s. f./unit	35'
R-2: Multiple-Family	3,500 s. f./unit	60'	600 s. f./unit	35'
R-2: Apartments	3,500 s. f./unit	60'	500 s. f./unit	35'
R-2: MH*	5,000 s. f.	60'	900 s. f.	26'
R-3: Single-Family	4,500 s. f.	45'	700 s. f.	35'
R-3: Two-Family	3,000 s. f./unit	45'	500 s. f./unit	35'
R-3: Multiple-Family	3,000 s. f./unit	45'	450 s. f./unit	35'
R-3: Apartments	2,000 s. f./unit	45'	400 s. f./unit	35'

New dwellings may be erected as close to a front property line as the average distance established by existing dwellings on that side of the block, provided the lots on the same side of the block are fifty (50) percent developed.

4. An addition to a main dwelling shall be permitted as an extension of existing building lines, which have non-conforming setbacks. Setbacks for such addition shall be the same as the main dwelling.
 5. There shall be a minimum setback of one (1) foot for each foot in height of any building, other than a single or two family dwelling, abutting on R-1 or R-2 District.
- B. *FRONT-YARD PARKING*. Parking areas shall not cover over one-third ($\frac{1}{3}$) of any open area between the front of a dwelling and the front property line; except in cases of a cul-de-sac, two-thirds ($\frac{2}{3}$) of a front yard can be used; and on existing lots less than fifty (50) feet, a twenty (20) feet parking area is permitted. Townhouses and apartment lots may use three fourths ($\frac{3}{4}$) of the front yard for parking.
- C. ***MINIMUM DISTANCE BETWEEN STRUCTURES***. There shall be no less than ten (10) feet between buildings or structures located on the same lot, tract, or parcel.
- D. *EASEMENT ENCROACHMENTS*. There shall be no permanent structures located on easements without written approval of the City Commission.

Sec. 11-14-4. - Commercial and Manufacturing Districts: Additional Provisions and Exceptions.

The following provisions shall apply to all development in a commercial or manufacturing Districts:

- A. *SETBACK EXCEPTION*.
1. A zero (0) foot side yard shall be permitted only when:
 - a. A building on the abutting side is at least five (5) feet from the property line; or
 - b. Both buildings share a common wall on the side property line; or
 - c. When the abutting property is undeveloped. Otherwise, a five (5) foot setback is required.
 2. There shall be a minimum setback of one (1) foot for each foot in height of any building abutting a residential District. There shall be at least a minimum distance of thirty (30) feet maintained between any residential dwelling and any commercial or industrial structure.
- B. *MINIMUM DISTANCE BETWEEN STRUCTURES*. There shall be no less than ten (10) feet between buildings or structures located on the Same lot, tract, or parcel.
- C. *PRIVATE STREETS*. All non-dedicated streets or private drives shall be a minimum of twenty-four (24) feet in width.

ARTICLE XIV. - DEVELOPMENT STANDARDS

Sec. 11-14-1. - General Development Standards.

All lots, tracts, buildings and structures in the City shall be developed in accordance with this Article and other related provisions of this Code. All development standards of this Code shall apply to each lot, tract, or parcel independent of all other lots, tracts, or parcels.

Sec. 11-14-2. - Standards For Districts.

District	Lots: Minimum Front Setback	Yards: Minimum Rear Setback	Yards: Minimum Side Setback
R-1	25'	25'	8'
R-1	25'	20'	6' or 0'*
R-3	20'	15'	5' or 0'*
R-4	25'	25'	5'
RR-1	25'	15'	5'
C-1	20'	15'	5' or 0'*
M-1	25'	25'	5' or 0'*
T-1	25'	25'	15'

* As permissible per Section 11-14-3 and 11-14-4.

Over 1,000	20 spaces plus 1 space for every 100 spaces or fraction thereof or 1,000	1 of every 8 accessible parking spaces or fraction thereof
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The designated parking spaces shall be located so as to provide the most convenient access to entryways or to the nearest curb cut.

Sec, 11-12-3. - Space Criteria.

A. RESIDENTIAL AND LODGING USES.

1. **One-Family and Two-Family Dwellings:** One and one-half (1½) off-street parking spaces per dwelling unit shall be provided. One-third (⅓) of any part of a front yard of a dwelling may be used for parking, except in cases of cul-de-sac where two-thirds (⅔) of a front yard is permissible, and on existing fifty (50) foot lots where twenty (20) foot width parking is permissible.
2. *Multi-Family Dwellings (three (3) or More Units):* One and one-half (1½) spaces per dwelling unit shall be provided.
3. *Boarding Houses and Similar Uses:* Two (2) spaces in addition to one (1) space for each person, resident or member.
4. *Hotels and Motels:* One (1) space for each guest room in addition to requirements for auxiliary uses such as restaurants or shops.

