

CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, May 24, 2011

REGULAR MEETING

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, May 24, 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

Absent was:

Also present:

Ellen F. Lindsey, Acting 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.

Commissioner Green 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 Luna.
Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT: City Attorney Rubin stated he had a discussion this morning with Randy Van Vleck League Counsel for the NMML regarding the proposed dangerous dog ordinance that was on their last agenda.

He stated there are some things they are not going to be able to change because they are preempted by State Law, and that there are some things they can change if they decide that we want to be more restrictive than what the State has, and stated they are some things they can change that Mr. Van Vleck would recommend that we don't.

City Attorney Rubin stated he discussed this with the City Manager, and that they will be meeting the next few days, and discuss this in detail, and will get something to them by the next meeting, and that he encourages the Commissioners, and that there

is a lot of material to go through, and that he certainly welcomes their comments, e-mails, and suggestions about things they do want from the proposal, and what you don't want to make this go faster.

COMMENTS
FROM THE
PUBLIC:

Ms. Lois Saille came before the Commission with comments.

Ms. Dana Berkstresser came before the Commission with comments.

Ms. Karen McIntire came before the Commission with comments.

Ms. Davis came before the Commission with comments.

Ms. Sophia Peron came before the Commission with comments.

Mr. Ron Fenn came before the Commission and read from a letter addressed to the Commissions, and provided information for the record.

Ms. Nola Kent came before the Commission and read a memo from DFA, and provided copies to the Commissioners, and for the record.

Mayor Montgomery stated she would like to comment...Ms. Kent, and I appreciate you coming to the Commission and providing this information to them, and appreciates the Task Force coming also. And will explain to those that are here today that we received a letter from DFA dated May 23rd with some very urgent issues that we must deal with...with the DWI Program, and that the commission and community takes DWI very seriously, and that they will be addressing these issues as lined out by DFA, and will be on our next agenda for the City Commission meeting.

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

CONSENT
CALENDAR:

Mayor Montgomery stated there were two items under the Consent Calendar – Minutes – City Commission Meeting – May 10,2011, and the DAIC Monthly Report – April 2011.

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

Seconded by Commissioner 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 stated just an observation on the Recreation Advisory Board minutes, and referred to page 4...They talk about how the tennis courts are now being handled with picking up the key at the city office, and they also talk about vandalism on new courts that we spent a lot of money of tax payer's dollars, and is wondering if in the future on the tennis courts that is not being used, and he thinks out of frustration the young people who are using that and all of a sudden we took it away from them, and he thinks that anger was expressed in that vandalism, and he thinks they might take a look at this lesson in the future that if we take

away something for young people...we make sure we give them something else in replacing it.

BOARD
COMMITTEE
REPORTS:

& Planning & Zoning Commission – Recommendation –

Acting City Manager Ellen Lindsey stated the proposed hotel is located in a C-1 Zone with a height restriction of 35’, and that it is a 3-story design with modifications to the parapet for signage.

She stated the property has topographical issues that will affect the design, and that Chief Tooley reviewed the plans, and visited the site, and that he is confident that the fire department equipment can handle a fire or rescue situation, and there is a letter from Chief Tooley regarding that.

And stated the request is to allow the design height of 47’ from grade on the north half, and recommendation from Planning & Zoning is to grant the height variance to commercial code requirements with the stipulation that the variance does not exceed 47’. And that staff concurs with the recommendation from Planning & Zoning, and that Mr. Ashbaugh is in the audience if there are questions or comments.

Mayor Montgomery asked Mr. Ashbaugh to step up to the podium please...so with the stipulation from Planning & Zoning for the variance not to exceed 47’...that can be handled on this plan.

Mr. Ashbaugh – Correct. And stated that the 3rd story would only be about 24-25 feet to a window, and stated you are not going to be rescuing anybody off the roof, and the majority of the major height is on the awing...and thinks the average height is 36-37 feet. He stated the building has fire exits, and a fire suppression system, and that it has to be approved by the State Fire Marshal...for the fire alarm system. And stated it is a great project, and he also wanted to thank Mr. John Mulcahy for showing the people that will be building this project, and that he was instrumental in taking them on a tour, and to the Spaceport and supplying data for the County and surrounding area which was extremely helpful.

