

**CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, July 24, 2012**

Regular Meeting

ACTION 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, July 24, 2012, at 6:00 P.M.

PRESIDING OFFICER: The meeting was called to order by Mayor John Mulcahy, who presided and Judy Harris, Deputy City Clerk acted as Secretary of the meeting.

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

Hon. John Mulcahy, Mayor
Hon. Sandra Whitehead, Mayor Pro-Tem
Hon. Jeff Richter, Commissioner
Hon. Steve Green, Commissioner

Also present:

Juan Fuentes, City Manager
Jay Rubin, City Attorney
Judy Harris, Deputy City Clerk

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

CEREMONY: Mayor John Mulcahy opened the Regular Session

Silent Mediation

Pledge of Allegiance

APPROVAL OF AGENDA: "Mayor Mulcahy moved for approval of the Agenda, stating he wished to hold item #D.4). Airport Advisory Board Minutes, from the Consent Calendar, and hold for separate discussion".

"Commissioner Steve Green moved for approval of the Amended Agenda; holding the Airport Advisory Board Minutes for later discussion."

Seconded by Commissioner Sandra Whitehead.
Motion carried unanimously.

COMMENTS FROM THE PUBLIC: Mayor Mulcahy opened the floor for **Comments from the Public**, noting that Comments needed to be related to items directly on the Agenda.

Diane Lombardo-made comments to the Commission regarding the Companion Action Team at the Shelter, requesting to be on the Shelter Task Force.

Ron Fenn-made comments to the Commission regarding the open Commission

position; and made comments on the Waste Transfer Station.

Kim Audette- made comments to the Commission on the Solid Waste Transfer Station, the Open Meetings Resolution and the request for de-annexation by HSLD.

Ed Irwin-made comments to the Commission on the Domestic well Drilling Study.

George Szigeti made comments to the Commission regarding the Domestic well Drilling Study.

Mike Kertesz-made comments to the Commission regarding the Waste Transfer Station.

Sophia Peron-made comments to the Commission regarding the Animal Shelter and the open Commission position.

**CONSENT
CALENDAR:**

Mayor Mulcahy opened for a motion to accept the Consent Calendar.

“Steve Green moved to accept the Consent Calendar, with the exception of items #4.Airport Advisory Board Minutes”.

Seconded by Commissioner Richter.
Motion Carried Unanimously.

Mayor Mulcahy stated he wished to speak on item D. #4.) Airport Advisory Board Minutes. Noting that there had been a joint meeting with the Airport Advisory Board and the Planning and Zoning Commission; noting the minutes stated it would take a couple of meetings before they could come to an agreement about zoning, the Mayor wished to know why, as the project needed to move forward. The Mayor asked the City Manager and the City Clerk for a response.

Deputy Clerk Harris noted that the discussion was because of the different height zones, and areas around the Airport, the fact that the Code says you can only have 5 people in a certain zone, the 50 foot range, it's not any major problem – it will just take more than one meeting to make the decisions to make it better for the Airport and it's users, and needed further review.

Mayor Mulcahy noted he would like to see the project move forward in a diligent but correct way.

“Mayor Mulcahy moved to approve the Airport Advisory Board Minutes.”

Seconded by Commissioner Green.
Motion Carried unanimously.

**UNFINISHED
BUSINESS:**

Resolution 01-12/13 Open Meetings Resolution

Mayor Mulcahy opened the floor for discussion.

Commissioner Green noted it was brought to his attention that on page 2 under

Regular Meeting that there is no time frame for the notice of regular meetings.

City Attorney Rubin was asked for opinion. Mr. Rubin stated it has always been practice to have the Agenda items ready by the previous Thursday at noon. Then the packets are distributed by Friday afternoon, the publication is done on Friday as well, which is sufficient.

Mayor Mulcahy noted we also have scheduled dates for Commission Meetings.

City Manager Fuentes noted that there was also a monthly calendar which was distributed for all Boards, and placed in the paper; well in advanced of such meetings; both which covers the Open Meetings Actions. Manager Fuentes noted that with questions, the Commission could table this and bring it back.

"Mayor Mulcahy moved to table the Resolution".

Seconded by Commissioner Green.

