

CITY COMMISSION  
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
Tuesday, March 22, 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, March 22, 2011 at 6:00 P.M.

**PRESIDING OFFICER:** The meeting was called to order by Mayor Pro-tem Renfro 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. Evelyn B. Renfro, Commissioner  
Hon. Steve Green, Commissioner  
Hon. Frances Luna, Commissioner  
Hon. Freddie Torres, Commissioner

Absent was:

Hon. Lori S. Montgomery, Mayor

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 Pro-tem Renfro called for fifteen seconds of Silent Meditation.

Mayor Pro-tem Renfro called for the Pledge of Allegiance.

**APPROVAL OF AGENDA:** Mayor Pro-tem Renfro called for approval of the agenda.

“Commissioner Green moved approval of the agenda as submitted.”

Seconded by Commissioner Torres.

Mayor Pro-tem Renfro stated under H-4...Consider – Proclamation, and stated she would like to change that to reading of Proclamation because it obviously has already been proclaimed and has been signed by the Mayor, and stated they will just have the reading of the Proclamation.

Motion carried unanimously.

RESPONSE TO  
PUBLIC  
COMMENT:

None.

COMMENTS  
FROM THE  
PUBLIC:

Mr. Gerald Boland came before the Commission with comments.

Mr. Ron Fenn came before the Commission with comments.

Mr. Bradley Gower came before the Commission with comments,  
and provided information for the record.

CONSENT  
CALENDAR:

Mayor Pro-tem Renfro stated they have two items under the  
Consent Calendar – Minutes - City Commission Meeting Minutes  
(**Amended**) – February 22, 2011 & March 8, 2011.

“Commissioner Green moved approval of the Consent Calendar as  
presented.”

Seconded by Commissioner Luna.

Motion carried unanimously.

DRAFT  
MINUTES:

Mayor Pro-tem Renfro 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 comment on the Public Utility  
Advisory Board, and referred to page 2...Comments from the  
Public...Brad Grower approached the board with comments...and  
that’s all it says, and stated since they have been encouraged not to  
go to these very highly sensitive boards for obvious reasons, and  
stated I think maybe the chair when he recognizes people who are  
going to approach that panel under public comment might say...  
state your name and what is the subject matter that you’re gonna  
talk about, so at least we’ll have an idea, example...Mr. Grower  
wanted to have recycling bins in alleys in T or C, and stated he  
might speak for 3 minutes, but at least we’ll have a concept of  
where he’s going, and then if we’re interested we can give Mr.  
Grower a call, or go to City Hall and listen to the tape of the entire  
board...but just something...a little bit more than approached the  
board with comments I think would help us a little bit do our job  
maybe a little bit better.

Mayor Pro-tem Renfro stated she thinks that is a good idea.

BOARD &  
COMMITTEE  
REPORTS:

None.

PUBLIC  
HEARINGS:

Final Adoption – Ordinance #605 – Adding Section 2.5 to Chapter  
2, Article 1 – Pertaining to rules and regulations during city  
commission, advisory board and commission meetings.

City Attorney Rubin stated what is being proposed is that they are  
adding a new section to Chapter 2 of our ordinances and read the  
following from the Ordinance. (Complete copy attached hereto and  
made a part hereof.)

He stated he obtained the language consulting with the City Manager.

Mayor Pro-tem Renfro opened the Public Hearing, and asked if there was anyone who would like to speak in favor of the ordinance, and no comments were received. Mayor Pro-tem Renfro asked if there was anyone who wanted to speak against the ordinance.

Mr. Gerald Boland came before the Commission and stated he had questions on the text of the ordinance regarding the safety of those in attendance, and asked what specific safety risk have they encountered.

Mayor Pro-tem Renfro stated she thinks this might have something to do with a lot of the dealings that have taken place in other towns, and fortunately they have not had any such thing like that happen here, but there is always a possibility.

Mr. Boland stated the stairway was the best location for video recordings of the meeting.

