

CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, January 11, 2011

REGULAR MEETING

Minutes

TIME & PLACE: The Mayor and the City Commission of the City of Truth or Consequences in the County of Sierra and State of New Mexico met in Regular Session in full conformity with the law and ordinances of said Commission in the Commission Chambers of said City, on Tuesday, January 11, 2011 at 6:00 P.M.

PRESIDING OFFICER: The meeting was called to order by Mayor Montgomery who presided and Mary B. Penner, City Clerk acted as Secretary of the meeting.

ATTENDANCE: Upon calling the roll the following Commissioners were reported present:

Hon. Lori S. Montgomery, Mayor
Hon. Evelyn B. Renfro, Mayor Pro-tem
Hon. Steve Green, Commissioner
Hon. Frances Luna, Commissioner
Hon. Freddie Torres, Commissioner

Also present:

Dave Weiser, City Manager
Jay Rubin, City Attorney
Mary B. Penner, City Clerk

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

CEREMONY: Mayor Montgomery called for fifteen seconds of Silent Meditation, and asked that they remember the family of Quentin Drunzer, and stated Mr. Drunzer was the City Manager for the City of Truth or Consequences for quite some time, and passed on recently.

Mayor Montgomery called for the Pledge of Allegiance.

APPROVAL OF AGENDA: Mayor Montgomery called for approval of the Agenda.

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

Seconded by Commissioner Renfro.
Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT: None.

Mayor Montgomery stated before they get started she has two announcements.

Chief Gallagher came before the Commission and stated he wanted to make everyone aware...subsequent to the previous City Commission meeting it came to our attention that there was an unauthorized tape recording of the Executive Session, and indicated

he wanted to assure everyone that the matter has been fully investigated.

Mayor Montgomery stated next there was a request from the home owners the neighbors for the Braxton Merritt, and stated she is going to save that for last, and that she was asked that they be put together, and will call on them last and put them in order, and will call them in order when the time comes up.

COMMENTS
FROM THE
PUBLIC:

Mr. Ronald Fenn came before the Commission and read a letter, and provided information for the record.

Mr. Bradley Grower came before the Commission regarding two items listed on the Agenda.

Dr. Eve Elting came before the Commission with comments.

Mr. Neal Weeks came before the Commission with comments.

Ms. Susan Lynch came before the Commission with questions for the record:

1. Is code for the 6" main going to be adhered to or will a variance be submitted for the 4" pipe?
2. At the Nov. 9th, 2010 CC Mtg., the City Manager was directed by the Mayor to ask each Commissioner what information they needed to make a decision on this development...was that done, and has all information been provided?
3. Was a formal request ever made to Merry Jo Fahl of SSWC for input on erosion control, drainage and terrain management?
4. Did you realize the power point presentation in their package is not the one presented at the June 1st meeting? Items that were not discussed at the June 1st meeting that are now stipulated as such are street width, fire hydrant location, parking restrictions, dust control, utilization of the public sewer system, required site built homes for lots 3, 4 & 5, and restrictions and covenants to keep the neighborhood consistent. And stated they can verify this by looking at the Feb. 24th, 2010 maps which were the only ones provided at that meeting, and/or you can listen to the tapes from that meeting.
5. We have asked all along for sane code enforced development that actually improves our neighborhood, and they have said all along 5 sites are too many and will create a negative impact on the neighborhood, and that they have asked for fewer sites. This could solve all code adherence issues. And stated in a phone conversation with Merritt following the December 14th Commissioners meeting, and they asked him again if he would consider doing two sites instead of the 5...he said no...he thinks his development will improve the area. He stated some of the trailers that are in the neighborhood now nauseate him...this are outrageous. As he plans on adding more trailers. Our question is how will more trailers, more noise, more congestion and more pollution improve our neighborhood, and finally we he really be allowed to develop the land to make the largest amount of money a possible without following city codes?

Ms. Joyce Hudgens came before the Commission and passed out paperwork for the Commission.

Mr. Jake Jacobson came before the Commission, and stated for the record he provided the City of Truth or Consequences Subdivision Code, Chapter 15 and the Comprehensive Planning and Zoning Code, Chapter 16, and provided 1 hard copy of each for Mayor Montgomery, and a disc copy for each Commissioner.

Mr. Paul Pompeo came before the Commission with comments, and provided a letter of his credentials to the Clerk for the record.

Ms. Joey Perry came before the Commission with comments, and prior to the meeting presented information to the Commission.

Mayor Montgomery stated one of the questions that she has, and that she is totally confused in Ms. Perry's minority report she doesn't understand what that is Mr. Rubin...a minority report from Planning & Zoning, and stated further she wanted to note for the record from the minutes of September 7th meeting, and read from those minutes. "Joey Perry also requested that the motion of approval for the Preliminary Plat be amended with the following stipulations: And read from the minutes. (Complete copy attached hereto and made a part hereof.) And this is noted for the record.

CONSENT
CALENDAR:

Mayor Montgomery stated they have three items under the Consent Calendar – Minutes of the City Commission Meetings – Regular – December 14, 2010 and Special – December 16, 2010, and Accounts Payable – December 2010.

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

Seconded by Commissioners Luna/Renfro.
Motion carried unanimously.

DRAFT
MINUTES:

Mayor Montgomery stated the following are draft minutes from various boards provided to the Commission for their information, and are non-action items.

Commissioner Green – just a clarification from the Golf Course Advisory Board...under 7 – old business (a)...Manager Weiser reports cash available presently is approximately \$11,000 due to budgetary funding problems...what does that mean?

City Manager Weiser stated part of the agreement was that the \$1.00 that is collected from each round of golf goes to a special construction fund that the golf board can recommend to the Commission on how it be spent, and indicated that was not included in the budget for 2009-2010 nor was it included in the budget for 2010-2011. And what he told them over time they will bring that back up to where it is supposed to be so they match what the contract with the golf-pro says.

BOARD &
COMMITTEE
REPORTS:

Planning & Zoning Commission –

Consider Variance Request – From front yard setback – 1303 N. Riverside – John & Michele Saridan. (Tabled from the 12/14/2010 CC Mtg.)

City Manager Weiser stated the Commission asked that they provide the address, and indicated they provided the entire packet which includes the application, mailing list of adjacent neighbors, photographs of properties along North Riverside in the general vicinity which shows some of the set-back issues.

City Attorney Rubin asked the position of the neighbors.

City Manager Weiser stated nobody spoke at the hearing.

City Attorney Rubin – nobody opposed it?

Commissioner Green stated he does not have a problem with the request, but what I do have a problem with is our own code, and not abiding by our own code, and referred to the packet, under Section 11-5-5C – Submission requirements...**and shall contain plans**, and stated there are no plans. And does not see how they can vote against our own code and in our own code book it might need some tweaking...I don't think anyone disputes that, but in the meanwhile that is what they're dealing with...that is our law to govern our community.

He stated on the application where it refers to if plans are attached it indicates **need variance to prepare plans**, and stated they need to abide by our code...also is there a representative or the Saridan's in the audience, because under the variance application under #4...**Appear in person or through an authorized representative at the required Planning & Zoning Board Public Hearing, and the City Commission meeting to present testimony to support the application.**

Commissioner Green – As I say...I would vote yes on the variance right now if they had plans and someone here, but I cannot see putting the City in a position to violate its own codes.

Mayor Montgomery asked if the Saridan's were in the audience, and there was no response.

Commissioner Luna stated when she read need variance to prepare plans...I thought that meant approval or denial...I can't draw you plans until I know we'll get it or not...that's how I took it.

Commissioner Green – and I understand...and not gonna ask applicant's to spend a lot of money on something they don't know that it's gonna happen, but the point is...if we're gonna have a code book then lets live by it...otherwise let's burn it or until that point then let's change and go over it, but until those codes that don't make sense make sense...that's the law of the land...that's what we have to govern this community by, and I cannot see publicly us violating the trust that the citizens put in us for us to honor our own codes...to live up to the codes.

“Commissioner Green moved that they postpone this for the plans, and that the Saridan's or a representative is present to they can vote on this with everything legal, and everything that they need.”

Seconded by Commissioners Renfro/Luna.

Mayor Montgomery stated on the application it does state that the application was complete so she would like when the Planning & Zoning does their letters in the future that they state that everything was complete. She stated the codes are there for a reason, and that there are variances that are granted for specific reasons, and it is unfortunate that they continue to hold these landowners hostage on some of these things because they can't...

(Commissioner Renfro – get the necessary paperwork). Mayor Montgomery – correct.

City Attorney Rubin – one thing I am curious about...did anybody appear at the Planning & Zoning level to testify?