Mayor Mulcahy responded Aye to a Roll Call Vote
Commissioner Whitehead responded Aye to a Roll Call Vote
Commissioner Green responded Aye to a Roll Call Vote
Commissioner Richter responded Aye to a Roll Call Vote
Commissioner Torres responded Aye to a Roll Call vote

Motion carried unanimously.

Resolution #04=12/13 – Directing City Manager and Staff to obtain a qualified scientific study in conjunction with its Domestic Well Drilling Moratorium.

Mayor Mulcahy stated the wording in this Resolution has been changed to comprehend some things learned in a trip to New Mexico Tech, last week, and to incorporate some language that makes more sense. Noting three steps in the Resolution, he urged the Commission to approve this Resolution and take steps to give direction to our Community about why we are entering into this moratorium.

"Commissioner Green moved to approve Resolution #04-12/13, to obtain a qualified scientific study in conjunction with its Domestic Well Drilling Moratorium."

Seconded by Commissioner Richter.

Mayor Mulcahy responded Aye to a Roll Call Vote
Commissioner Whitehead responded Aye to a Roll Call Vote
Commissioner Green responded Aye to a Roll Call Vote
Commissioner Richter responded Aye to a Roll Call Vote
Commissioner Torres responded Aye to a Roll Call vote

Motion carried unanimously.

Tank Rehab Project: Change Order No. 4

Waste Water Division Director Jesus Salayandia and the Kim Jacobson Project Manager from WH Pacific Engineer were introduced by City Manager Fuentes.

Project Engineer Jacobson explained Change Order #4, noting it was to rehab the 3 million gallon tank inside, noting many pits, indicated she had many pictures.

Mayor Mulcahy question if we should have known about this and incorporated this in the original pricing.

Project Engineer Jacobson noted it was not able to be discovered until the whole interior of the tank had been cleaned enough to be able to determine how badly the surface has degraded. Noting that there would be one more change order coming, because we don't know how much material it will take to fill these holes with epoxy.

City Manager Fuentes explained the first Change Orders leading up to the addition of Change Order #4; noting the 1st (first) Change Order was due to the condition of the floor, which was the original proposal of the project, to sandblast the floor; now that they started to sandblast the interior of the tank walls, the sandblasting of the walls revealed the condition of the walls, there was a lot of rust built up on those walls, so that they have been exposed – there is a lot of pitting in those walls. Some of the epoxy that will be used to fill in the pitting of those walls may not be enough – or because of the depth of the pittings there may be additional costs. Noting that all the Change Orders are being covered by the current Grant and Loan, so there is still is enough to cover the repairs.

“Commissioner Green moved to approve Change Order #4 for the Tank Rehab Project.”

Seconded by Commissioner Richter.
Motion carried unanimously.

NEW BUSINESS:

Process and/or Appointment to fill remainder of term for Commissioner Torres.

Mayor Mulcahy requested City Attorney Rubin to clarify the process that State Statue provides.

City Attorney provided copies of State Statue; Section 3-14-9; it basically gives the Commission the option of either just appointing an individual to serve the vacancy or to proceed to a Special Election. (Complete copy attached hereto and made part hereof.)

Mayor Mulcahy stated it was not his wish to call for a Special Election, believing there is a year and a half left of the term,

Commissioner Green stated he agreed, and did not believe a Special Election was necessary. Noting we just had the Election 4 months ago, there were a lot of good qualified candidates who ran, expressing their interest to serve the Community. Commissioner Green stated he thought the fairest thing to do would be to go to the voting rolls on the Election data and offer the position to the person who got the most votes, but who did not get elected.

Mayor Mulcahy nominated Lisa Burris to fill the position for the next year and a half.

Commissioner Green noted Mrs. Burris is a major asset to the Community, and is sorry to learn her husband will be leaving the Community, noting Mrs. Burris would eventually be leaving the Community to be with her family. Commissioner Green then nominated Mike Kertesz.

"Mayor Mulcahy moved to nominate Lisa Burris".

Seconded by Commissioner Richter.

Mayor Mulcahy responded Aye to a Roll Call Vote
Commissioner Whitehead responded Nay to a Roll Call Vote
Commissioner Green responded Nay to a Roll Call Vote
Commissioner Richter responded Aye to a Roll Call Vote

"Commissioner Green moved to nominate Mike Kertesz."