He stressed that the Commissioner's proposed ordinance could be in violation of the Constitutional Rights, and identified several specific sections, and that he sees no issue here that brings this forth.

Commissioner Luna stated that she asked that they address this because numerous times there have been people behind her, and indicated that she does have safety issues, and stated she would like to go home to her family every night.

City Attorney Rubin stated they are not required to respond to questions that are asked during comment, and if they want to include questions they can do that, and that they are not required to respond.

Mr. Brad Grower came before the Commission and stated he is absolutely certain that this ordinance has been proposed merely to replace my camera from the location in which it is.

He stated the fact that Ordinance #605 was developed by Commissioner Luna and Attorney Rubin provides sufficient indication to any objective judicial body that the intention of this particular legislation has absolutely no connection at all to safety, and pointed out that the entrance to the chambers are behind the Commissioner's, and stated they have the Police Chief who regularly sit's next to the door and is armed.

Mr. Ronald Fenn came before the Commission and stated he agrees with most part of Mr. Brad Grower's assessment of this, and stated in all of the meetings that he has attended in this chamber...the only people that he has ever seen walking behind Ms. Luna or any other member of this body have been members of the official press, and stated if they constitute a threat then he would expect that they would keep them behind the press counter also so that we will not have any more worry on the part of Ms. Luna for her safety.

No other comments were received and the Public Hearing was

closed.

FINAL  
ADOPTION  
ORDINANCE  
#605:

– Mayor Pro-tem Renfro stated they have consideration final adoption of Ordinance #605, and she will open the floor for discussion.

Commissioner Green stated he has concerns about this ordinance when it was proposed two weeks ago, and stated although he supports Commissioner Luna, and partially understands some of her concerns, and indicated he does have a problem with this ordinance, and that he has been attending city commission meetings for 10 years, and does not think there has ever been a problem where it would force us to even possibly consider an ordinance such as this, however that said I would like to do everything in my power to make Commissioner Luna comfortable with her position, and her position up here at City Commission meetings, and if some type of a compromise or something could be done that doesn't put this ball of wax into play that I think we'll have a life of its own if it gets passed...this will not be the end of it I would like to work to accomplish that and see if we can accomplish both things and make Commissioner Luna comfortable, and stated everyone has a different comfort level, and it's not for me to impose my comfort level on anyone else, but I think that some of the points that we have heard here are well thought out and valid, and I think we should take that into consideration as well as we discuss this and comes to a vote.

Commissioner Torres stated he doesn't see anything wrong with this ordinance, and thinks it's up to us to put those cameras where we want them and be out of the way, and if she doesn't feel comfortable with it...I don't feel comfortable with these people.

Commissioner Luna stated there were two incidents...one Mr. Grower left an audio recording recorder in this room, and it recorded executive session, and stated the police had to investigate that, and indicated that was part one of why this was created, and stated she did not have any part of writing this...I did request for two reasons...one my safety level might not be as high and I think we all have different comfort levels, and also because I believe my focus is to be amongst my fellow commissioners, the person at the podium, and stated there have been times when people have been making noises...Mr. Grower and fellow people in the audience and the attention...I'm not pointing at you I'm just saying in those chairs...they have been making noises, and I have had to turn my attention, and redirect it from this proceedings and this body, and my fellow commissioners and their statements to see what was going on over there. She stated at the same time this audio recording happened so did the shooting at the school board meeting in Florida, and stated she has all the faith in the world in our police chief or whoever he designates to sit here and stand with us, and there was a time we didn't feel the need to have law enforcement officer with us, and that she would love to go back to those times, but I don't believe that we are in those days and times like you said Mr. Fenn, and that I have absolutely nothing against recording these meetings with the recorders, and thinks that is a great idea, but I just think they should be where the Commission as a whole can see them...I don't think there is anything wrong with asking that they be where the Commission as a whole can see them.