B. OFFICES AND PERSONAL SERVICE ESTABLISHMENTS.

1. *Professional Services—(Medical and dental offices, barbers, hairdressers, and similar uses):* One (1) space for each two hundred fifty (250) feet of gross floor area.
2. *Small Office Establishment—(Law, accounting, engineering, and real estate offices):* Two (2) spaces plus one (1) space for each three hundred (300) square feet of gross floor area.
3. *Large Business Offices—(Banks, telephone, electric companies, and other similar offices):* One (1) space for each company-owned vehicle, in addition to one (1) space for each three hundred (300) square feet of gross floor area.
4. *Low Volume Service Establishment—(Dry cleaning, equipment rentals, small and large item repair shops and similar uses):* One (1) space for each three hundred (300) square feet of floor space.
- 5.

Parallel Parking	9'	9'	22'	12'	24'
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A parking space is further defined as having ingress and egress to a public street without moving any other automobile. Ingress and egress to an alley is permissible only for a single family or duplex dwelling. All other parking must ingress and egress to a public street.

Sec. 11-2-8. - Parking Plan Approval.

Detailed plans for on street or off-street parking and driveway openings shall be submitted to the designated Zoning Administrator for approval prior to construction. All curb cuts require approval from the designated Zoning Administrator.

Sec. 11-12-9. - Construction Standards.

All parking spaces and areas provided under the provisions of this Code shall:

- A. Be paved with asphalt, double-penetration chip-seal or other appropriate surface as approved by the designated Zoning Administrator.
- B. Afford adequate drainage. A drainage plan will be required for major developments, including parking, as determined by the designated Zoning Administrator, and said plan must be approved by the City Commission prior to issuance of a building permit.
- C. Have bumper guards where needed.
- D. Be provided with necessary space and aisle safety markings.



Stantec Consulting Services Inc.
3831 E. Lohman Ave, Suite 200, Las Cruces NM 88011

May 5, 2023

Attention: Traci Alvarez, Assistant City Manager
City of Truth or Consequences
505 Sims Street
Truth or Consequences, NM 87901

Dear Ms. Alvarez,

Reference: Review No. 1 for City Development Review Services for Wyona Street (Condominiums)

I have reviewed the new development (Wyona Condominiums) along with the City Department Staff and the following are comments from that review.

Project Information:

Address: Wyona Street
Developer: AGNS Construction
Zoning: R-3
Type: New Condominiums
Flood Zone: AE

General Comments:

- 1) Once approved by the City of Truth or Consequences, building plans need to be approved through CID.

Zoning and Planning Comments (CONDITIONAL - APPROVED):

- 1) Will require a variance to the Minimum Rear Setback from 15' to 10'.
- 2) Lot meets minimum area and minimum width for R-3.
- 3) Dwelling meets minimum area and maximum height for R-3.

Engineering Comments (CONDITIONAL - APPROVED):

- 1) Tract 7 labeled on plans/Lot 12 labeled on Survey Plat need to verify which and needs to be labeled as an easement. Need to verify what type of easement it is for.
- 2) Maintain positive drainage away from building.

Utility Comments (CONDITIONAL - APPROVED):

- 1) Arnie Castaneda – Water/Wastewater Director (Conditional Approved - 5/2/23)
 - a) 2 inch water connection must have a 2 inch master meter with vault and lockable cut off valve on the city side and gate valve on the customer side. Install to AWWA standards.
 - b) Sewer connection must be connected to a minimum 6inc sewer line (not shown).
 - c) Sewer connections must have double cleanouts on customer side accessible to customer. Install to AWWA standards.
- 2) Bo Easley – Electric Department Director (Approved 4/27/23)

Reference: Review No. 1 for City Development Review Services for Wyona Street (Condominiums)

- a) Install 5 pad mount transformers.
- b) The transformer pads will need to be higher than the house foundations.

Solid Waste Comments (N/A):

Flood Commission Comments (APPROVED):

- 1) Travis Atwell – Flood Director (Approved – 4/25/23)

Fire and Emergency Comments (N/A):

Impact Fees:

Fixture Type	Quantity	Cost per Fixture Unit	Total Impact Fees
Water Closet	96	\$150	\$14,400
Lavatory	96	\$150	\$14,400
Bathtub/Shower	24	\$150	\$3,600
Kitchen Sink	24	\$150	\$3,600
Clothes Washer	24	\$150	\$3,600
Total Fixtures	264	\$150 per Fixture Unit	\$39,600*

*This amount could be impacted by previous development fees paid. Water Line Est. \$16,275.00
Impact Fees will be offset by WA/SW/Streets Dev. Sewer Line Est. \$24,000.00
Street Improv. Est. TBD

Thank you,

Stantec Consulting Services Inc.

 Digitally signed by Hall, Wesley
DN: CN="Hall, Wesley",
OU=Internal, OU=users,
OU=stantec, DC=corp,
DC=ads
Date: 2023.05.08
11:34:10-06'00'

Wesley Hall
Project Manager
Direct: 575-805-6009
Email: Wesley.hall@stantec.com

Rick Dumiak
705 Charles
Truth or Consequences NM

Good morning Mayor and Commissioners;

I am here to comment on a few different items this morning.