Mayor Mulcahy responded Nay to a Roll Call Vote
Commissioner Whitehead responded Aye to a Roll Call Vote
Commissioner Green responded Aye to a Roll Call Vote
Commissioner Richter responded Nay to a Roll Call Vote

Mayor Mulcahy noted without a unanimous vote, to bring the issue back to the next meeting, he asked the Commissioners to bring new nominees and allow them to present for themselves, perhaps in an interview format, so that we can make a choice that is educated based on thoughts and words, and not just ours. He stated he would ask the Commissioners to bring their own nominations to the next meeting and have them presented in a question and answer format, here at the Commission Chambers.

Invitation to bid for Transfer of Municipal Solid Waste

City Manager Fuentes noted that two bids were received. As discussed in the Work Session the City received one from South West Disposal and one from New Mexico Waste. Southwest Disposal did come in with the lower bid. The proposal submitted by Southwest Disposal required a minimum of 7,956 tons of waste annually, with other requirements as well. Noting that all entities in Sierra County looking at their own best possible deal in dealing with their Solid Waste. Noting that there is no guarantee that the City will generate 7,956 tons, according to our own figures we only generate about 6200 tons a year. Also with the extension with the closure of our Landfill, does allow us some additional time to do some additional research and look at some other alternatives. With that the recommendation from Staff is to reject all the bids and authorize City Manager to re-bid or to propose an alternative plan for hauling services. City Manager Fuentes also noted the bids were good for 60 days.

Commissioner Green noted that the Commission needed to sit down with all jurisdictions to see if they will or will not partner with the City on the transfer of Municipal Solid Waste.

It was agreed that all municipalities needed to partner in the issue. The issue of how much trash would actually be processed would be of concern, with the cost involved to be an issue without a number of the amount of trash being resolved. Tipping fees were also discussed.

Commissioner Richter we need to figure the amount of trash we are hauling.

"Mayor Mulcahy moved to reject all bids and authorize the City Manager to re-bid or propose an alternative plan."

Seconded by Commissioner Green.

Mayor Mulcahy opened for discussion.

Commissioner Green asked if the City Manager had meet with Southwest

Disposal face to face, or just thru their RFP response.

City Attorney Rubin did not approve of meeting face to face prior to selecting or rejecting a bid,

Mayor Mulcahy stood for a vote to ask the City Manager to reject all bids and re-bid and come back to the Commission with a hauling service solution.

Motion Carried Unanimously.

Discussion/Action – Tourism Contract between County of Sierra and Dianne Preisser.

Dianne Preisser noted she promote all events throughout the State and down into El Paso; coordinating advertising, writing the New Mexico Cooperative Grant through the New Mexico Tourism Department, she represents the Tourism Board and they meet once a month and discuss Tourism Projects. Ms. Preisser spoke of several on going projects.

Mayor Mulcahy asked what the City's recommendation was.

City Manager Fuentes noted the recommendation was to approve the agreement for Contract between the County and Dianne Preisser for the Tourism.

City Attorney made one point, looking at the opening paragraph of the Contract, we are not actually a part of the Contract, it's really between Ms. Preisser and the County – our involvement is do we want to fund it or not pursuant to paragraph 2B. Mr. Rubin said that one other thought would be for us not to be a signature and sign an agreement with the County for funding.

City Manager Fuentes noted It has been approved for funding, it is in the final budget, and we don't necessarily have to be a signature on that Contract.

It was discussed and decided that it was already in the budget and the City's contribution was also already approved.

City Attorney Rubin noted that it was already in the approved final budget.

City Manager Fuentes noted he would recommend a contract with the County that would specify what sort of services we are getting for our contribution; stating he would discuss it with Jan. The City sets aside \$25,300, from the Lodger's Tax Fund.

Commissioner Richter wants to know what the Cities portion the percentage of compensation was is.

Discussion/Action – Attorney Contract – FY 12/13 for Municipal Court

City Attorney Rubin noted this was a similar contract that we just approved last meeting or the meeting before that. This is for another Public Defender that we need to appoint to Municipal Court. In this particular case it is for Steven Sage, who is already providing services at Municipal Court and this is the same contract.