City Manager Weiser - people did appear to testify...Commissioner – I don't remember if there was someone there representing the Saridan's or not.

Motion carried unanimously.

Planning & Zoning – Variance request/Preliminary Plat – Review all documents requested by the Commission – Braxton Merritt

Mayor Montgomery stated they have a letter and documentation in your packets.

City Manager Weiser stated at their request they compiled the list of documents, and indicated they did take this back to the Planning & Zoning Commission last Wednesday, and they reviewed it and discussed a couple of the issues, and felt those issues had been discussed earlier within their deliberations.

He stated the hydrant had been discussed two different times on July 6th and April 3rd, and the drainage was discussed on July 6th, and the sidewalk variance was discussed the first time on August 3rd, curb, gutter and sidewalks were also discussed on August 3rd, and they did have the two variance requests, public hearings and that they were duly noted and advertised. And indicated the dust issue is covered under City ordinance, and stated the one issue that he did not find in the minutes...and knows there was discussion about the driveway access at one time, and it was thought that there would be a common driveway...perhaps two common driveways for the 5 lots, and stated that was subsequently changed verbally to the 2 lots being served by the one driveway. And the other 3 lots on the upper portion of the property would have access from Gold or Joffre depending on the layout of the house.

Commissioner Green – Before we even start this whole process is there a representative from Braxton Merritt here tonight...

Commissioner Renfro – that is what I was going to say I don't see anybody.

Commissioner Green – How can they even discuss once again...to even discuss the possibility of voting for or against a variance if there is no one here?

Commissioner Renfro – Did he know it was going to be on the agenda.

City Manager Weiser – Yes.

Commissioner Green – My position would be if they felt that way for the Saridan's we have to feel that way for Mr. Merritt, and believe me as we had some people stand up and say...I am not against development...I mean I feel it's even ridiculous that I have to make that statement and defend my position...but my position is if nothing else for a New Year's Resolution 2011 I want the City to get it right.

And stated he would suggest that they table this if there is not a representative, and would like to put an end to this one way or another and move on, but I don't see how we can without that.

Mayor Montgomery stated what she wants to discuss here is this is the board and committee reports...so this is your opportunity to ask questions for staff because they have this on the agenda later on so if you choose to make a motion at that point, but right now what I want to discuss is you have been given all the information that Planning & Zoning had...and I assume everybody went through the documentation and the plans, and you have seen all of the minutes for all of the meetings, and seen all the letters of concern, and heard all the testimony...both sides before, and what I'm asking is...is there anything else that you're asking for before we move on.

Commissioner Luna – Ms. Perry's stipulations that you read earlier...the electric department would like to see the power lines run East on Joffre, South on Gold rather than in the easement on the West side of the property...was that addressed because I can't find it in the maps. I know the maps are dated prior to this, but...

Mayor Montgomery – in the condition they would have to put that in their new plans.

Commissioner Luna – Right, but did they ever agree to...

Mayor Montgomery – They wouldn't until we approve it...why would do they do that...they don't have to agree to it.

Commissioner Luna – You're right and we don't have to approve it.

Mayor Montgomery – That's correct...so I guess what I'm asking...they have the preliminary plans, and then the Planning & Zoning made recommendations that come to us, and we either agree or not agree, or direct the developer to do whichever way, and then they address the plans.

Commissioner Luna – Okay but there's also a fire hydrant that they've said we're going to put in that's not in those plans that Mr. Gutierrez said...should be on those plans...we just didn't have the right piece of paper because there was a map that showed the plans cause I specifically asked, and so my question is...did they agree to move those power lines...well because...the fire hydrant isn't on these plans...preliminary...final whatever...did they agree to move those lines, or is that still something we can stipulate...am I asking the question right.

Mayor Montgomery – You are asking the question right, but my answer is going to be the same...why do they have to agree to it...if that's not their choice to agree to it...once we make a decision...we can say...you're gonna make the road 40' wide and you're only gonna have a building x y, and we send it back to them, and that's what we so direct them to do...they find Planning & Zoning recommendations too...we can make it more stringent...at that point they can say forget it...I'm taking my development elsewhere.

Commissioner Luna – So we are going to see the final plat.

Mayor Montgomery – You can make that stipulation.

Commissioner Renfro & Mayor Montgomery – There should be another plat that comes back after they take this action.

Commissioner Renfro – Stated she notice these were not signed by

the Planning & Zoning Board either, and my question had been about the Public Utility Advisory Board. The plans should be signed by the Planning & Zoning and Public Utility Board, and then it comes to the City, and then the Mayor signs for the City.

Commissioner Luna – Then my next question is...

Commissioner Green – Along those lines they don't have to.

Mayor Montgomery – if they want to do it they have to agree to our...is what I'm saying.

Commissioner Green – then how can we...what I hear you saying is that we make a decision on what we were given...we can put a decision that has a dot, dot...we want you to do 1, 2, 3, 4, 5...it goes back to Mr. Merritt...he either agrees to those or doesn't agree to those changes...goes to P & Z, and then they recommend, and it comes back to us...

Mayor Montgomery – P & Z is done...they're done with their part...they bring it to us...we either agree with P & Z or we don't agree with them. We listen to all the testimony which we've heard and you make a decision based on that. You can make it more stringent...you make it less stringent...it's really your call, however you want to do it, and then you give it to Mr. Merritt and you say based on these conditions this it's what's approved with these conditional requirements...at that point he either does it or he doesn't do it.

City Attorney Rubin – I think that's right...yea I think that's exactly right.

Mayor Montgomery – We've done this a couple of times, and I think I'm right...so he can choose to do it, or he can choose not to do it.

Commissioner Luna – The 6" water lines...yes or no.

City Manager Weiser – The way the proposal is...is a 4" water line...you can require a 6".

Mayor Montgomery – Right you can make it more stringent, but my question...what is currently there.

City Manager Weiser – There is a 4" there...it is a loop system.

Commissioner Green – One of the main things...and I don't think...would anyone...the 5 of us, and I will say no first really be comfortable in standing in front of an audience, and saying this is what Mr. Merritt is gonna do...how he is gonna do it...when he's gonna do it, and ultimately what the project is gonna look like. I have read everything...looked at the maps, and I'm still confused. I don't know what we can hold his feet to the fire for or not. I would have thought that a business person would create a business plan...after they went through the P & Z and they found the...they heard the concerns...I would of thought there would have been a letter addressed to the Commission, or to P & Z, or to the Mayor or the Manager, and saying these are the things we discussed...these are the things that we are going to do. And we have nothing in writing all we have are minutes...again where is the construction plan.

Questions for example...is he going to grade the property...put poles in the ground with flags, and say this is lot #1, 2, 3, 4, 5 and the lots are for sale...is he going to build site stick homes...is he going to bring manufactured homes. And stated it is very open, vague, and seems to be an incredible amount of unanswered questions.

Mayor Montgomery – So let me get you back on track...we're gonna address this on the agenda tonight.

Commissioner Green – I want a schedule of construction.

Mayor Montgomery – Based on what...the decision that was made by the Planning & Zoning with those requirements or additional requirements.

Commissioner Green – Based on that...

Mayor Montgomery – I'm just saying.

Commissioner Green – Based on that and what the end product is gonna look like. I want to quote from Mr. Gutierrez... quote...lacking is a specific table of events of how this whole procedure works, no he was talking about the procedure of subdivision and preliminary plat/re-plat...so they can do it correctly, all I'm asking for things...so we can do it correctly, and we have the information. If you want a list of them I will be more than happy...one is the schedule of construction, dust control.

Commissioner Renfro – It is the City's responsibility to make sure the ordinance is enforced and that they spray the property.

Commissioner Green – The ponds for example, and that they are located within a 10' utility easement.

Mayor Montgomery – You would say no you can't do that.

Commissioner Green – Landscaping...all he's got is shall have pervious membrane only.

Mayor Montgomery – Then we make it more stringent. We did exactly the same thing for another sub-division that is on the other side of the highway. We were very specific and we said every one of those lots will have a tree...that's not part of our code...we made that a requirement for that sub-division...when you start grading that land you will plant a tree on every one of those lots, and we made that a condition, and the developer agreed to it...that's an example.

Commissioner Green – And not to repeat...the hydrant at Gold & Joffre that they talked about.

Mayor Montgomery – The hydrant was addressed.

Commissioner Green – I see conversations going on in the minutes...City is requesting a 6' utility and sidewalk easement on the West side of Gold...is he willing to do that, or is that at the end...we don't know.

Mayor Montgomery – I don't care...I really don't care if he is willing to do it or not...he will either do it or he won't do it, he'll either meet our stipulations or he won't.

Commissioner Green – So what you're saying is we can compile a list of everything a-z of what we want him to do.