I find it very discouraging to see city and county vehicles ignoring our traffic laws, and when those in authority ignore the law how can we expect the average citizen to follow the traffic laws?

Stop signs seem to be only suggestions as rolling stops are far more common than a full stop in TorC. Speed limits? They don't seem to exist, especially on Main and Broadway between 7-8 AM during the week. Post Street is turning into a drag strip.

With our city in such dire financial shape, we could easily put more dollars in the general fund with a much more aggressive traffic enforcement policy.

A well known fact is that Camel Back casino in Cuyamungue NM was largely paid for with revenue from almost constant traffic enforcement on 84/285. It was and still is well known that you do the speed limit in Cuyamungue or you get a ticket. TorC should be no different.

Speaking of traffic laws, ever since construction started on the 800 block of Wyona, traffic on Post St has increased well over 150%. The workers are in a hurry to get somewhere so the speed limit on Post is not adhered to at all and the stop signs on the side streets are being ignored. A lot of local residents walk on Post every day and as there are no sidewalks we are forced to walk in the roadway and someone is going to get hurt or killed if nothing is done about the speeding on Post St.

I had previously suggested when the project on Wyona was being discussed that stop signs needed to be installed on Post St. and since work on the development began, Post St. has only become more dangerous for local residents and pedestrians.

I urge you to have stop signs installed on the corners of Van Patten and Post and Wyona and Post, currently the only stop sign on Post or any other cross street is on Austin (Bullocks parking lot), after that stop sign Post is becoming an almost perfect 1/4 mile drag strip. Installing two additional stop signs will slow traffic down on Post down especially if there is enforcement to go along with the signage.

Since I am talking about the development on Wyona, I urge you to table item F1 on today's agenda as our own code of ordinances will be ignored and or broken if you hear this item today.

Our Code of Ordinances is very clear regarding variances and under Chapter 15, section 15-8, Subdivision Code the procedure for a variance is clear and specific.

Sec. 15-8 Variances

Item B. Required Findings

Before recommending approval of a variance to the Planning and Zoning Commission, the City's Zoning Administrator shall make the following findings of fact. These same findings **must** be made by the Planning and Zoning Commission **before** it may recommend for approval to the City Commission. The same findings must be made by the City Commission before it may approve a subdivision with variances and must form the basis of its decision when acting on an appeal regarding a variance.

If you hear item F1 today you will be ignoring the required procedures that state the variance request must be heard by the Planning and Zoning commission prior to submittal to the city commission.

In addition according to todays packet it is stated that item F1 provides the following documentation;

Site plan, Development standards and Public Hearing Notice.

I guess 2 out of 3 of is okay?

The site plan that is included in todays packet is not a site plan but a "Grading and Drainage plan" this plan does not show the items required of a site plan per Sec. 11-14-10 that defines what a site plan is and lists 7 items that must be on a site plan.

The submitted "site plan" in todays packet does not meet the 7 items required of a site plan including but not limited to the locations and dimensions of all parking facilities, turning spaces, drives, aisles and landscaping.

Again I urge you to table item F1 until all procedures are followed to the letter of the law.

Finally, why do we have selective enforcement of our local laws and ordinances?

There is no camping permitted in Rotary Park without special permission, yet for the the last 5 days there has been a person camped out under one of the pavilion's at Rotary Park. I have called dispatch 5 different times and nothing has been done.

When I called on the 4th day dispatch told me "he has no where else to go" and made it sound like I was in the wrong! My friends tried to sleep in their camping van in the dirt lot by the dirt dam several months ago and they were chased out by PD but this person gets a pass for 5 days, if that's not selective enforcement I don't know how else to define it.

Thank you;

Rick Dumiak

Public Comment of Ron Fenn, 316 N. Foch St. T or C July 26,2023

The recent convening of a Committee to study and ultimately order the transfer the judicial powers of the Municipal Court, regarding Municipal Codes, to the Magistrate Court was done illegally and in-advicably due to its lack of Public participation (as usual) and violations of the State Statute that allows it and the NM Constitution's Article III Distribution of Powers.

Since the Magistrate Court is a higher judicial body with higher standards and requirements it is very unlikely that code enforcement will take the "quality of life" issues such as; passable sidewalks, to that higher court, or that citizens will be given the consideration they currently get from the lower court.

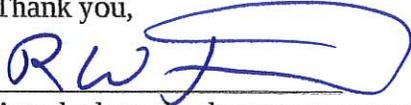
The Committee's violation of the Open Meetings Act is currently under review by The Office of the Attorney General.