"Commissioner Green moved for approval of a contract for services between the City of Truth or Consequences and Steven L. Sage, Attorney at Law.

Seconded by Commissioner Richter.

Motion Carried Unanimously.

Approval of Amendment to Professional Services agreement with Gordon Environmental

City Manager Fuentes explained that Mike Crepeau, Project Engineer for Gordon Environmental, was here tonight, and would better explain the task orders.

Mr. Crepeau noted this budget request adjustment was for \$11,000.00; the building got bigger and we had to redesign the building because of some of the structural issues, those issues being the outside tunnel wall (20 ft high) supporting the building, when we received the soil sampling results back in late April, those soil sampling results indicated that the thrust load on that building – the soil that was there – insitu was not adequate enough to meet our compaction standards, therefore the thrust loads on that outside tunnel wall was too excessive to support the building itself, so we took the building it self and increased the building size by 17 feet. We went to a building size of 75 x 75 to 75 x 92, and the change in the square footage alone necessitated change in our Construction Plans and it also eliminated some of the Construction costs. Mr. Crepeau noted they also had to acquire the services of an electrical engineer, as New Mexico Construction Industries Division now requires electrical engineering plans for facilities of this type.

Commissioner Green asked if they had considered adding solar to the project.

Mr. Crepeau answered no, it was not considered. He also noted they were trying to think of a way to bring in another scale.

“Mayor Mulcahy moved to approve the amendment to the professional services agreement with Gordon Environmental.”

Seconded by Commissioner Richter.

With no further discussion, Mayor Mulcahy called for the vote.

Motion Carried Unanimously.

Discussion/Action – Bid Award for Taxiway B Construction

City Manager Fuentes noted a letter from Mark Huntzinger of WH Pacific, in the Commission Packet, making a recommendation on the Taxiway B Construction project. Noting that the City had received three bids; Kimo Constructors, Inc., Highland Enterprises, Inc. and Smith & Aguirre Construction Co., Inc.; with the low base bid coming from Kimo Constructors, Inc., in the amount of \$295,116.80 which includes gross receipts tax. Noting that Kimo Construction holds a correct and current New Mexico Contactors License, it would be Staff’s recommendation to award the Bid to Kimo Constructors, Inc. This is part of the FAA Grant, which will pay for it.

“Commissioner Green moved to award the Bid for Taxiway B to Kimo Constructors, Inc., of Bosque Farms, New Mexico.”

Seconded by Commissioner Whitehead.

Motion Carried Unanimously.

Discussion/Action – Resolution #05-12/13 – Establishing a Task Force to research, study and address Animal Services for the City.

Chief Mullins stated this was brought up during the negotiations for the Animal Shelter Contract for FY2 12/13; as Dr. Dockins stated this will be the final year that the Animal Shelter will provide the service for the Community. The Task Force would be to research and develop direction for the City, in order to comply with the State Statute. Chief Mullins named several Members of the Task Force.

“Commissioner Green moved to approve establishing a Task Force to research, study and address Animal Services for the Community.”

Seconded by Commissioner Whitehead.

Mayor Mulcahy responded Aye to a Roll Call Vote
Commissioner Whitehead responded Aye to a Roll Call Vote
Commissioner Green responded Aye to a Roll Call Vote
Commissioner Richter responded Aye to a Roll Call Vote

Motion Carried unanimously.

Discussion/Action – Resolution #06-12/13 – Establishing a Vehicle & Equipment Replacement Policy.

City Manager Fuentes noted this was a proactive approach to replace equipment and vehicles for the City, in effect establishing a policy for the City to follow when replacing vehicles and equipment.

Commissioner Green asked if there was any type of spreadsheet made by the Service Center that they could review.

“Commissioner Green moved to approve Resolution #06-12/13 Establishing Vehicle and Equipment Replacement Policy.”

Seconded by Commissioner Whitehead.

Mayor Mulcahy responded Aye to a Roll Call Vote
Commissioner Whitehead responded Aye to a Roll Call Vote
Commissioner Green responded Aye to a Roll Call Vote
Commissioner Richter responded Aye to a Roll Call Vote

Motion Carried Unanimously.