Mayor Montgomery – Which I hoped you, had already done by looking at all this information...okay.

Commissioner Green – I figure a lot of things had been covered except I will go back to this...does anyone here know exactly at the end of this project what it's gonna look like.

Mayor Montgomery – I can tell you on a lot of the developments that have been put...we know what the lot layouts look like but other than that...I couldn't tell you that...we know...I don't know if that has ever been a requirement.

Commissioner Green – I just don't know how I can personally vote for something...

Mayor Montgomery – You're gonna get an opportunity in just a minute. I just want to make sure before we move on that we...that everything from staff that you need...you're looking for schedule of construction.

Commissioner Green – And actually Madam Mayor I'm looking for that because on code 15-13...which is a preliminary plat...he doesn't have to do some of the things that I would like information on but that's his privilege, however if you take a look at the code he doesn't have a choice...once he starts the process, and this is where I'm coming from, and basically it says may submit to the City a conceptual plan for the proposed development...and it goes on the conceptual plan shall consist of proposed restrictive covenants that will be applied within the sub-division as a plat described in the major elements...the major elements of the sub-division and containing at least the following information...and that runs from a-n...this is not a Chinese menu...you don't get to choose...pick and choose, and under m...it says the proposed schedule of construction, and we still have not got it, and that to me lays it out very simple so anyone can understand it...what he is asking of the City...what he's gonna do...we can then go in and tweak and ask this and ask them that, and I don't think we've gotten enough of that information, and I can't see violating our own codes.

Public Utility Advisory Board –

Consider – Proposed Ordinance (For Publication) – Amending Section 11-10 – Pertaining to Solid Waste Fees

City Manager Weiser stated Leonard is here to answer any additional questions that they may have. And if they remember they brought this to them several months ago, and that they approved part of it, and stated there was some questions concerning what some of the other items meant regarding the ordinance.

And stated this is back to let them capture some of the costs that they are now incurring because they are not accepting waste from the County's landfill, and that they are expecting additional recycled products...recyclable products, and that it has been reviewed several times by the City Attorney, myself, Leonard, and the PUAB Board.

City Manager Weiser stated when they brought this to them previously they talked about fees for in City and out of City

residents, and that they changed that because the current contract or current customers of our solid waste yard to take care of that potential issue.

City Attorney Rubin referred to page 2, and that it still talks about City and County residents.

City Manager Weiser stated he thinks what this says that all residents have to comply with this...it talks about loads being tarpped, and \$3.00 per cubic yard for Municipal Solid Waste, and stated they are not differentiating it is all inclusive.

There was lengthy discussion by the Commission regarding the ordinance, and noted a number of discrepancies regarding fees and services, and it was suggested they send this ordinance back to staff and delineate clearly the residential and commercial differences, and some of the things that they talked about encouraging people to clean up and what they are going to do, and then bring it back to them.

“Commissioner Green moved to postpone the ordinance, and also change the date on page 6.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

PUBLIC HEARINGS: None.

CONSIDER – CC City Manager Weiser stated there is a possibility that there will be 3
MTG., 1/25/11: Commissioners out of town on January 25th to attend the
Legislative Session in Santa Fe, and since there will not be a
quorum available do they wish to cancel that meeting or postpone
the meeting to another date, and staff cannot tell right now about a
schedule.

“Commissioner Luna moved that they tentatively cancel the
January 25th Commission meeting pending confirmation of
appointments in Santa Fe.”

Seconded by Commissioner Green.
Motion carried unanimously.

CONSIDER – City Manager Weiser stated this follows the previous item.
ACTUALS FOR
COMM. & CITY “Commissioner Renfro moved to approve actuals for the City
MANAGER TO Manager & Commissioners attending the Legislative Session in
ATTEND LEG. Santa Fe for 1/25/11.”
SESSION IN
SANTA FE –
1/25/11: Seconded by Commissioner Luna.
Motion carried unanimously.

CONSIDER – City Attorney Rubin stated he would like to make a couple of
APPEAL – comments regarding the way this is listed on the agenda. And
BRAXTON – stated he has given the opinion that this really is not an appeal...I
MERRITT: given the opinion this is the way you have the recommendation that
came from Planning & Zoning...it’s a recommendation and nothing
really to appeal, and you’re making the final decision and to make a
point even more forcefully there is really no aggrieved party...you
only have a recommendation.

He stated Commissioner Green gave him a phone call last week and he knows he was concerned and made a point some people were advised by I guess the administration this was an appeal and they were acting in that regard...so I suggested to you well we can put it on the agenda that way and hash it out with the Commission to really know how they want to proceed here. And my thought would be actually to maybe handle b, c & d first.

City Attorney Rubin stated discuss the variance issues...discuss the preliminary plat, and then after you discuss those then you can decide whether you need to take action on the appeal or not...so that's one thought anyway, but again I don't think this is an appeal, but I understand since there was some confusion to the public...Commissioner Green called me so I said let's put it on the agenda and you can see how you want to proceed.

City Attorney Rubin – And by the way Commissioner Green...not putting you on the hot spot...actually you made a point and I agreed let's put it on the agenda so the Commission can tell me what you want to do.

Commissioner Green – And I sent an e-mail to all my fellow Commissioners about why I felt that it would be disrespectful to the neighbors since they authorized a process to move forward that they don't recognize that as a legitimate process and vote on it.

City Attorney Rubin – And I just want to make a point personally...If I was wanting to contest it I really wouldn't want to consider it an appeal...actually I think you're better off actually coming to us that the fact it's really just a fresh recommendation coming from Planning & Zoning, and you haven't lost yet, but I understand people disagree with me about that so that's why we say let's cover all bases and you can put it on the agenda that way.

City Manager Weiser – On the agenda bill there is listed several alternatives for you to look at. I think that the City Attorney just offered an additional one, and you can probably think of several beyond the three that I've listed as well.

Commissioner Green – Again I don't even know how we can...if the City Attorney is recommending that we do b, c, & d first...I don't even know how legally we can do b & c...people aren't in attendance for a variance request by our own code...so again either we're gonna throw the baby out with the bath water, or we're gonna honor our code and do it correctly so it can't come around and bite us later on.

Commissioner Luna – I agree that our codes says that they need to be here, however I think it is at our staff's for lack of a better word problem that this issue has taken this long to actually get to this point...I mean I really do believe that we didn't get the paperwork...we finally got the mounds of paperwork, and I think this is like the kid coming to ask on Wednesday night if they can go to their friends house for the week-end, and you tell them as the parent do this, this, this, this and this, and if you do then we'll see on Friday night, and I really think that we are at the point that we don't need Mr. Merritt or his representative at this point, so we can tell him okay if you do this, this and this we send him a letter with that information...he can either do it and bring us back a final plat, or he can say thank-you and move on...try to sell the piece of property...do whatever he's gonna do, and one of our this, this and this can be the construction plan, the 6" water line, the moving of

the power lines, and the widening of the road or adding the sidewalks, or none of those or all of those or more of those or plant trees or whatever, but I think we owe it to these people to Braxton Merritt who has been here at every meeting except this one to get the show on the road. And let him either do it or move on or get over it or whatever he's gonna do.

Commissioner Green – In relationship to owe to these people...the neighbors and citizens rather than these people. And stated they have heard that one of the big buga boos in the lack of process, and failing to follow our own codes, and have heard that over and over and over again, and I don't want to be a nit-picker however if the codes says that then why are we gonna violate our own code...I understand everyone's frustration...I would like this to go away...I'd like to vote on it one way or another and move on, however no one here probably wrote that code whenever it was written, but those are the codes that we run the City by, and I just can't see...to violate a code just to move a process along because it's convenient.

Mayor Montgomery – There is nothing convenient about this.

City Attorney Rubin – Commissioner Green...it that regard...just a question for you...didn't...your concern that testimony is not being offered by Mr. Merritt, but actually didn't you already offer testimony on these issues at the previous hearings?

Mayor Montgomery – Yes.

Commissioner Green – He did at that long meeting...you're absolutely right, however I'm just looking at what the application says...they should be in attendance...simple as that...can't be simpler.

City Attorney Rubin – Okay...it seems...whatever...and certainly you're entitled to...it seems they actually appeared and actually gave testimony, and gave them full opportunity to cross examine them...I think actually that particular requirement be met, but I understand you know...you feel they should be here that's your decision.

Commissioner Green – Because I mean also if I'm not mistaken it says to be able to answer questions or something like that on the form...to present testimony to support the application.

City Attorney Rubin – I understand.

Commissioner Green – So testimony to me means a statement, and would allow asking a question to get clarification on that.