Under T or C's Commission/Manager form of government The People are the Executive Branch equivalent to "Mayor" while mayor Forrister is a commissioner, with limited mayoral duties, so along with mayor pro-tem Hechler, made up 2 members of the "governing body" where the Statute 35-14-1 B allows for only one. Their appointed public members were; City Manager Swingle and former commissioner Francis Luna. Thus the voting committee was stacked with former of Police Chief Rodriguez creating an overwhelming 5-2 advantage in what Francis Luna testified; "...this committee...and public hearing is merely a formality" also "...the municipal court is going to close", This was a predetermined based on the fraudulent make up of the Committee.

NM Stat § 35-14-1 G (2021) provides for a reversal of the process and retention of the Municipal Court with a Petition of "at least twenty percent of the registered voters who voted in the last municipal election for the ***office of the mayor***". (emphasis added)

Attorney Rubin. who with the City Clerk, has stopped the legal process for Petitions NM Stat § 3-1-5 (2019) J. ironically using the argument that "The City of Truth or Consequences is not a Mayor Elected form of government." "...our Mayor is appointed, not elected. Therefore, I cannot verify how many signatures are needed for Mr. Fenn's petition... supporting the fact that mayor Forrister should not have acted as an elected Mayor and that the Executive Branch committee member should have been filled by the only member of the T or C public that has acknowledged and acted as Co-CEO of the City of Truth or Consequences, namely Ron Fenn.

Thank you,



Attached are the documents supporting this accusation:

July 11, 2023 Letter of verification for 5 signatories representing 100% of the votes cast for mayor Forrister.

The Petition

Rubin Letter

*Amanda Forrister
Mayor*

*Rolf Hechler
Mayor Pro-Tem*

*Merry Jo Fahl
Commissioner*



*Destiny Mitchell
Commissioner*

*Shelly Harrelson
Commissioner*

*Angie Gonzales
City Manager*

*505 Sims St.
Truth or Consequences, New Mexico 87901
P: 575-894-6673 ♦ F: 575-894-7767
www.torcunm.org*

RON FENN - 2nd PETITION TO RE-ESTABLISH THE MUNICIPAL COURT

New Mexico Statutes Chapter 35. Magistrate and Municipal Courts § 35-14-1.
Municipal court; creation

G. Any municipality that has passed an ordinance designating the magistrate court of the county in which the municipality is located as the court having jurisdiction over municipal ordinances may re-establish the municipal court as the court having jurisdiction over municipal ordinances through the following procedures:

- (1) the governing body of the municipality may pass an ordinance rescinding the designation that was made pursuant to Subsection B of this section; or
- (2) following receipt of a petition signed by at least twenty percent of the registered voters who voted in the last municipal election for the office of mayor:
 - (a) convene a municipal ordinance jurisdiction advisory committee pursuant to Subsection B of this section that shall make a report and recommendation, if any, to the governing body of the municipality; and
 - (b) the governing body shall indicate its assent to re-establishment of the municipal court by ordinance.

3-1-5. Petitions; examinations of signatures; purging; judicial review. (2007) is attached hereto and made a part hereof.

July 11, 2023

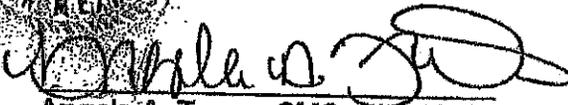
A second Petition to re-establish the Municipal Court was submitted to my office on June 28, 2023 by Ron Fenn (copy of petition attached hereto and made a part hereof). A voter registration list has been provided to me by the County Clerk's Office and the verification of signatures was performed by me, Angela A. Torres, on June 28, 2023.

Registered Voter Signatures:

1. Ron Fenn, 316 N Foch, T or C, NM 87901: Mr. Fenn is a registered voter within the Municipality of Truth or Consequences.
2. Ray Downs, 418 Locust, T or C, NM 87901: Mr. Downs is a registered voter within the Municipality of Truth or Consequences.
3. Susan Crow, 711 Kopra, T or C, NM 87901: Ms. Crow is a registered voter within the Municipality of Truth or Consequences.
4. Ariel Dougherty, 1580 Caballo Road, T or C, NM 87901: Ms. Dougherty is a registered voter within the Municipality of Truth or Consequences.
5. Charles Vangelder, 207 S. Arrowhead, T or C, NM 87901: Mr. Vangelder is a registered voter within the Municipality of Truth or Consequences.

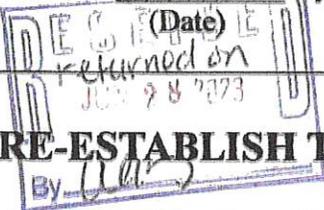
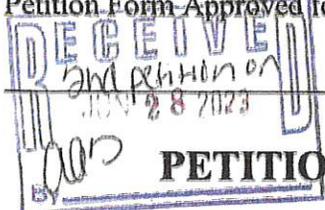
I am verifying that the five (5) signatures listed above, as and provided on Mr. Fenn's petition are registered voters within the Municipality. However, the New Mexico State Statute § 35-14-1 (2) states: ***following receipt of a petition signed by at least twenty percent of the registered voters who voted in the last municipal election for the office of mayor***. The City of Truth or Consequences is not a Mayor Elected form of government. We are a City Manager/City Commission form of government, and our Mayor is appointed, not elected. Therefore, I cannot verify how many signatures are needed for Mr. Fenn's petition, and as explained in the attached letter from our City Attorney, ***given that the city does not hold elections for the office of the Mayor, it is unclear whether § 35-14-1 (2) applies.***"