She stated Mr. Grower is not here as a member of the press...he is here as a member of the public...he is a resident and a constituent of ours, and if he wants to record anywhere...I think this building is 500 sq. feet at least...there is 499 other sq. feet right out there...just record out there so we all can see you...that's all I'm asking, and I think that's what this is trying to address...I don't think it's trying to restrict anybody...that's all I have to say.

Mayor Pro-tem Renfro stated...I do remember the reason that this came up was a fact that there was that recorder that was left during an executive session...I'm sorry and with this ordinance it will not be legal.

Mr. Grower in the background was saying it was legal.

City Attorney Rubin – Madam Mayor public comment is closed.

Mayor Pro-tem Renfro – public comment is closed...you heard the attorney, and asked if there was any more discussion with the Commissioners.

“Commissioner Torres moved approval Ordinance #605.”

Seconded by Commissioner Luna.

All in favor voted aye – Commissioners Luna, Torres & Renfro

All opposed – Commissioner Green – nay

Motion carried.

SCEDO:

Mr. John Mulcahy Executive Director with SCEDO came before the Commission to talk about establishing a SCEDO Business Incubator, and that they are asking for their support and involvement.

He stated in the State of New Mexico there are 6 entities called business incubators, and explained they are places where small businesses can come get a start, and get a handout with resources to allow them to grow their business, and do training and do the kinds of things in a centralized place, and stated it has been successful throughout the state, and that it would benefit Sierra County.

Mr. Mulcahy stated that he is asking for a letter of support from the City of Truth or Consequences so that he can go forward with the funding requests, and stated the money he is looking from the USDA requires community support, and that he is also seeking in-kind assistance, and is asking for their help to get this started, and that he will come back and keep them informed of where they are.

Commissioners Torres and Green expressed their support.

“Commissioner Luna moved to direct the City Manager to draft a letter indicating their support for the project.”

Seconded by Commissioners Green/Torres.

Motion carried unanimously.

Mr. John Mulcahy provided information to the Commission.

BOY'S 'N' GIRL'S CLUB: Ms. Amy Claussen, Director with the Boy's 'N' Girl's Club of Sierra County came before the Commission, and stated she is here to share some good news, and indicated as one of our partnerships that they have been able to strengthen with the community is through a grant that came through the City of T or C which was a Title V Juvenile Delinquency Prevention Grant of which they are in year 3 of 3 which is their final year.

She wanted to thank them for partnering to provide the services for the youth in our community, and stated the services that have been provided had been educational and recreational for the youth of Sierra County particularly in the age group of middle school and high school youth.

Ms. Claussen stated they also provide a free summer lunch program through the USDA summer lunch program, and also provide transportation for the kids that need it that could not get to the club after school. She stated that this programming has allowed the kids to do develop stronger partnerships with other youth serving organizations in the community, and ones of those has been the teen outreach program, and stated through that program they have been able to do monthly service learning projects in the community.

She provided some statistics stating that last year they had 122 kids attend 52 days or more, and stated that The Club is a little over 2 year's old.

Ms. Claussen stated they also provide some direct one on one mentoring for the kids so that they have somebody positive in their life that they can talk to, and indicated they provide recreational and educational supplies, and also provide youth access to a computer lab during business hours which is a partnership with the Rotary Club of Truth or Consequences, and that they can use that lab to attend classes on line or to take their tests, and also use it through the WIA Work Program for Youth, and use the computer lab for testing, job preparation, and job applications, and to print papers.

She stated additionally they have been able to host a Juvenile Delinquency Prevention Steering Committee once per quarter of which they have been able to have representatives including relevant stake holders, youth practitioners, law enforcement, parents, DWI, CYFD and the City Manager come together and share what is happening with our youth in this community, and how we can strengthen what we are doing to best meet the needs of the community and our kids.