City Attorney Rubin – I thought they already had given testimony...is my point, but if you need more clarification that's certainly within your discretion as a Commissioner.

City Manager Weiser – Would we then need to re-open the public hearing?

Mayor Montgomery – That's what I think Planning & Zoning did...right wrong or indifferent...when I looked through all of those minutes and made my notes...is what they did at each of those meetings.

She stated I'll hold your feet to the fire...if you have a decision to make one way or the other then I want you to put it in a form of a motion.

“Commissioner Green moved that on the City Agenda item 3 – b, c, & d be postponed until a representative of Mr. Merritt or himself is in the audience so he can offer testimony...because there is a lot of confusion now...at least in my mind since the testimony was offered and some of the questions that were asked and answered, but I think there are additional questions asked and answered about utilities...whatever it might be about drainage, retentions, scraping...what's gonna happen with the property...what is it gonna look like...is he just gonna sell the land, or is he gonna be the builder...a lot of questions were not asked, unanswered because we were not given the full packet at that particular time so we move forward on what we were given...now we've been given a lot more information, and I just think...someone had said either way this is gonna end up in a law suit, and what I'm trying to do is at least people might not like the outcome of the vote...that's their right, but I don't want the City to violate its own codes and what is in black and white...that's my concern.”

No response motion dies due to a lack of a second.

Mayor Montgomery asked of the Commission...do you want to take b, c and d before a...do you want to take a before b, c and d, or do you want to take them altogether...individually...what is the quest of the Commission.

Commissioner Green – I think we should deal with the appeal first...the way it's on the agenda...the way it came to us.

Mayor Montgomery – Okay...I'm with Jay...I just don't understand how we but...So the item on the agenda is consider appeal filed against the Planning & Zoning Commission recommendation on Braxton Merritt – variance request and preliminary plat.

City Attorney Rubin – So is that the desire of the Commission then...have you decided you're gonna take a first then...

Mayor Montgomery – Yes...I didn't hear it any other way Jay...they didn't say they wanted it in any other order.

Commissioner Luna – I have a question...was the submittal for an appeal not inappropriately accepted by a staff member?

City Manager Weiser – Can you repeat the question?

Commissioner Luna – Was the acceptance of the appeal inappropriately accepted by a staff member...it was not at an appeal status...we shouldn't have accepted an appeal because we had not made a decision...am I...

Mayor Montgomery – That's part of the Commission's thought process...but another process is that they were allowed to...they were lead to believe that it was an appeal...therefore we should treat it as such and put it on the agenda...which is what the City Attorney has done.

Commissioner Green – What I think is that...whether it was an improper decision made by someone from staff to accept

money...give an application and move forward...that is another debate...that is another discussion, however if you take a look at our codes there are two...and I think this is the thing that is confusing...there are two appeal processes...one is where you can appeal a subdivision...this was not a subdivision...we had nothing it can fit under, so we called it a preliminary plat, and basically what you're talking about on the appeal process is appeal of any action of the zoning administrator or his or her designated etc., etc., etc., can be appealed to the P & Z Board and or to the Commission, and what I wrote to my fellow Commissioners was that the action taken...there was action taken by the P & Z Board, and that action was to repeal the e-mail...someone made a motion it was seconded...it was voted on, and that turned into a recommendation.

And stated those recommendations are pretty strong from P & Z...if you go back...I could not find...I think I found one in four years this Commission has voted against a recommendation from P & Z, so their recommendation carries a lot of weight for us because they are doing all the research, and they give us a packet so we can just take everything...it's condensed down and makes some intelligent decisions, so that's where I disagree with Jay, and why I sent out the e-mail. And when I spoke to Jay and why I thought it would disrespectful not to finish the appeal process because that appeal is predicated on an action taken by P & Z, and that action was...ended up in a recommendation to this board for approval of the two variances and the preliminary plat.

Mayor Montgomery – so if anything the appeal should have gone back to P & Z.

Commissioner Green – they had the right to kick it up to us.

Mayor Montgomery – I understand that, but I still feel that...

Commissioner Green – I don't disagree with that...all I'm saying is the appeal should have...it was heard and a decision should have been made on the appeal, and then that's over with and we can move forward.

Mayor Montgomery – So here is my thought process on the items...I know that the Commission said they want to take it in this order...I disagree...I don't see how you can decide on an appeal prior to...so if we voted one way or another on the appeal...b, c and d could be mute.

Commissioner Green – exactly right.

Mayor Montgomery – so I don't see how you can vote on the appeal first before you vote...and it's vice versa also. You could vote b, c and d down...you get to the appeal there is nothing to appeal because the decision was not accepted. So that's why I feel personally that the appeal...the decision on the appeal needs to be last.

City Attorney Rubin – that's why I thought b, c and d...and as Commissioner Green, and I understand where you're coming from, and I appreciate that...I guess my legal opinion it is not appeal, and thinks they should deal with it as a recommendation, and then proceed in that manner, and I understand you don't agree, but I just want to make it clear in the record...that's my opinion.

“Mayor Montgomery moved to decide on b, c and d first, and then

a.”

Seconded by Commissioner Renfro.
All in favor – Commissioners Renfro, Luna,
Torres, Montgomery.
Opposed – Commissioner Green.
Motion carried.

CONSIDER – P & Z – APPROVE VARIANCE REQUEST FROM STREET STANDARDS: Commissioner Green stated what is good for the Saridan’s should be good for Mr. Braxton, however he would make a comment on the street variance...our own code says variances should not be granted in such cases where it endangers public safety, and if you are talking about the testimony that they have heard, and some of the citizens who work as volunteer fire people I don’t see how we...once again can make it less than what it should be.

Mayor Montgomery – then make a motion.

“Commissioner Green moved that they turn down the variance as requested for the street width.”

Seconded by Commissioner Luna.

Commissioner Green stated he would like to offer to Mr. Merritt that if he widens Gold to...that he come back with us with his intent and if he would widen Gold to at least be the same size it is right now...which I think in the minutes it’s 34’.

City Manager Weiser – the portion to the North.

Commissioner Green – exactly...from Joffre where Gold intersects Joffre that portion North where it intersects Joffre...yea Joffre jags around...it’s the zig zag...that be 34’...that would be a requirement for permitting that variance to go through.

Commissioner Torres – did he say that was part of his property?

Mayor Montgomery – Yes.

Commissioner Renfro – so we’re gonna ask that it be widened to 34’.

Commissioner Green – the minutes reflect that someone measured Gold to the North of where it intersects Joffre that particular point was 34’.

Commissioner Renfro – the streets are paved aren’t they.

Commissioner Green – yes they are.

Mayor Montgomery – so the recommendation from Planning & Zoning was 26’...so we’re saying that should be 34’.

The Commission stated they have the letter from the Fire Chief is saying 34’.

Commissioner Green - to Commission Renfro...that is the same distance that Gold is right now before it narrows down...so at least let’s keep it consistent...in this particular instance I think it would be unreasonable to ask him to go to 36’ when the road is 34’.

Commissioner Luna – and I’m gonna tell you why I seconded his

motion, because there are 35' of easements on each one of lots 1, 2 and 3 where the road would be widened to 34' which is an improvement of 16'...I mean those people are still getting those easements, and you know from what I understand the easements for the...include so he meets the minimum lot requirement, and I'm sorry but I don't care if he has to go to 4 new lots so he can get that...I think that we do need to...even though it's an in fill subdivision, and I think we need to bring up the standards, and that way maybe when the next block up wants to improve then they also widen the road...I think that's what we need to do. The whole 35' in easements is what pushed me over the edge, and I just want everybody to know.

Commissioner Green – And I think Madam Mayor we can maybe bend and work with...but when it comes to safety I think we have to take the absolute high road to protect everyone.

Mayor Montgomery – that's fine.

City Manager Weiser – to Commissioner Green...are you still including the **no parking** on Gold Street?

Commissioner Renfro – I don't think so...if you're widening it.

Commissioner Green – just that little area of Gold or are you going to do the entire street.

Commissioner Luna – no only the part.

Commissioner Green – if he widens it I don't think that is going to be an issue.

Commissioner Renfro – No it should not be, because the only reason it was being made an issue because it wasn't be widened.

Commissioner Green – and we were told by...I think it was Mr. Gutierrez even though we don't have any evidence or information about this and it doesn't appear on any of the maps...that originally Commissioner Luna is exactly right...there was going to be a driveway 25' wide driveway, utility easement that ran parallel to Gold going West, and the entrance to lot 1, 2 and 3 was going to be off Gold not off every drive, so I don't think the parking when people have guests they'll have actually...you can drive right onto their property and park...I don't see that as an issue.