Angela A. Torres, CMC, City Clerk

Petition Form Approved for Circulation on: 6/28/23

by: *[Signature]*
Angela A Torres, City Clerk



PETITION TO RE-ESTABLISH THE MUNICIPAL COURT

We, the undersigned voters of the City of Truth or Consequences, NM, hereby petition the T or C City Commission pursuant to NM Stat § 35-14-1 (2021) G (2) to:
G-(1) Rescind by Ordinance.

Ordinance 742

AN ORDINANCE AMENDING THE CITY OF TRUTH OR CONSEQUENCES MUNICIPAL CODE OF ORDINANCES BY ADDING A NEW SECTION DESIGNATING THE SIERRA COUNTY MAGISTRATE COURT AS THE COURT HAVING JURISDICTION OVER MUNICIPAL ORDINANCES AND REPEALING SECTIONS 2-371 THROUGH 2-380.

OR

- (a) convene a new legal jurisdiction committee pursuant to § 35-14-1 (2021) B and
- (b) governing body shall indicate its assent to re-establishment of the municipal court by ordinance.

DATE	Print Name	Print Address	Signature	†
6/28/23	RON FENN	316 N FOOTH ST	<i>[Signature]</i>	
6/28/23	Ariel Dougherty	1560 Laballo Road	<i>[Signature]</i>	
6/28/23	CHARLES VALENZUELA	207 S. ARROWHEAD	<i>[Signature]</i>	
6/28/23	Ray DOWNS	418 LOCUST ST	<i>[Signature]</i>	
6/28/23	Susan Crow	711 Kapa St.	<i>[Signature]</i>	

† Verification

NOTICE: Any person or any municipal or county official knowingly violating the provisions of this section, knowingly providing or causing to be provided any false information on a petition or forging a signature or otherwise signing a petition when that person knows the person is not a qualified elector in the municipality is guilty of a fourth degree felony. NMSA § 3-1-5. O.

STATE OF NEW MEXICO
COUNTY OF SIERRA

I, RON FENN do hereby certify that the signatures appearing on the front hereof were signed in my presence; that to the best of my knowledge and belief each such signature is genuine and that the person so signing is a qualified elector in the county named on this page.

Signed 



City of Truth or Consequences

505 Sims Street

Truth or Consequences, New Mexico 87901

City (575) 894-6673 • Fax (575) 894-7767

July 6, 2023

Ronald Fenn
316 N. Foch Street
Truth or Consequences, NM 87901

Dear Mr. Fenn,

Your second Petition to Re-Establish the Municipal Court dated June 28, 2023 has been referred to me by the City Clerk.

As you are aware, the City recently pursued a lengthy, time-consuming procedure to enact an Ordinance designating the Magistrate Court of Sierra County as having jurisdiction over City Ordinances. The Ordinance was approved by the.

The City has no authority to challenge the New Mexico Supreme Court. Further, it is highly unlikely that the City Commission would desire to re-commence the process of rescinding the Ordinance, especially so soon after its recent enactment.

Given that the City does not hold elections for the office of the mayor, it is unclear whether §35-14-1 (G) (2) applies.

Based upon the foregoing, the City Clerk and I feel that we have no authority to take action with respect to your Petition. We will make copies of our correspondence available to the City Commission and the public.

Very Sincerely,

Jaime F. Rubin, City Attorney

JFR: sjh

Cc: City Clerk

I am going to share a quote with you guys from John F. Kennedy. History is a relentless master. It has no present, only the past rushing into the future. To try to hold fast is to be swept aside. This city is at a crossroads right now with development and what we are trying to do. If we don't embrace it, and we don't move forward with development and the plans to better the city, we are going to be swept aside. That is what is happening. All of the infrastructure is failing, and we all know that. It is very obvious as you drive around town. We need to generate new ways of the city getting revenue, and that would be by adding houses. We have teachers that are coming in, and these teachers have nowhere to live so we are working to try and find them rentals, and we are working to try and remodel houses to get them in there. Our children aren't going to have teachers because we don't have housing. The idea that we are going to fight development and fight the addition of housing because somebody doesn't want traffic on their street is ludicrous. The three culverts that are on Marshall are 18 inches. Those 3 culverts have the combined square inch diameter of 972 inches. They have been holding back and diverting the water to the Rio Grande for years, even decades with no incident. We had the big flood in 2020 that flooded Williamsburg, and we had the big flood for the 3 day event that risked overflowing the Rio Grande. Neither one of those events that those culverts didn't handle and divert the water down that drainage canal into the Rio Grande. The culvert that we put in is 3422 inches in diameter. That is 3.5 times the size of the system that has been in the work and has been working for decades. All of the mistruths and all of those things can be addressed by giving me a call or meeting with me to talk with me. We can make changes, if need be, to my plan so that we make sure that we touch all the marks. If I miss something, I am willing to work with you guys 100%, but the idea that we can just stop development because someone doesn't want traffic on their street is ludicrous.