Discussion/Action – Resolution #07-12/13 – Approval of Final Budget for FY 2012/2013 for City of TorC.

City Manager Fuentes explained the Budget, noting the shortfall and what direction the Commission wanted Staff to take.

Commissioner Richter spoke of entitlements and cutting pet projects.

Commissioner Whitehead spoke about making adjustments, the General Fund and asked to study on the problem before answering further.

Mayor Mulcahy noted that if we were in Santa Fe we could cut payroll and staff benefits. He encouraged the City Manager to look at all positions.

City Manager Fuentes spoke of cutting expenses, balancing the budget, trying to recover funds, allocated funds and looking at all options.

"Commissioner Green moved to approve Resolution #07-12/13."

Seconded by Commissioner Richter.

Mayor Mulcahy responded Aye to a Roll Call Vote
Commissioner Whitehead responded Aye to a Roll Call Vote
Commissioner Green responded Aye to a Roll Call Vote
Commissioner Richter responded Aye to a Roll Call Vote

Motion Carried Unanimously.

REPORTS:

City Manager Fuentes spoke of needing to schedule a Special Meeting to approve the School Resource Officer's Contract for the coming school year. The Commission did approve meeting July 20th, 2012 at 8:00 A.M.; and there may be other items added to the Agenda, if the Commission approves.

Commissioner Green spoke of the loss of Patti Lester, the Pilot Recycle Project and Marketing of the town and after an incident that happened in the Community he thought that the Commission should look at the Restraint of Animals in vehicles again.

Mayor Mulcahy gave a reminder that the National Night Out was to be August 7th; he also spoke of the study on the well moratorium.

PUBLIC COMMENT:

Sophia Peron made comments to the Commission regarding the Commission Board Position, closed businesses in town, impact fees, and unpaid utility bills.

Chief Mullins made comments thanking Mr. Burris, who supported the PD and who would be missed.

Mr. Burris made a comment on the Special Meeting for the SRO Contract.; he thanked the Commission and Police Department.

Ronald Fenn made comments to the Commission about a letter he submitted regarding Heartland Mesas. (Complete copy attached hereto and made part hereof.)

Ginger Johnson made comments to the Commission about the negative personal attacks.

Kim Audette made comments to the Commission about fiduciary duties required by law, an accounting for the Pool, the need for ICIP Plan workshops in September, a Solar Generating Plant and reminded Commissioners to speak into the microphone, noting it was hard to hear them on the radio.

Malissa Cordell made comments to the Commission regarding the Canine Dog at the Police Department.

EXECUTIVE SESSION:

"Mayor Mulcahy moved that the meeting be closed for Executive Session pertaining to:
A.) Pending or Threatened Litigation 10-151H(7)

1. HSLD, LLC – Request for De-Annexation & 2007 Option Agreement.”

“Seconded by Commissioner Richter.

Mayor Mulcahy responded Aye to a Roll Call Vote
Commissioner Whitehead responded Aye to a Roll Call Vote
Commissioner Green responded Aye to a Roll Call Vote
Commissioner Richter responded Aye to a Roll Call Vote
Commissioner Torres responded Aye to a Roll Call vote

Motion carried unanimously.

Commissioner Whitehead recused herself from the Executive Session.

OPEN SESSION:

“Mayor Mulcahy stated that the Commission was now in Open Session.”

CERTIFICATION:

“Commissioner Green certified that only matters pertaining to: Pending or Threatened Litigation 10-15-1H (7) was discussed and no vote was taken.”

Seconded by Commissioner Richter.

Motion carried unanimously.

“Commissioner Green made a motion to instruct staff to notify HSLD that we reject their request for de-annexation and their demands under the 2007 option agreement.”

Seconded by Commissioner Green.

Motion carried unanimously.

ADJOURNMENT:

There being no further business to come before the Commission, Mayor called for a motion to adjourn.

“Commissioner Green moved for adjournment.”

Seconded by Commissioner Richter.

Motion carried unanimously.

APPROVAL:

PASSED AND APPROVED this _____ day of _____, 2012 on motion duly made by Commissioner _____, seconded by Commissioner _____, and carried.

ATTEST:

John A. Mulcahy, Mayor

Judy M. Harris
Deputy City Clerk