Commissioner Green had a question regarding the map which Mr. Ashbaugh answered.

“Commissioner Luna moved approval of the variance request for Holiday Inn Express.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

PUBLIC
HEARINGS:

None.

RESOLUTION
#26-10/11:

Acting City Manager Lindsey stated the Lodger’s Tax Advisory Board requested clarification of the term entities in #1 of the resolution, and stated the board felt that this term was restrictive, and didn’t allow for new entities to apply for lodger’s tax allocations.

She indicated that staff changed the language to say...any and all entities eligible to apply, and stated this resolution would repeal Resolution No. 31-08/09.

“Commissioner Green moved approval of Resolution #26-10/11.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

RESOLUTION
#27-10/11:

Acting City Manager Lindsey stated that the Golf Course Advisory Board recommended a 7% increase in the green fees for the Municipal Golf Course, and stated this resolution puts that into place, and repeals Resolution #04-07/08.

City Attorney Rubin stated they want to strike the language where it says **by the City**.

Acting City Manager Lindsey stated in the first **Whereas**, and in the **Now Therefore**, and that City Attorney Rubin suggested that we take out **by the City** in both of those paragraphs.

City Attorney Rubin stated because there is a contractor that collects the fees.

Mayor Montgomery – Correct...an independent contractor.

“Commissioner Green moved approval of Resolution #27-10/11 with the corrections.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

RECRUITMENT
– CITY
MANAGER:

Commissioner Green stated he thinks there are 3 ways they can go, and my fellow Commissioners might come up with other ideas, and #1 would be to reach out and hire a search firm to help us look for a City Manager, and stated last time they looked into this it was going to be a cost of about \$12,000 for their services, and another choice would be to do it on our own as we did the last time, and the third way to go I feel...is the way I would like to go, and stated this is my own personal preference...I think that we have someone who has been sitting in the manager's office for the last 13 months who has been working with the manager who has a wonderful as I can see working relationship with staff...I think that's critical I think this person has the respect of staff she is open and accessible to citizens...I've been down there and I see her talking to some of the citizens...I think that right now there is a lot of catch up work to be done, and I think that person is doing a wonderful job, and I would recommend to my fellow commissioners that if Ellen Lindsey would take this position for a stipulated period of time because I don't know anything about what she wants to do in the future...I think the City would be well served I think she has the respect that the citizens the respect of the community, and I think she's here...she's doing the job...let's continue playing catch up and move forward...that's my recommendation.

Commissioner Renfro – I don't have a problem with Ms. Lindsey being...and my suggestion would be that she be acting city manager for a period of time to see if...and give her a chance to see is she does want to do it or doesn't want to do it, or she feels she can or can't.

Commissioner Torres – I feel the same way I think she's doing a good job as long as we're legally...is there any laws we have to follow.

Mayor Montgomery – The difference would be whether or not we want to do a contract or she remain as a city employee...that would be one of the things we would have to look at.

Commissioner Green – Question to Ms. Lindsey...if...I don't want to spend everyone's time and energy...if this is something that has no interest to you, so I'm gonna put you on the spot...I'm surprised we're doing it this way...but since we are...

Mayor Montgomery – I'm surprised you're doing it this way too.

Commissioner Green – Following Commissioner Renfro...if we went with a 90-day acting city manager, and then we turn to you and we said...okay would you like this position, and you said yes to us we would negotiate with you a period of time for a contract or whatever it might be...is that something that is feasible and doable for you.

Mayor Montgomery – Are you interested in the position for an interim period of time as Steve has suggested for 90-days.

Ms. Lindsey – Yes.

Mayor Montgomery – And at that point we can re-assess the situation and determine whether you are still interested in it, and what we need to do at that point.

DWI PROGRAM
&
COORDINATOR:

Acting City Manager Lindsey stated as you are aware DFA Local Government Division conducted an audit last week of the DWI Program, and that she received a letter from Sam Ojinaga Acting Director, and that she provided them a copy.