Nate Stephens

Comments for Variance Request for Side Setback Requirements 800 Block of Wyona
During City Commission meeting and July 26 2023

This hearing today is invalid for two reasons:

Reason 1: *Improper notice has been given for the hearing.* Sec 11-7-2 A. States that variance requests shall be published at least fifteen (15) days prior to the date of the hearing in one newspaper of general circulation in the city. The only newspaper in the City, the Sierra County Sentinel, ran a Legal Notice for the hearing on July 14, 2023 for the meeting today, July 26, 2023. That is only a 12 day notice.

Also, George Henson, who lives closest to the development says he did not receive a certified letter announcing this hearing.

Reason 2: *This matter has not been presented to the Planning and Zoning Commission for consideration and recommendation.* They have not voted on it with a quorum of 3 and have not presented the City Commission with a written recommendation within its minutes and in a special letter to the City Commission on all matters per Sec 11-7-2 D.

The Planning and Zoning Commission needs to review the codes and building plans, including those for the bridge that dams the drainage ditch, and to put in writing that it believes whether or not that granting this variance, which is needed for a re-subdivision, will ultimately result in detriment to the public health, safety, or welfare, will be materially injurious to properties or improvements in the area of notice, that it upholds the spirit and intent of this Code, that public safety and welfare will be secured and substantial justice done, that it will not result in the City being caused to absorb costs over and above those typically associated with subdivision approval, and that it will not cause negative impacts on adjoining properties, properties in the area of notice, or to the public well being – then after that when these recommendations for or against the variance are sent to the City Commission, only then can the Commission rule on this variance request.

Furthermore, as can be seen by my public comments today, the developer requesting this variance does not give a second thought about following codes, and Sec 15-8 states that “No variance shall be granted simply because the subdivider disagrees or does not wish to meet the goals, objectives or standards of this Code” and that granting a variance “Shall not constitute a special privilege inconsistent with the limitations on other properties in the area of notice”

Diane Gunning
Diane Gunning, 709 Wyona St, Truth or Consequences, NM, diane.tominaga@gmail.com

9 pages for inclusion in minutes



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 26, 2023

Agenda Item #: F.1

SUBJECT: Public Hearing/Discussion/Action – Variance Request 800 Block Wyona **Side** Setback Requirements

DEPARTMENT: Community Development

DATE SUBMITTED: July 20, 2023

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

Property is located in the R-3 Zone requiring a minimum side setback of **5 feet if lots are individually sold**. Applicant would like to request a variance of the required setback for potential sale of individual lots.

Recommendation:

Approve or deny Variance request

Attachments:

- Site Plan
- Development Standards
- Public Hearing Notice

Fiscal Impact (Finance): N/A

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: Department Director

Reviewed by: City Clerk Finance Legal Other: [Click here to enter text.](#)

Final Approval: City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. [Click here to enter text.](#) Ordinance No. -

Continued To: - Referred To: -

Approved Denied Other: -

File Name: CC agendas 7-26-2023

Sec. 11-7-2. - Hearings of the Planning and Zoning Commission.

The following applications reviewed by the Planning and Zoning Commission may be done only after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard.

A. **Requirements of public notice.** A Public Notice for Conditional Use Permits, Special Use Permits, Level III Home Occupation Permits, Annexations, Change of Districting, **Variances**, or Amendments to this Code, shall state the time and place of the public hearing, **shall be**



published at least fifteen (15) days prior to the date of the hearing in one newspaper of general circulation in the City.

Legal Notice appeared in Sierra County Sentinel on July 14 2023 for hearing changed to July 26 2023; only 12 days

B. **Requirement of notice to property owners.**

1. **Notice of the public hearing shall be mailed by certified mail, return receipt requested, to the owners as shown by the records of the County Treasurer, of lots or land within the area proposed to be changed and within one hundred (100) feet, excluding public right-of-way, of the area proposed to be changed. Whenever:**

- i. A change of Districting is proposed for an area of one block or less
- ii. An application is for a Conditional Use, Special Use, Variance, or Level III home occupation permit.

2. Whenever a change in Districting is proposed for an area of more than one block, the procedure stated in the preceding paragraph shall be following except that property owners shall be advised by first class mail. If a notice by first class mail to an owner is returned undelivered, City staff shall attempt to discover the owner's most recent address and shall remit the notice by certified mail, return receipt requested, to that address.

3. Notice shall be mailed not less than fifteen (15) days prior to the required public hearing.

4. Notice of the proposed hearing date, time, and location shall be placed on the subject property fifteen (15) days prior to the required public hearing.