Mayor Montgomery so the motion on the floor that was seconded was...to deny the variance request, and the discussion was stated that you want to come back to the developer and require that the road that portion of the road be widened to 34', and that parking on the street is okay. Do you want to amend your motion to include that?

Commissioner Green – yes I do.

Mayor Montgomery – Is your second...

Commissioner Luna – second, yes.

City Manager Weiser – I just want to point out that you're widening the street by 8', and you're allowed 10' per parking place, so you're reducing by 2' maybe up to 2'.

Motion carried unanimously.

CONSIDER P&Z RECOMMENDATION FOR APPROVAL OF VARIANCE REQUEST FROM SIDEWALK STANDARDS: – “Commissioner Luna moved to approve the request for sidewalk variance.”
Seconded by Commissioner Renfro.
Commissioner Green stated I agree with that motion...it sounds a little punitive...like someone do something that doesn't exist in the area at all, however I'm wondering if that has to be tied in with the utility easement that the manager in discussion was able to obtain from Mr. Gutierrez and/or Mr. Merritt that we put that in as well, so that he can do it...if you want him to do it, but also we need that easement...that 6' easement.

Commissioner Luna – and that is noted on the maps.

Motion carried unanimously.

CONSIDER – P & Z RECOMMENDATION APPROVE PRELIMINARY PLAT: – Commissioner Renfro stated I definitely think we need to go with the 6" water line.
Mayor Montgomery stated one at a time...you either approve or disapprove it...if you disapprove as Commissioner Green did on the first one and then make your recommendations...I want it to be clear on the record...so are you approving the preliminary plat as presented by Planning & Zoning...if you're not put it in a form of a motion.

“Commissioner Green moved that we turn down the recommendation of the P & Z to approve the preliminary plat as presented.”

Seconded by Commissioner Luna.

Commissioner Luna – the fire hydrant on the corner I want it on the maps...I don't care if he has agreed to it verbally 800 times.

Mayor Montgomery – okay...so fire hydrant on the corner of Gold & Joffre. Which corner?

Commissioner Green – the Northeast corner...no I see what you're talking about...no because you have Joffre, Gold and Joffre again.

Mayor Montgomery – so where do you want it?

Commissioner Green – probably somewhere that would split the difference in the middle so that the entire development...the entire 5 homes are all accessible.

Commissioner Renfro – couldn't you double check with the Fire Chief and sees exactly where he thinks the best location because...

City Manager Weiser – they were discussing have it...so the Southeast corner...somewhere in that vicinity was more equal distance between the other fire hydrants.

Commissioner Renfro – so I think whatever the Fire Chief would recommend.

Mayor Montgomery – so fire hydrant placement according to Fire Chief's recommendation and it must be shown on the map...it must

be shown on the blue prints.

Commissioner Luna – yes.

City Manager Weiser – on the preliminary plat map or the final?
I know it has to be shown on the final.

Mayor Montgomery – it should be on both...yea.

Commissioner Renfro – I don't know why they wouldn't...if they are going to be asking us to approve a preliminary plat you would think they would incorporate the change into it, and then re-submit another preliminary plat.

Commissioner Luna – remove the retention ponds from the easement on the West side of the property...I don't care if they are still on the West side of the property just not in the East. I don't see how you cannot historically affect...not affect the historical water flow if it didn't have them on the West side of the property.

City Manager Weiser – But isn't strong drainage and utility...isn't that a utility easement.

Commissioner Green – it's a utility easement.

Commissioner Luna – but in his covenants it says...and I guess maybe this needs to be mandated as part of our requirements or whatever...is further more access is granted at all times to any and all appropriate governmental agencies that have a need to the drainage swell between lots 3, 4, and 5.

Mayor Montgomery – okay.

Commissioner Luna – to follow the electric departments recommendation to have the power lines run East on Joffre, South on Gold rather than in the easement on the West side of the property.

Mayor Montgomery – East on Joffre...West on Gold.

Commissioner Luna – South on Gold. That's my laundry list.

Commissioner Green – going back to those ponds...I would like to see a covenant in the deed of the land...or whatever the correct terminology is...that the property owner must keep those retention ponds...because that protects the homes to the West...if they get rid of those retention ponds because they figure they bought the land and they don't like that little sump hole in the back yard...I want to make sure that the neighborhood...the neighbors protected.

Mayor Montgomery – so you want as a covenant on the deed that they must flow with the deed.

Commissioner Green – exactly.

Commissioner Renfro – because I know it said that they had to keep them clean.

City Manager Weiser – do cities...do we enforce covenants ...

City Attorney Rubin – the property owners do that.

City Manager Weiser – so should we include that as one of our requirements if we don't enforce them?

Commissioner Renfro – see that's what I...

Mayor Montgomery – it's not a covenant...that doesn't flow with the deed. Somebody can buy the property and cut the trees down...we can't control that. So how do you do that?

Commissioner Renfro – to me it would be the sub-divider that would stay on top of it because I know...this would have been in the County where there were covenants about what the residents were able to do or not do...or keep or not keep on the property, and I know that it was the sub-divider...the person that was selling the property that went back and sent letters to every property owner that they need to comply with the covenants...so I still think like I said...any covenants are gonna be the responsibility I would think of the sub-divider.

Mayor Montgomery – well we can put it in there...they know what you want. Okay...what else?

Commissioner Green – the schedule of construction.

Commissioner Torres – you can't force someone to start building.

Commissioner Green – no I don't mean...when I say schedule of construction...Commissioner Torres...I mean...how is he gonna do it, what is he gonna do...I mean we know nothing about scraping of the land...of the retention walls...we know nothing.

Commissioner Torres – but there is State...local ordinances and laws that don't let you do certain things...you've got to do things according to the law.

Commissioner Green – I understand that but when you're pushing dirt...and there is a 7 or 10 foot drop off there, how is he going to reinforce that drop off because if it gets eroded and gets into the utility easement it's gonna misdirect the flow of water...

Commissioner Torres – but that's...we get the same thing...Main Street when we get a big rain, and we have a big discussion...we can't force them...they try to force us to put up a retention wall.

Commissioner Renfro – and to me...that's where city staff is going to have to be...inspectors and everybody is going to have to be right on top of it.

Mayor Montgomery – the CID is gonna be...

Commissioner Renfro – yea, so everybody is gonna have to be inspecting and making sure that everything is done the way it's done. One concern that I have...I want that gentleman that lives in the mobile home down...I want to make sure that property is protected from any flooding.

Commissioner Luna – the retaining wall to stay.

City Manager Weiser – a non-dirt retaining wall.

Commissioner Luna – and I think the best way to protect our interest I guess that we have invested in this...is have an engineer

sign off on whatever method he's going to re-enforce that hill with.

Mayor Montgomery – they'll have to anyway.

Commissioner Luna – in addition I think we should have flood commissioners soil and water...somebody. I think we should have a report from them...from the plans in addition to...

Commissioner Renfro – and I think they have engineers for that purpose.

Mayor Montgomery – so what do you want?

Commissioner Luna – I think maybe we need to see the engineers report or engineer's opinion...or certification.

Mayor Montgomery – okay...so you want...

City Manager Weiser – so when the final plat comes back to you...you want to see the engineers report on the storm water control measures.

Commissioner Luna – I hate to have to ask this...but can I ask that man if that's the legal document...what it is called so that we ask for the exact entitled the right document so we get the right piece of paper.

Mayor Montgomery – What's the name of the document we're asking for? To – Mr. Pompeo...

Mr. Pompeo – you want a drainage report, and you want a full set of construction drawings...stamped and sealed...

Mayor Montgomery – okay so a final drainage report...it's not just the certification and the report...that's an addition to those plans being certified by an engineer. An engineer is going to put their stamp on it to say this is gonna work.

Okay what else?

Commissioner Green – an explanation...just about the garden wall on the South of lot 4 and 5...what material are they gonna use...if it's just dirt piled up there...that's gonna last about an hour. So basically what material are they gonna use, and how are they gonna re-enforce that structure so it can withstand a very heavy down pour that we get.

Commissioner Renfro – are you talking about the rock wall?

Mayor Montgomery – Isn't the engineer going to certify all of that?

Commissioner Renfro – yes...yes.

Mayor Montgomery – then why...he's not gonna approve it...the engineer is not going to put a stamp on it.

Commissioner Luna – and that was my thing about the whole water line...we know exactly every detail about this rock wall...the slope...everything on it, but we don't have any idea of what he was gonna put...what water lines so...

Commissioner Torres – that's the City's responsibility to bring that

water line to his property.

Commissioner Renfro – well and see that's where your Public Utility Advisory Board comes in...there should have been something showing where the utilities are gonna go.

City Manager Weiser – but the water line is there at the property.