She stated in the letter he thanked them for their cooperation, and outlined some immediate concerns that they felt the City should address. And indicated they did not find any negligence in the handling of funds...there was a question of poor handling in regarding double billing for one of the contractors, but not a major issue.

Acting City Manager Lindsey stated they suggested significant structural and personnel changes that need to be made, and that the DWI Task Force they call it a Planning Council needs to be reformed, and that its members must be appointed by the City Commission. She stated they also expressed concerns that the DWI Program is not meeting the needs of the community.

She stated during the conversation with the audit team I came away with a couple of things...or budget...the budget that is now in place, and that it will need to be looked at seriously, and that they were concerned that there is a large amount of money going towards salaries, and less towards the DWI Program, and that they felt like it needs to be brought more in line, and that too much funding was allocated for prevention.

Acting City Manager Lindsey stated while the auditors were here they met with Ms. Rush at the hospital, and with a representative at Ben Archer Health Clinic, and stated they were very receptive to a treatment program in this town, and very receptive to working with the City...they have many options that DFA was very pleased with, and that we have a good opportunity there with both of these health

care providers to put a treatment program into place.

She stated there are concerns that the current program is not working as closely with the court system as they think it should be with regards to screening, tracking and compliance, and stated this needs to be done in conjunction with the courts, and going into screening, compliance and then into treatment, and that there are sometimes there may be a break in timeframe where you have several days between court, and when they start their screening, and stated DFA felt like we needed to lessen that gap in those time frames.

Acting City Manager stated on the DWI Task Force some of their suggestions for members is from schools, law enforcement, courts, health care providers, domestic abuse, faith entities, the public and teens.

Mayor Montgomery stated they have a copy of the May 23rd letter from DFA, and indicated there are several things that need...and other things...this is coupled with the additional IRS Audit, and that there are those individuals must be city employees, and stated there are several things that the Commission needs to address, and she does not know if we should put this on the next agenda or discuss and make a decision tonight on what we need to do.

Commissioner Renfro stated it is obviously states that there are items that we must address in order to retain LDWI funding for the fiscal year.

Commissioner Green – I would like to suggest, and I think this is serious and obviously have to address it I think I don't know if Ms. Kent got a copy of this letter and her board, and that he would like to see this on our next city agenda so they have an opportunity to answer some of these concerns...get the documentation to us, and that we can't afford to receive letters like this as the fiscal agent, so I would like to give them the benefit of the doubt and have them get the information, and answers and address these concerns and questions, and put this on our next city agenda.

Mayor Montgomery – And I would recommend that we take each one of the points at the next meeting, and address each one because we're going to have to answer back to DFA to ensure that funding stays in place for July 1.

Commissioner Luna – And I think simultaneously we also need to start advertising because as I understand in those re-classification audits from IRS we should have addressed that back in February when we got the audit findings...not now and not in 3 more weeks...I think we need to get that obviously the staff that is there is welcome to apply, but it is also open to the public...I mean we need to get that, and do it legal and take care of that before the IRS comes back, and is wondering why we haven't addressed that.

Commissioner Renfro – I agree with Commissioner Luna we need to start advertising.

“Commissioner Luna moved that we begin advertising immediately for the needed positions for the DWI Program.”

Seconded by Commissioner Renfro.

Commissioner Green – A point of clarification...the first one the

Planning Council Members have not been appointed by the City Commission is that everyone has not been appointed.

Mayor Montgomery – That’s correct...that has not come...I can’t remember it.

Commissioner Renfro – I was giving to bring up something else about the fiscal agent...did I hear somewhere, or it seems to me that I might have heard that the County was interested in being the fiscal agent for DWI, but they wanted to do their own selection of the personnel, and so I don’t know if maybe our Acting City Manager could check and see.

Commissioner Luna – In the conversation I set in on with DFA there was no discussion of them pulling us from being the fiscal agent...we had it and this is what we need to do, and this is how we needed to fix the problem, and keep the ball rolling, and be in compliance with the way things are supposed to be.

Acting City Manager Lindsey stated the only comment that we are the only municipality in the State that has a DWI Program, and that the rest of them are through the counties.

Motion carried unanimously.