5. Fees and costs: The applicant shall bear the cost of mailing, envelopes and publication of all notices and shall provide the maps and property owner information to the City staff in a timely manner. The City staff shall calculate the costs of mailing and publishing and require payment prior to publishing the notice or sending out the mailed notices. The application form shall specify the manner and format in which the mailing list (property owners) shall be delivered to the City staff. The City staff may charge an additional fee as specified by Commission Resolution for doing the research required to create the property owner list.

C.

George Henson, closest home to the development says he did not receive a letter

Recommendations of the Planning and Zoning Commission. Recommendations of the Planning and Zoning Commission shall be made in accordance with the criteria stated in Article II of this Code.

- D. ***Report to the City Commission.*** The Planning and Zoning Commission shall provide a written recommendation within its minutes and in a special letter to the City Commission on all matters.

The hearing is taking place during a regularly scheduled City Commission meeting. Is there to be a quorum of 3 of the Planning and Zoning Commission present? Will they be able to review, or have they already reviewed plans for the development in question? Will they be able to make a recommendation in writing to the City Commission before it makes its final decision?

LEGAL NOTICE

NOTICE OF PUBLIC HEARING MEETING CHANGE

NOTICE is hereby given that the July 10, 2023 Planning & Zoning Public Hearing has been re-scheduled to go before the City Commission on Wednesday, July 26, 2023.

The public hearing listed below will be held during the regular scheduled City Commission meeting starting at 9:00 a.m. in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico.

Public Hearing/Discussion/Action: Variance Request for 800 Block of Wyona. Applicant is requesting a variance of Sec. 11-14-2. Standards for Districts, specifically related to required minimum side setbacks.

Should you have any questions regarding this Public Hearing, please contact Traci Alvarez at (575) 941-0565 or by email at talvarez@torcnm.org.

The agenda may be obtained on Friday, July 21, 2023 on the city website calendar at www.torcnm.org; by contacting the City Clerk's Office at 575-894-6673; or by email to: torcclerk@torcnm.org.

/s/ Angela A. Torres, CMC, City Clerk

Posted on July 10, 2023 at the following places:

- 1) Bulletin board at the City Utilities Office; 2.) the north bulletin board at the Sierra County Administrative Building; 3) First Savings Bank; 4) Bank of the Southwest at T or C; 5) U.S. Post Office located on Main Street; and 6) City Clerk's Office and on the City's website.

Pub.: July 14, 2023

LEGAL NOTICE

STATE OF NEW MEXICO
COUNTY OF SIERRA

County (Video: mrv-nxuw- phonic: 1 Pin: 945 7; day, Aug 2:50 p.m., orable M MURPHY.

/s/ Jaim JAIME Attorne Represent Jaime l P.O. Dr Truth o NM 8790 575.89 Fax: 575 Pub.: Ju This www.p

LEG

STATE (COUNT SEVENT TRICT (NO: D-7 JUDGE (IN THE ESTATI BYRON Deceas NOTIC NOT GIVEN signed person this es ing cl tate al their month first p tice o ever be pr unde rese FILC Drav sequ filed 311 Cor ico. DA /s/ Per 142 Pri /s/ At Re Pc Tr N

12 days,
NOT 15 days!

Sec. 15-8. - Variances.

- A. *Cause:* Where, in the case of a particular proposed subdivision, it can be shown that strict compliance with the requirements of this Code would result in a substantial or unreasonable hardship to the subdivider because of exceptional topographic, soil or other surface or subsurface conditions, or that strict compliance with this Code would result in inhibiting the achievement of the objectives of this Code, the Planning and Zoning Commission may recommend and the City Commission may approve variances, modification or waivers of this Code's requirements. **No variance shall be granted simply because the subdivider disagrees with or does not wish to meet the goals, objectives or standards of this Code.**
- B. *Required findings:* Before recommending approval of a variance to the Planning and Zoning Commission, the City's Zoning Administrator shall make the following findings of fact. These same **findings must be made by the Planning and Zoning Commission before it may recommend approval to the City Commission.** The same findings must be made by the City Commission before it may approve a subdivision with variances and must form the basis of its decision when acting on an appeal regarding a variance. Granting a variance:
1. **Shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the area of notice;**
 2. **Shall not result in detriment to the public health, safety, or welfare, or be materially injurious to properties or improvements in the area of notice;**
 3. Is justified because a physical hardship to the applicant is caused by existing size or shape of the lot, by existing structures, topographic or physical conditions on the site or in the area of notice, or if a physical hardship to the applicant would result from strict compliance with this Code;
 4. **Upholds the spirit and intent of this Code, public safety and welfare will be secured, and substantial justice done;**
 5. **Will not result in the City being caused to absorb costs over and above those typically associated with subdivision approval;**
 6. Is not contrary to the requirements of state law;
 7. **Will not cause negative impacts on adjoining properties, properties in the area of notice, or to the public well being.**
- C. *Procedures and requirements:* The following procedures and requirements shall apply to all requests for variances under this Code.
1. Requests for variances and the review fee shall be submitted in writing prior to or at the time of request for preliminary plat approval.
 - 2.