Commissioner Torres – 6”?

City Manager Weiser – 4”.

Commissioner Renfro – for all the houses and everything.

City Manager Weiser – well you have individual hook-ups.

Mayor Montgomery – you're gonna have your individual hook-ups...there gonna take it off the 4”.

Commissioner Luna – and Mr. Gutierrez addressed that during when he...when I asked him...he said we'll just block it off and have to tell all the neighbors the process...when they turn their water back on when we hook up the 6” line...it may be dirty...they just need to follow the process...wash out the line...and then we'll be good to go. They from that meeting...they had no problem...it was gonna be a minimal cost for them to put in the 6” line, so that shouldn't be a big deal.

Mayor Montgomery – the 6” line is for the fire hydrant...it's not for...oh okay...what else?

City Manager Weiser – access from Gold for lots 1, 2, and 3.

Commissioner Torres – also the fees.

City Manager Weiser – can lot 1 take access from Joffre depending on the orientation from the house?

Commissioner Green – I guess so, however if you take a look at the land it almost has a natural berm on the North side of the land on Joffre...on the South side of Joffre on the North side of the land, and also my concern is if they come in and grade that level then on a heavy thunder buster that waters gonna run into Joffre rather than grading the property from East to West...the idea is to have the property run this way graded and then the water will go down...and then run right underneath...I would like to know that he can protect the houses on Joffre between Gold and Magnolia by having a slight rise...

Mayor Montgomery – then that should be in the engineering...the final drainage report.

Commissioner Renfro – and all the appropriate fees need to be paid...**must** be paid.

Commissioner Luna – in the mounds of paperwork...there is a typo on the application...there is not a period between the 2 and the zeros where it says preliminary plat...it is supposed to be \$2.00 per lot...not \$200.00 per lot...it was addressed and discussed at the P & Z meetings...I never heard about the typo until I got this breakdown sheet where it says \$2.00...so we've been thinking the man owed us \$1,200.00 instead of \$112.00, and I'm sorry I don't

care who's checkbook you're in that's a huge difference.

City Manager Weiser – and I hate to disagree with you but I have brought it up at least twice...that the thought it was \$200.00 per lot was wrong...that it was \$2.00, and if you look at the number of times that piece of paper has been copied...the decimal point is there but it is right up against the two.

Commissioner Luna – well I think we need to fix it so we never have a discussion about that again because I don't see it.

City Manager Weiser – we're changing that.

Commissioner Luna – and he filed 2 variance requests...he owes \$25.00 each for those...if we have to adjust the summary plat that we didn't accept because it was the wrong form or whatever, and also...

Commissioner Renfro – all appropriate fees.

Mayor Montgomery stated the motion on the floor was to deny the recommendation by Planning & Zoning for the preliminary plat and it was seconded.

In discussion there were numerous items and I am going to read them:

The request to have a 6" water line for the fire hydrant installed.
The fire hydrant placement will be according to the Fire Chief and shown on the blue prints.

Removal of the retention ponds from the easements.

Follow all electric department recommendations for the lines running East on Joffre and South on Gold.

We are asking for covenant placed in the deeds to continue to maintain the ponds in the placement on the lots.

Request for a copy of the schedule of construction.

Requesting retaining wall be installed between, and I'm going to use the gentleman's name...use the lots later...Stephens & Braxton.

Requiring engineering certification and report.

Final drainage report and engineer's stamped plans.

Want to see access to the lots...1, 2, and 3 from Gold.

All appropriate fees must be paid in full.

City Manager Weiser stated that lot 1 may have access from Joffre.

Commissioner Renfro – and do we want to deny or do we want to approve with these conditions?

Mayor Montgomery – that's what I'm asking next...do you want to amend your motion to approve it based on these recommendations, or what? How do you want to do that?

Commissioner Renfro – because it could be approved to include pending all these conditions that we have set forth.

Commissioner Luna – did anywhere on there I hear...it has to go back before the PUAB...

Commissioner Renfro & Mayor Montgomery – no...I think the issue is existing utilities are there at the property...that's the issue.

Commissioner Luna – but doesn't...

Commissioner Renfro – when they send it to us they send to us to approve with additional conditions according to us that was the recommendation at the time.

Mayor Montgomery – your call...

Commissioner Luna – this piece of paper says...shall consult and receive a written opinion from the City's PUAB...so can we at least have a written statement from them saying that we have everything that we need there...that's not too big of a request.

Mayor Montgomery – PUAB recommendation.

Commissioner Luna – or opinion...it says a written opinion from the City's PUAB so...

Mayor Montgomery – okay.

Commissioner Luna – then I'm content.

Mayor Montgomery – so with that being said...do you want to amend or remove your motion from the floor and re-do the motion.

City Attorney Rubin – I don't think you have to do that...I think...you already have the motion made...

Mayor Montgomery - We have a motion and the second on the floor...we're in discussion right at this moment. We've heard all the recommendations with the additional requirements that the Commission wants to put on the preliminary plat approval.

City Attorney Rubin – alright...I was gonna...okay...that's fine.

Commissioner Renfro – what were you gonna say Jay?

City Attorney Rubin – well I think actually your action was appropriate...you say you deny the recommendation from Planning & Zoning, but now you're having your own motion now to consider approving this preliminary plat with these conditions...I mean I think you have two separate actions. You already took action...you already denied the Planning & Zoning recommendation.

Mayor Montgomery – be we already voted on it though.

Mayor Montgomery – Commissioner Green...it's your motion...do with it what you want.

Commissioner Green – I will take my motion off the floor.

“Commissioner Luna moved that we deny the P & Z's approval for preliminary plat...approval for preliminary plat as it was recommended to us, and we approve the preliminary plat with the stipulations that we have listed.”

Mayor Montgomery – which I just read.

Commissioner Luna – yes that you just read.

Mayor Montgomery – into the record.

Commissioner Luna – yes.

Mayor Montgomery – so there is a motion on the floor.

Seconded by Commissioner Renfro.
Motion carried unanimously.

CONSIDER – City Attorney Rubin stated it seems that disposed the merits of it by
APPEAL FILED the actions you just took.
AGAINST THE
PLANNING & Commissioner Renfro – that’s what I was thinking...I don’t know
ZONING without hearing from them again, but I felt we had more or less
COMMISSION addressed the concerns.
RECOMMENDA
TION ON THE Mayor Montgomery – so then the motion should be...as it stands.
BRAXTON
MERRITT City Attorney Rubin – I’m just thinking out loud...do we need to
VARIANCE: take any action at all since it’s a mute- point since you already
acted on b, c, & d which actually...

Mayor Montgomery – I don’t think that it does render the appeal
mute...by placing it on the agenda as the appeal filed I think that
we need to take action on it.

Commissioner Green moved that we take a vote on the application
of the appeal on the Braxton Merritt proposed preliminary plat and
the two variances that were requested.

Commissioner Renfro – what variances?

Commissioner Green – well the applications that he asked for
approval of the plat, and then the variance for the streets and the
sidewalks.

Commissioner Renfro – oh and the appeal wasn’t all of it...oh
okay.

Mayor Montgomery – I don’t understand your motion I’m sorry.
You moved to take a vote...

Commissioner Green – it’s gonna probably be the same vote as b,
c, and d, but I think it just cleans up business...that’s all. So that
we support the appeal for example of the sidewalk...of the street
and we would vote yes because they were saying they were against
the recommendation of having a smaller street...do we vote for the
appeal of the sidewalk then we would vote no because we are
supporting a recommendation of P & Z because we all thought it
would be...

Mayor Montgomery – okay so you’re taking...okay.

Commissioner Green – I just think we should just tie this up and
move forward.

Mayor Montgomery – I understand...I think.

City Attorney Rubin – how about this...how about something along
the lines that you’re partially upholding the appeal in the course of
the action you just took with respect with b, c, and d.

Commissioner Green – I can live with that.

City Attorney Rubin – okay.

Mayor Montgomery – okay...so is that your motion.

Commissioner Green – yes.

Mayor Montgomery – okay.

Seconded by Commissioner Renfro.

Commissioner Luna – if we were treating this as though it wasn't an appeal, and I guess Ms. Lynch did you get your \$50.00 back...did you go to collect it? Okay...so then I guess we could still treat it as an appeal. But if we were saying that it was an appeal then how do we say now that it is an appeal if it wasn't an appeal...I don't understand.

Mayor Montgomery – I think it is irrelevant whether we feel it is or it is not...it's on the agenda as an appeal, and I want it dealt with as an appeal. There is no other way...

Mayor Montgomery – so the motion is...we partially uphold the appeal request as through the actions just taken on b, c, and d.