REPRESENTATIVE – SCEDO:

Commissioner Green stated that Mayor Montgomery serves on the SCEDO Board, and knows she has a lot on her plate, and that he was going to suggest that he would like to volunteer to serve on the board as the City’s representative if there is no objection from my fellow Commissioners.

He stated that he would ask that the Acting City Manager or the City Clerk notify SCEDO of the change of the City’s representative.

“Commissioner Luna moved that Commissioner Green be the new representative for SCEDO.”

Seconded by Commissioner Torres.
Motion carried unanimously.

OLD BUSINESS: None.

REPORTS: **ACTING CITY MANAGER –**

Acting City Manager Lindsey stated she has received several inquiries about fireworks with the 4th of July approaching, and indicated it is very, very dry with no moisture. And stated that our City Ordinance does prohibit ground audible devices and aerial devices within the city limits.

She stated that the Fire Chief a month or so ago issued an open burn ban, and that is in place within city limits, and in conversations with him regarding fireworks, and he thinks that this is adequate at this time to protect the City, and certainly if the Commission has other thoughts on that we can bring it up for discussion.

Acting Manager Lindsey stated that the street department has been trying to purchase and oil tank for quite some time, and that she and Don Armijo have had several conversations on this, and stated he

anticipates that purchase by mid-August, and if it is not completed in August he will put together specs and they will go out to bid.

She stated he is also working with NM Environment Department to start the process for removing the fuel tanks at 3rd & Date.

She also reported she received a call from Tony MacRobert, and advised her that we received \$400,000 in CDBG Funds to complete the Williamsburg Electrical upgrades.

Acting Manager Lindsey stated that SCCOG is moving forward with our grant which we'll put together a new City Comprehensive Plan, and stated part of the requirements for the grant is that a survey go out to the citizens of T or C, and stated the grants are requiring a certain level of citizen participation. She stated the idea that they have come up with is that they surveys be put in the utility bills for 1 month, and that they will collect the first 400 surveys, and compile the data to meet the requirements of the grant, and stated they spoke with Berna from utilities, and it is not an exorbitant cost, and they will move forward with that.

She stated GreenWorks is in town, and this is part of a grant from NM Energy Minerals & Natural Resources to provide residents and businesses with energy efficient upgrades. And stated they are here soliciting interested residents and businesses for those upgrades. And stated the upgrades will take place in June, and that if anyone is interested they can go to the City Clerk's Office.

CITY ATTORNEY – No Report.

COMMISSIONERS –

Commissioner Luna asked if they could have an update on where we stand with the trash collection issues.

Acting Manager Lindsey stated she and Leonard have met several times, and that he called her this evening, and stated Monday's route was completed as of today. She stated he is well aware of the issue as everyone else is...as well as the Commissioners, and that she has asked Leonard to provide here with a plan of action by the end of next week, and that she wants to know about his routes, staffing levels, dates and hours of operation, and also about his trucks, and what kind of troubles he is having with his trucks, and stated she wants a plan of action to bring our sanitation services up to speed.

She stated he has several issues he has brought to her mind that I will bring to the Commission when I have all the numbers, and that some of them are an increase in the trash load, and that there has been an increase at the landfill and in town, and stated all of these are impacting that department which they have gotten behind.

Commissioner Green stated he has received phone calls about the skatezone... and what is the City going to do, and has there been any plans addressed.

Acting Manager Lindsey stated that Jimmy Schraner from facilities is requesting bids from various contractors, and that they had a structural done by WHPacific, and they gave us two options...one: do the rehabilitation on the Youth Center, and the other option was the demolition, and stated it is far cheaper to demolish the building as they have major structural issues for the building because of the

geothermal wells underneath. And stated she also has facilities, and the street department putting together figures so we have a comparison.

Commissioner Green stated he received several phone calls...it was nice to see the Acting City Manager and her husband walking the streets during Art Hop and meeting people, and he thinks that was great.

Commissioner Torres – No report.

Commissioner Renfro stated she would like to ask our Acting City Manager in view of what's happened in the City of Las Vegas where they lost 2 city employees because of proper safety procedures not being followed. And that she check with our safety officer to make sure that all safety procedures and precautions are being followed by the City of T or C.