ARTICLE II. - ADMINISTRATION OF THE CODE

Sec. 11-2-1. - Administrative Official.

This Code shall be administered by the Building Inspector for the City until a Zoning Official is specifically designated by the City Commission. Throughout this Code, "designated Zoning Official" shall mean the Building Inspector, or a zoning official subsequently designated by the City Commission. Except as otherwise provided in this Code, the designated Zoning Administrator shall:

- A. Administer and enforce this Code;
- B. Receive applications;
- C. Inspect premises for Code compliance;
- D. Issue permits and certifications;

No building permit or certificate of occupancy shall be issued by the designated Zoning Administrator except where compliance with the provisions of this Code have been met.

Sec. 11-2-2. - **The Planning and Zoning Commission.**

- A. *Purpose.* A Municipal Planning and Zoning Commission is hereby established for the purpose of interpretation of this Code, approving certain actions, receiving requests for modifications to this Code and re-zoning, and making recommendations to the City Commission concerning matters pertaining to zoning within the City.
- B. *Administrative review and interpretations.*
 1. The Planning and Zoning Commission shall review an administrative action of the designated Zoning Administrator when it is alleged that there is an error in the order, requirement, determination, or refusal made by the designated Zoning Administrator and reverse, affirm, or modify the administrative action.
 2. The Commission shall interpret this Code when the designated Zoning Administrator is in doubt as to the exact meaning of the text.
 3. The Commission shall interpret the Official Planning and Zoning District Map in accordance with the standards set forth in the Comprehensive Planning and Zoning Code when the designated Zoning Administrator is uncertain as to the exact boundary of a District shown on the Official Planning and Zoning District Map.
- C. *Powers and duties.*
 1. **Recommend to the City Commission either approval, denial or modification of a request for annexation, special use permit, variance, subdivision, zoning, amendment of this Code,**

or any other land use consideration within the planning and zoning jurisdiction of the City.

2. Grant final approval or denial of a home occupation or conditional use permit after public meeting, provided there is not an appeal to the City Commission within fifteen (15) days in accordance with Article 7 of this Code.
- D. *Composition of the Planning and Zoning Commission.* The Planning and Zoning Commission shall consist of five (5) members each to be appointed by a simple majority of the City Commission. Eligibility requirements for membership shall be established by the City Commission. Members shall serve staggered terms of two (2) years each. A recording secretary shall be provided to assist the Planning and Zoning Commission by the City. The recording secretary shall not be a member of the Planning and Zoning Commission and shall be only responsible for those duties requested by the Planning and Zoning Commission and approved by the City Manager.
- E. *Organization of the Planning and Zoning Commission.* The Planning and Zoning Commission shall elect a chairman, vice-chairman, and second vice-chairman in July of each year, or as required due to unforeseen vacancies. They shall serve for one (1) calendar year following their elections.
- F. *Voting.* A simple majority vote of a quorum of the Planning and Zoning Commission is required for approval of all Planning and Zoning Commission actions. A quorum requires at least three members of the Commission present.
In order for a vote to be valid on a particular issue, a quorum must actually vote regarding the measure. A member who abstains from voting on an issue is deemed to have not voted on the issue.
- G. *Findings of facts for recommendations and decisions.* In considering all requests, the Planning and Zoning Commission shall review applicable plans and determine whether the request will:
1. Impair an adequate supply of light and air to adjacent property;
 2. Unreasonably increase the traffic in public streets;
 3. Increase the danger of fire or endanger the public safety;
 4. Deter the orderly and phased growth and development of the community;
 5. Unreasonably impair established property values within the surrounding area;
 6. In any other respect impair the public health, safety and general welfare of the City; or
 7. Constitute a spot zone and therefore adversely affect adjacent property values.

All actions or recommendations by the Planning and Zoning Commission shall be based on Findings of Facts as to the impacts of the proposal, using the criteria listed in numbers 1 through 7, above. The Planning and Zoning Commission shall review each of the above listed

factors and accord each factor the necessary weight on a case-by-case basis in making its determination.

- H. *Report to the City Commission.* The Planning and Zoning Commission shall provide written minutes, with recommendations as necessary, to the City Commission on all matters that are brought before the Commission. Such minutes shall include a statement of the findings of facts that were the basis of any decision or recommendation made by the Planning and Zoning Commission.

Sec. 11-2-3. - The City Commission.

The City Commission shall make all final decisions concerning amendments to this Code, original zoning, re-zoning, variances, appeals, and special use permits, and subdivisions.

All actions by the City Commission shall be based on and stated as a Findings of Facts of the impacts of the proposal, using the criteria listed in Section 1-2-2 H1 through 7, above. The City Commission shall review each of the above listed factors and accord each factor the necessary weight on a case-by-case basis in making its determination.