City Attorney Rubin – in accordance with b, c, and d.

Mayor Montgomery – in accordance with...okay...so there was a motion and has been seconded...so is there other discussion...is everybody comfortable with that wording...Jay...you're comfortable with that?

City Attorney Rubin – I'm the one...yea...I think that we're saying...a portion upholding the appeal only because you have taken some action with existing with the appeal with some of these conditions you've imposed. I think it would be okay.

Motion carried unanimously.

DISCUSSION/CONSIDER – CITY TO JOIN CUCHILLO VALLEY ASQUIA ASSOC.:

It was noted that the correct spelling was **Acequia**.

City Manager Weiser stated in 2007 there was an application filed with the State Engineer to withdraw up to 54,000 acre feet of water from a maximum...using a maximum of 37 wells drilled to a depth not to exceed 3,000 feet in the St. Augustine area which is roughly North and West of Socorro in the area...

Commissioner Torres stated it's between Magdalena and Socorro... Magdalena and Datil.

City Manager Weiser stated there was notice sent out starting in November 2007 through August 2008 of this application, and that a hearing was held in November 2010, and stated there were 900 protestors to this water rights application.

He stated the City nor the County or any individuals...most individuals in this area did not either know of the hearing or of the application, and stated only few people from Sierra County have appealed part of the appeal. And stated one of the appellant's is a Cuchillo Valley Association, and at a meeting Saturday that was attended by Mr. Rubin, myself, Mayor Montgomery and Commissioner Green, and that they heard from an Attorney who is representing a couple of different entities in this appeal process,

and indicated they can join with the Cuchillo Valley Association if they wish to help them along the appeal, and that one of the suggestions that has been made is that it would take a retainer of approximately \$2,000.00 for the Attorney, and one of the suggestions was that the City of T or C contribute \$1,000.00 if the other governmental agencies contribute their portion as well.

City Manager Weiser stated what he thinks worked out...there is \$150.00 pledge from a couple of citizens as well as \$1,750 from the four governmental agencies.

Commissioner Torres stated that could cost us a lot of money.

City Manager Weiser stated this is an opt out at any time that they wish.

Commissioner Torres stated once you get in it...I don't mind going in maybe...but I don't think we need to join...I think we can donate \$1,000...

Mayor Montgomery – I think... the discussion that was had...the issue is...is that the individuals that are listed on the appeal are the only ones that will ever be involved in the issue...there is no way to determine ever if it will affect us or will not affect us. And stated the unfortunate part is that if we are not part of it, and for some reason it gets over turned and they get to drill, and then we are affected...we have no say in it what so ever...we have no standing.

Commissioner Torres – well I just hate that the City get in to something that's gonna be like that of Texas...Mexico and cost us a lot of money.

Mayor Montgomery – right...and I think part of the concern was that not having a voice at the table was worse than anything else, because of the potentiality of the affect that it may have on the hot mineral water...cause we don't know, and if that's affected then...you know not just the hot mineral water...drinking water...the aquifers. She stated as the Attorney spoke she stated that she has never seen this many opponents to this type of issue in the past, but this is also the largest request to drill in the history of New Mexico.

Commissioner Torres – what are they gonna use that water for?

Mayor Montgomery – they want to buy it and put it in the Rio Grande and sell it to New Mexico to sell to Texas...very clever.

She stated they want to pump it out...throw it in the Rio Grande...sell it to New Mexico, and let us buy it to sell to Texas to satisfy our water credits to Texas.

City Manager Weiser stated part of it will be used for irrigation.

Commissioner Torres stated as long as we can't get in to something we can't get out of...I've got a problem with that.

City Manager Weiser stated there are a couple of issues that the hearing examiner has laid on to the applicant...one is that they have to show the ability to not only be able to pump the water out, but they also have to show the ability to treat it so it's potable, and they also have to show the ability to transport it 60 some miles or 50 some miles from the well field to the river. And the other issue

they are going to have is how do you take a ground water right and then turn it into a surface water right and transport it...I think that's another...

Commissioner Renfro – Is the protest period open and we're joining in as...okay then how are we going to be able to protest if its already been closed?

Mayor Montgomery – We're going to go on the shirt tail of the Cuchillo Valley Acequia Association...basically The Friends of Cuchillo Valley, and that we would be on...we would be under them, so anything they would protest...that's how we would join.

Commissioner Torres – Do we have any idea who they are?

Commissioner Green – Salomon Tafoya...that was one gentleman.

Mayor Montgomery – They have an Attorney.

City Manager Weiser – stated what he heard from Mr. Tafoya today is they are planning on hiring Sherry Tippet.

Commissioner Torres – I'd like for you to look into further before we make a decision.

Commissioner Green – I think also...I think if you look at this as an insurance policy...no one wants to buy an insurance policy and you hope you never have to cash in on it...but for us to be at the table...for us to have standing...if this goes in the drillers favor, and then the appeal process I understand it gets incredibly expensive, but the contractor whatever it is they were lead to believe, and we heard we can step off that bus at any time, and I did some quick numbers, and broke down a percentage of each entity by population up to the \$2,000.00...to protect what our future is...we have to do this, and it breaks out on a population of 13,000 county wide...if you take a percentage of population...it would be the City for \$1,000, County for \$600.00, Elephant Butte for \$200.00, Williamsburg for \$50.00 that totals \$1,50.00, and there were two people at the meeting...someone pledged \$100.00, and someone else pledged \$50.00 then we could come up with the \$2,000.00. And then we fall as the Mayor said under the umbrella of the Acequia Association and then we have standing. And I think we just have to do everything to protect...

Mayor Montgomery – I think with the initial investment of \$1,000 from the City to be able to at least be friends of the Cuchillo Association, and anything in the future would come back to us to either agree to or not agree to, and at any point if it gets...

Commissioner Torres – I just don't want the City to get into something, because I know we've been in the courts and it's cost us a lot of money, and I don't want to cost the City of T or C...cause I don't think it will really affect us...who knows.

Mayor Montgomery – And that's the thing...

City Manager Weiser – I think a couple of things...Commissioner Green said...I don't think we'll ever have standing, but by doing this we'll have a say on this process.

Commissioner Renfro – So what are you wanting a motion for...

City Attorney Rubin – I think what we’re talking about...I think what we want to do is prepare a resolution and bring it back to you for you to approve that we’re falling under the umbrella. As I understand the time frame is that Ms. Tippet wants to file a motion...a supplemental motion to dismiss this matter by March 4th as I understood or March 11th, so we can get this back to you for the next meeting, and that way she’d have time to work on this, and know that we’re involved.

“Commissioner Renfro moved to bring a resolution back.”

Seconded by Commissioner Green.

Motion carried unanimously.

OLD BUSINESS: None.

REPORTS: **CITY MANAGER –**

City Manager Weiser reported on the Youth Center, and indicated that the building inspector went out and measured the movement on the two columns that have moved already, and that he went out last Thursday and again this morning, and stated they have moved another 1 ½” towards the street, and that there is still some movement. And stated they are in the process of moving City owned items, and non-city owned items from the building in case it does collapse.

He stated he has a call into a structural engineer, and that he is getting back to him with a cost to come here and inspect the building to let us know if it is salvageable or not so we can make a decision.

City Manager Weiser stated he has asked our building inspector for a list of commercial building permits, and indicated from July 1st until the end of the year there were 12 of them...4 were for signs, 2 for demolition, 2 re-models, 1 re-roof, 1 interior re-model, 1 for re-doing a parking lot, and a commercial fence. And stated there is some activity going on.

He stated that Raymond Chavez has come up with a code violation form that we will get out to our employees to carry in their vehicles so they can report any violations.

City Manager Weiser stated they are waiting to get the P.O., back on the ball field lighting, and stated there was a mistake made by the vendor on the tennis courts, and that they are correcting that, and on the swimming pool cover...regretfully they are having to re-write the request for bids, and stated Juan is taking that over and will have that done by the end of the week or the first part of next week.

Commissioner Renfro – why are you having to re-write it?

City Manager Weiser – It didn’t meet the...they didn’t like the way it was written, and they wanted to get it out...they left something out.

Commissioner Renfro – who is drawing up these, bid specs or whatever...don’t you have an engineer working on this stuff?

City Manager Weiser – remember this one is a design built.

Commissioner Renfro – well yea but don't you have all the information. I know we paid for months and months for that girl to gather information and specs to get everything together...so to me it seems...I'm just frustrated I guess...go ahead I'm sorry.

CITY ATTORNEY – No report.

COMMISSIONERS –

Commissioner Renfro – No report.

Commissioner Torres – No report.

Commissioner Green – No report, just a question to the manager, how are we coming along...are we still advertising for applicant's for the P & Z Board...we still have one opening, and where are we with the hospital advertising that?