Ms. Claussen stated one thing they are very, very particular about is their staff, and indicated one thing they are required to do because they are a chartered club through the Boy's 'N' Girl's Club of America is to annually do a background check on all of their volunteers in our staff who do direct services with our youth. And they are also required through the Public Education Department through one of their grants is to maintain membership files so they have an extensive data base that is accessible at the state level through PED to maintain those membership files so they have access to their grades through a partnership with the school to help support them in academic success as well as to maintain secure

membership files, and additionally they use a nationally standardized continuous quality assessment program called Elevates so they can continuously see what needs to be improved at The Club so they can be the safest high quality program that they can be.

PROCLAMATION:

Mayor Pro-tem Renfro stated this is the reading of the Proclamation, and stated this is the Golden Apple Foundation of New Mexico has requested that April 1<sup>st</sup> be proclaimed...Tribute to Teacher Excellence Day in the community, and stated one of our local teachers Barbara Pearlman who teaches 9<sup>th</sup> and 12<sup>th</sup> grade English at Hot Springs High School in Truth or Consequences, New Mexico has been one of the recipients of the award.

At this time City Manager Weiser read the Proclamation in its entirety.

AWARD OF BID  
– S. POOL:

City Manager Weiser stated they went out to bid for the pool cover for the swimming pool, and indicated they had 3 companies that expressed interest and asked for additional information, and at the request of one of the companies they did extend the bid period for 7 days so they could have additional time to prepare their bid.

He stated they received 1 bid, and they were provided with the information, and that the bid amount from Arizon came in at \$241,291.00, and is recommending approval to award the bid to Arizon, and explained because this is a design-build, and that the bid fit in established by the State for design-build contracts.

Mayor Pro-tem Renfro stated it states **approximately** \$241,291, and stated...I don't want the approximate...I want what the actual bid amount is...that is...right. I just don't like the word approximately.

City Manager Weiser – That is the amount.

Mr. Fuentes came before the Commission and stated that is the bid amount is the \$241,291. And stated that is error on my part for putting in the word **approximately**, but the bid is for that amount.

Commissioner Green stated in the Scope of work it says price excluding options below says \$241,391, and over here we have \$241,291...that's just a typo of \$100 bucks. On page 2 of 8 down towards the bottom.

Mr. Fuentes stated that was correct...**\$241,391**.

Commissioner Luna stated she also noted...at the buyers expense for all these extras including the removal of the existing light pole to interfere with the air structure, the diving board, and the play structures...my question...the existing shed and the area of the new structure...are those things we are going to have to take care of every time we put it up and take it down, or is that a one-time deal...do we know.

Mr. Fuentes stated part of the agreement with the company is those structures that you mentioned...we would remove them in-house, and that it is something staff can do, and as far as the 3 lighting fixtures those will be permanently removed. And stated the

contract does call for some additional lighting that they are hoping to use as permanent lighting, and the lighting at the North end of the pool will remain even when the structure is up...now as whether they will be removing the diving board and the slides... when the structure goes up and take it down...again that's yet to be determined, and stated once they have the structure in place since they are going to remove that structure we may have to do that as well in-house.

Commissioner Luna – my other question it also says upgrading the current electrical service on site is not included in this price...is that something that our electric department is going to have to do...

Mr. Fuentes stated he believes the staff with the electrical department did take a look at the current system, and indicated they believe there is enough power for this project, but without confirmation from the contract from the bidder if there are any small upgrades it would be handled in-house.

Mr. Gil Avelar with city staff came before the Commission and stated it would have to be a private contractor for the secondary work, and stated they cannot do that.

Commissioner Luna asked how much money do we have left for this project.

Mr. Fuentes stated this project will be paid for from the recreational loan, and I believe we have...and that we have 3 other projects that we are paying out of the recreation loan, and stated with this award we have approximately \$497,593.

Commissioner Luna stated I have pushed very strongly for this and I don't want to hit a snag later down the road, and stated she is very excited to see this, and hopes they can award this, and just don't want to come short when we have to sign the checks. And her other question is on the wind low design...80 mph, 3 second gust... where did we get that because it may only blow 126 mph for one time a year, but I don't want us to be able to...and I don't think we have to worry about the 25 lbs. snow load problem at all. So we may need to check, and make sure they used the weather service or something because I know we've had a 90 mile an hour gust at the Airport, and so if we can get the max included in there.