She stated she had somebody ask her about the lights that were taken down at the Louie Armijo Park, and that it was pointed out to her that our baseball stadium for the school...they have absolutely no lights, and they thought maybe something could be worked out, and they might want to check with the school to see if they would be interested, and that this would be something I thought would be very appropriate.

Commissioner Renfro stated she has a comment that she wants to make...and that this is in regards to the Fiesta, and the candy throwing. She stated she has heard that it was the City Commission that said there would not be any candy throwing, and I want to sit here and inform everybody that it was not the City Commission...it was then Mayor Banister that took it upon himself to instruct the Fiesta Board to request that no candy be thrown, and stated this would have been without any authority from the Commission, and that this was the Mayor himself doing it...he had no authority, and stated there is no action... no City Commission action has ever been taken regarding candy throwing...so let it be known.

Mayor Montgomery stated she received a call from Williamsburg regarding the transfer station, and that there was a meeting that Ellen count not avail herself, and that they are bringing back the property once again at the racetrack. And stated they are wondering what are thoughts are, and I advised them that we had talked about it before, and that my understanding was that was given to the City as a recreational area...so they wanted me to bring it back again, and talk again about appropriate locations, and that they need to make a decision...and that the County apparently has it listed something completely different, and not as recreational area...so that's why they brought it back again.

Commissioner Renfro stated it was Comstock that deeded it to the City.

Mayor Montgomery stated is we could follow-up one way or another to find out exactly what it is, and what the other issues may be...because there are residential properties around that, and stated there is going to be issues no matter what.

Commissioner Torres stated why can't we keep it out there where it's at now...why can't we build something out there...it's close to the Interstate...where the landfill is.

Commissioner Renfro – Stated that to me would be more appropriate because I really hat to see...and stated that is an area of recreation that would be taking away, and that there was a racetrack there, and it you take it for a transfer station...there you go again we're eliminating one more source of recreation that has been there for our community.

Mayor Montgomery – I think it's important...that whenever the next meeting if you can go, and offer other solutions for them.

Commissioner Green – I walk my dog around Kopra every morning, and at the old racetrack someone has graded it as an oval track...so it's obviously being used...and that's exactly what my point was...if we take away...we've got to supplement with something else. And that in that deed there was no mention of the use of the land...but a letter was accompanying the deed that they said they would like the land to be used for recreational purposes.

EXECUTIVE
SESSION:

“Commissioner Green moved that the meeting be closed for Executive Session pertaining to – A. Personnel 10-15-1H(2) – 1. Compensation – Acting City Manager, B. Pending or Threatened Litigation 10-15-1H(7) – 1. Franklin Complaints, C. Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8) – 1. HSLD – Airport Property.”

Seconded by Commissioner Luna.

Mayor 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 MEETING: “Commissioner Montgomery stated that the Commission was now in Open Session.”

CERTIFICATION “Commissioner Green certified that only matters pertaining to Personnel 1015-1H(2), Pending or Threatened Litigation 10-15-1H(7), and Purchase, acquisition or Disposal of Real Property or Water Rights 10-15-1H(8) were discussed in Executive Session, and discussed ensued, and no action was taken.”

Seconded by Commissioner Luna.

Motion carried unanimously.

“Commissioner Green moved that the compensation for Acting City Manager Lindsey...a 30% increase for 90-day time period, and a temporary hire to assist clerical.”

Seconded by Commissioner Renfro.

Motion carried unanimously.

“Mayor Montgomery moved that Acting City Manager Lindsey draft a letter to the Franklin family regarding his concerns and complaints.”

Seconded by Commissioner Renfro.

Motion carried unanimously.

“Mayor Montgomery moved that City Attorney Rubin proceed with

a letter to HSLD to purchase the land for \$100.00, and to enter into negotiations regarding the 19 plus land with obtaining FAA approval.”

Seconded by Commissioner Green.
Motion carried unanimously.

“Mayor Montgomery moved that we contact WHPacific for consultation for condemnation of the Airport land.”

Seconded by Commissioner Green.
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