Mayor Montgomery – let me answer that one, because I asked for the P & Z...they wanted to put it 30 minutes prior to this meeting, and I felt it wasn't enough time for us to do it so I've asked them to set up a special meeting so they can do the interviews on that separately.

City Manager Weiser – Remember we approved the moratorium on appointing anyone to the hospital board until the criteria was written by the either the Governing Board or the JPC whoever was going to write it.

Commissioner Renfro – Stated it was interesting to read the minutes or the happenings of the Governing Board, because they in no way agreed with the action that had been taken or the request that had been made of us, or the other entities.

Mayor Montgomery – Stated it wasn't us...the request came from the JPC or the criteria...they had no input on it.

Commissioner Renfro – yea, but the Governing Board was not yea...

Mayor Montgomery – and I made a comment the night it came to us.

Commissioner Green – so we're basically gonna wait until we get something finalized back from either the JPC.

Mayor Montgomery – you know what...I would recommend no.

Commissioner Green – that's my point.

Mayor Montgomery – I would recommend that we proceed with re-advertising for the Governing Board, and since the Governing Board had no input into that. I read through the criteria...there isn't anybody who qualifies for that board.

Commissioner Green – and I think they changed the word required to suggest. I think the biggest thing was their concern for the conflict of interest with an employee on the board. I think we should go ahead advertise, interview, and at that particular point we might want to get a hold of Mr. Ragsdale, Chairman of the Governing Board and say do you have any specific needs to fill of qualifications that you're looking for, and that might sway our

decision one way or another...who we are going to appoint, but I don't think we should wait.

Mayor Montgomery – I agree with you.

City Manager Weiser – so does that take a motion to rescind the moratorium that was placed?

Mayor Montgomery – did we put it in a motion?

Commissioner Luna – no we didn't.

Mayor Montgomery – or did we just accept it? We can review the minutes to find if it was a motion or how it was stated. And if it was stated as just agreeing to it...well we now agreed not to agree to it.

And stated the one thing I would as we're addressing the issue for the Governing Board, and one of the recommendations that has repeatedly come out of Santa Fe is that DFA would like us to look at someone with some financial experience that goes on that board, and I would just remind the Commission of that.

Commissioner Luna – on the heels of the Governing Board comment before we go out to advertise I would like us to check with Mr. Cross and see if he is still interested or not just so he doesn't think we left him high and dry especially after all this time.

Now to my report – I am very disappointed that the Municipal Judge's resignation was not on this agenda...I feel there is a huge communication gap between City Hall and Municipal Court. As of this meeting the...the Municipal Court Staff or Alternate Judges have not heard from the City Manager or anyone at City Hall regarding anything to do with what they are supposed to continue doing at the Court. Thankfully they have had the forethought to keep things going as they have all this time during the tenure of Judge Hawkins and the short-term of Judge Sanders.

City Manager Weiser – were you aware of the letter that the Judge wrote appointing or stating that Sandra would be the Presiding Judge while she was going to be gone for the entire next 45 days?

Commissioner Luna – yes I am aware of that, but she didn't just say she was going to be gone for 45 days...she resigned.

City Manager Weiser – her original letter was that she was taking time off to help take care of her granddaughter, and then it turned out that it was more involved than what she thought...that's when she resigned.

Commissioner Luna – okay, but nobody from City Hall has called to make sure that everything is going on at Municipal Court like it should...that they got that letter...that they are doing what they are supposed to be doing...did they need anything. I just think that this is a courtesy...I mean I think that they have and honestly their jobs are on the line right now. Whoever we appoint or don't appoint we don't have to appoint anybody we can let the two alternates go and run the Court until the next election which would not cost the City any money...I mean we might choose to compensate them for their extra work because they have volunteer positions as alternate judges, but there are a lot of questions that they need answered.

Commissioner Renfro – And probably one of the reasons for this Frances is that the City has absolutely nothing to do with the Municipal Court...absolutely nothing except for budgetary...you know.

Commissioner Luna – Then why did the Municipal Court not even know that the City was advertising for Municipal Judge applicants?

Commissioner Renfro – I didn't know that they were.

Commissioner Luna – Yes there was a legal in the newspaper...they sent it out, and Municipal Court didn't know until somebody went in there and said...I'm here to look at the Court...I hear you guys are taking applications...so you can't have it both ways.

Commissioner Renfro – on that part that is wrong then because either the Alternate Judges should have been told that they were going to be allowed to continue to serve until Ms. Sanders could come back, or I guess it's a decision that has to be basically made by the Commission anyway...not by the Manager.

Mayor Montgomery - and there has been a lot of discussion back and forth in the past about who can do what to whom regarding the Municipal Court...so there's been, and I can understand where there is a disconnect.

Commissioner Luna – And I understand that but I feel like we're in a dysfunctional marriage, and instead of going to counseling and working this out...we're just not talking, and so you know that's not gonna solve anything...I think there is a communication gap...I think we need to have the Municipal Court...

Commissioner Torres – I don't think we can...I don't think we can really get involved.

Commissioner Luna – but they didn't even know that the City had put out to accept applicants until somebody went into the Court to say...oh this is where I pick up an application...that's not right...I mean...why didn't we call and say...do you guys wanna run the Court like that...if you don't... if you're not interested how can we go out and ask for applications if we don't know anything.

Commissioner Renfro – well that's something that should have not been done anyway without it coming through the Commission as a body.

Commissioner Luna – my serious frustration with that. I don't understand why that happened, and I don't think it's fair...they don't have any idea what is going on...

Commissioner Renfro – cause I had assumed that the Alternate Judges were continuing to serve, and that it would be coming on the agenda what we were going to do...whether we were going to just allow Judge Sanders a leave of absence until such or whatever.

Commissioner Luna – and they have been doing what they were supposed to be doing...thankfully.

Commissioner Torres – I don't think we can do too much. The Supreme Court is their boss.

Mayor Montgomery – I agree and I don't think we're talking about telling them how to do whatever...we're talking about a courtesy.

Commissioner Green – out of common courtesy.

Commissioner Luna – yes and that's exactly...

Mayor Montgomery – duly noted.

Commissioner Luna – right now we're asking for applications, and they may be interested in running the Court as is...I just think we need to put some minds at ease, answering some questions for them...for us, and I want to see that...that happens and that it is on the next agenda...I think we owe them...to the Commission...I think that it should have been a Commission decision for that to go out to accept applications.

Commissioner Torres – it should have been, and I agree with you but I don't want them to think that we're interfering with what they're doing.

Commissioner Luna – I don't think...

Mayor Montgomery – I don't think that we can assume anything on anybody's part...we'll take care of it.

Commissioner Luna – Secondly with the Youth Center closed...I know DWI has the contract to run that facility...I don't know if we have paid that contract in one lump sum...if it's billed monthly we need to make sure they're not billing it for the time they are not operating it, and then if we do have to condemn that building, or it is no longer able to be operated as the Youth Center I would like it to be brought to the agenda...in the meantime to see where we can donate...or spend that money for the youth of Sierra County, because I think the youth of Sierra County has a very great need to be serviced, and if the DWI Center isn't going to be able to be operate the Youth Center to service those needs...we need to spend that money somewhere the youth serves can be.

Mayor Montgomery – No report.

EXECUTIVE
SESSION:

“Commissioner Green moved that the meeting be closed for Executive Session pertaining to: Personnel 10-15-1H(2) – 1. City Manager Contract, Pending or Threatened Litigation 10-15-1H(7) – 1. Airport Property, Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8) – 1. T or C Business Park located on South Broadway.”

City Attorney Rubin stated on the Airport Property under (B) could also be discussed as (C) also as an alternative.

Seconded by Commissioner Luna.

Commissioner Montgomery responded Aye to a Roll Call Vote.
Commissioner Renfro responded Aye to a Roll Call Vote.
Commissioner Green responded Aye to a Roll Call Vote.
Commissioner Luna responded Aye to a Roll Call Vote.
Commissioner Torres responded Aye to a Roll Call Vote.

Motion carried unanimously.

OPEN SESSION: “Mayor Montgomery stated that the Commission was now in open

Session.”

CERTIFICATION “Commissioner Green certified that only matters pertaining to Personnel 10-15-1H(2), Pending or Threatened Litigation 10-15-1H(7), Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8) were discussed in Executive Session, and no action was taken.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

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

APPROVAL: PASSED AND APPROVED this _____ day of _____, 2011, on motion duly made by Commissioner _____, seconded by Commissioner _____, and carried.

LORI S. MONTGOMERY
MAYOR

ATTEST:

MARY B. PENNER, CITY CLERK