City Manager Weiser stated there were two issues that concerned staff with this project...one was the original concept was you go into the changing area which is fairly warm, and step out into the cold, and then go through the air lock into the bubble...which also is fairly warm, and that they've designed this so that there is a connecting hallway, and stated the second one had to do with the changing areas...the roof slopes towards the pool, and stated there is a drain system between the changing rooms and the pool, and indicated if this covers that drainage system they will gutter the front of that, and stated city staff can do that.

Commissioner Green stated he has two questions...under Scope of Work...Borderline Construction Ace Electrical Construction...is that Frankie Chavez Company...Ace Electric from T or C?

Answer – yes.

Commissioner Green – so have we figured out what...have we given them an RFP...do we know what their services are gonna be?

City Manager Weiser stated we don't know what those services are going to be, and stated that is up to the contractor to work with the sub-contractor to provide those.

Commissioner Green – question for City Attorney Rubin...and referred to page 2 of 8...prices quoted includes State sales/use tax of 7.635%, and if you turn to page 4 of 8 indicates prices **do not** include any sales, use or excise tax. I would like clarification because that's another 15 grand or more...are we paying tax or are we not paying tax...one contradicts the other.

Mr. Fuentes stated he did speak to the vendor, and that he did assure me that the price is including gross receipts tax...and stated they used the template that they normally follow for all of their bidding projects, and that there were some areas they had to delete some sections, and indicated that is probably one of those sections that contradicts one section from another, but he did assure me that the 241, that gross receipts was included in that price.

Commissioner Green stated if we can get that maybe in writing that would be a strong assurance.

City Attorney Rubin stated maybe another idea...on the acceptance page...maybe cross through that one sentence with our initials.

Commissioner Renfro stated she noticed that under the terms and conditions of sale #12, page 5 of 8...the changes that you have 5 working days to approve any changes, and stated somebody has to really be on top of that and make sure if you approve or don't approve it's done within the 5 days otherwise it will automatically be approved.

City Manager Weiser stated we may need to call a special meeting of the commission to approve some of these...just so you are aware of it.

City Attorney Rubin stated on the 5-day provision...and thinks it's a concern, and possibly cross out 5 and insert 10, and check with Arizon before we do that to see if that is acceptable. I think 5 days is cutting it close.

“Commissioner Luna moved that they award the design-build to Arizon Structures for the swimming pool cover with the so noted changes.”

Seconded by Commissioner Green.

Mayor Pro-tem Renfro asked that Commissioner Luna give the amount of the bid so that it will be on record.

Commissioner Luna stated the amount...\$241,391.00 including sales tax.

Motion carried unanimously.

RESOLUTION  
#19-10/11:

Mr. Juan Fuentes, Finance Officer came before the Commission to explain the proposed resolution is to increase the wastewater fund by \$61,000 for various projects, and indicated they were provided with an e-mail from the Wastewater Manager Jesus Salayandia specifying the specific improvements that are needed.

He stated the funding source for the increase will be provided from the wastewater reserve savings account that the City has set aside for such repairs, and also the capital improvement reserve savings account which has been set aside for joint utility improvements.

Mr. Fuentes stated the funds for the capital improvement reserve account will be reimbursed, and indicated wastewater has a CD that has some funds invested, and once that matures they will pull the funds from that CD and reimburse the capital improvement fund for the amount that we're using for this project.

Commissioner Renfro stated this shows the fund as the wastewater fund, and asked if he had to show that anywhere on this...paper that you gave us.

Mr. Fuentes stated this is only to increase the expenditure budget, and stated if it is approved then since we are moving it from the other two savings accounts...if the resolution will be forthcoming that we'll actually be transferring those two amounts into the wastewater fund.

Commissioner Green asked if this work could be done without shutting down the plant.

Jesus Salayandia Plant Supervisor stated he did not anticipate any major interruptions.

Commissioner Luna stated her only question...did we need to go out to bid for the slide gate tilting wier.

Mr. Salayandia stated the engineering fee would be about \$11,000, and the actual wier and the actual work would be about \$16,-\$20,000, and indicated if it is under \$20,000 we can go for 3 bids... so we should be okay.

“Commissioner Luna moved approval of Resolution #19-10/11 – Budget Adjustments-WWTP Repairs.”

Seconded by Commissioner Green.

Motion carried unanimously.

OLD BUSINESS: None.

REPORTS: CITY MANAGER –

City Manager Weiser stated there was a question at their last meeting concerning the purchase of the Wall Street Journal, and stated that was by the library for their use.

He stated they received a letter from Sierra Health Care Center concerning their electrical issues that they had, and that our original estimates were that power would have to be shut down for about 8 hours for repairs, and that they got it down to 4 hours which was

acceptable to them. And indicated they received a nice letter, and read the letter in its entirety about how the city electric crew were very polite with staff and the residents, and how professional they were and worked well as a team...they were very informative left no mess, and they encountered no problems a job well done, and KUDOS to the crew, and thanked them to resolve the matter.

City Manager Weiser stated the lights at the tennis courts have been installed, and that fencing was going up this morning, and the lights have been installed at the parking lot at the ball fields with the next steps being the standards going up, and stated on Wednesday, March 30<sup>th</sup> he will be in Albuquerque with a presentation for the CDBG Grant Award, and then on April 7<sup>th</sup> I will be in Mesilla for the legislative wrap up session to let us know what bills came down that affects cities.

CITY ATTORNEY –

City Attorney Rubin stated he is pleased to state they are getting closer to completing the land swap...the properties that were in question involving the City and HSLD, and bringing this to everyone's attention that there was a bone of contention that we had three weeks ago when Mr. Kelly and Mr. Neal with HSLD was here, and just want you to know that we are advancing that initiative and hope they will have something done pretty soon.

COMMISSIONERS –

Commissioner Green stated he would like to suggest that the company that has the contract for the porta-potties at the Tennis Courts...once we open them that they be notified, and will probably have greater usage, and should be checked on more of a regular basis.

He stated they received a copy of a letter from the PGA, and would like to give KUDOS to Howie Tucker, and read the first three lines of the letter...Dear Howie, On behalf of your fellow PGA Professionals, I thank you for your efforts in increasing participation in Play Golf America by recognizing you as a member of the **2010 President's Council on Growing the Game**, and would like to congratulate him, and thanked PGA for recognizing him.

Commissioner Luna stated she would like to thank city staff for getting on the ball with the recreation projects and spending our money, and thanked them, and was very happy about the pool cover, tennis courts, ball lighting, and thinks they will have great comments coming, and less complaints.

City Manager Weiser stated the pool cover if I may interject was a joint effort with various departments...finance, electric, parks, facilities and water.

Commissioner Luna – KUDOS to all.

Mayor Pro-tem Renfro – the Recreation Board did some work on that too.

Commissioner Torres stated he appreciates the help of all involved,

and that it has been a long time, and hopes they enjoy it.

Mayor Pro-tem Renfro stated same here.

EXECUTIVE SESSION: "Commissioner Luna moved that the meeting be closed for Executive Session pertaining to Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8) – 1. Airport Property."

Seconded by Commissioner Green.

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

Motion carried unanimously.

OPEN SESSION: "Mayor Pro-tem Renfro stated that the Commission was now in Open Session."

CERTIFICATION "Commissioner Green certified that only matters pertaining to Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8), discussion ensued, and the decision was made to have City Manager Dave Weiser sign the exchange agreement between HSLD and the City of T or C on specified parcels of land at the Airport property."

Seconded by Commissioner Luna.  
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.

\_\_\_\_\_  
EVELYN B. RENFRO  
MAYOR PRO-TEM

ATTEST:

\_\_\_\_\_  
MARY B. PENNER, CITY CLERK

