

CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, October 9th, 2012

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, October 9th, 2012 at 6:00 P.M.
- PRESIDING OFFICER:** The meeting was called to order by Mayor Mulcahy 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. John Mulcahy, Mayor
Hon. Sandra Whitehead, Mayor Pro-tem
Hon. Steve Green, Commissioner
Hon. Jeff Richter, Commissioner
- Also present:
- Juan Fuentes, City Manager
Jay Rubin, City Attorney
Mary B. Penner, City Clerk
- INTERVIEWS:** Prior to the start of the Regular Meeting, City Commission Members interviewed two persons for the open Position on the Planning Zoning Commission. The two interviewed were Jimmy Butler and Michael Sparks.
- QUORUM:** There being a quorum present the Commission proceeded with the business at hand.
- CEREMONY:** Mayor Mulcahy called for fifteen seconds of Silent Meditation.
- Mayor Mulcahy called for the Pledge of Allegiance with Commissioner Whitehead leading the Pledge of Allegiance.
- APPROVAL OF AGENDA:** Mayor Mulcahy called for approval of the Agenda.
- “Commissioner Green moved that item F-2 New Business be removed from the Agenda and postpone until the first City Commission Meeting in November, due to the letter in the packet not corresponding with the item on the Agenda Item.”
- Seconded by Commissioner Whitehead.
Motion Carried Unanimously.

“Mayor Mulcahy moved the Presentation by the City Manager, regarding Service Awards for City Employees, be moved to the front of the Agenda, and to follow immediately.”

Seconded by Commissioner Green.
Motion Carried Unanimously.

SERVICE
AWARDS:

City Manager Fuentes noted he wished to take this time to recognize our City Employees. Mr. Fuentes stated there was a recognition meeting with City Employees last week, we have about 15 Employees that have been here longer than 5 years. Noting the City has 104 Employees, and wanted to take this opportunity to recognize those whom have been here over 5 years, noting 10 year and over 15 year Employees. City Manager Fuentes read the names and issued all awards.

COMMENTS
FROM THE
PUBLIC:

Millie McLeod approached the podium and spoke about the helicopter and helicopter pad at Sierra Vista Hospital.

Gerald Trumbull approached the podium and spoke about the helicopter and helicopter pad at Sierra Vista Hospital, noting he had contacted the FAA.

Captain James Morgan, TorC Police Department, approached the podium and noted that on the 29th the Police Department had a National take back initiated. In doing so, since April of 2011 the PD has taken 52.76 lbs. of unused, unwanted or expired medications. Just this past week, they received an additional 32 lbs. There were 21 sites in the State of New Mexico participating and they took back 1,190 lbs. were taken back total.

January Roberts approached the podium and spoke about the Helicopter and Helicopter Pad. She noted that she and Bill Slettom are looking in to this.

Ron Fenn approached the podium and spoke noting he had turned in another 125 violations of the Sign Code by the City of TorC.

Bill Buhler approached the podium and spoke about the vacant position on the City Commission, posing the question of noting what he described as a conflict of interest.

Sid Bryan approached the podium and seconded the comments by Mr. Buhler, regarding the position on the City Commission.

Mayor Mulcahy requested any comments prior to approval of the Consent Calendar. No Comments were made.

CONSENT
CALENDAR:

“Commissioner Richter moved that he would like the minutes of 9/11/2012 reflect that he did recuse himself and was not present to any and all discussions to the NMSA Welcome Center The motion was to extract item D-3 from the Consent Calendar for further discussion at the end of the Consent Calendar approval.”

Seconded by Commissioner Green.
Motion Carried Unanimously.

“Commissioner Green moved to approve items D-1 City Commission Minutes Regular -8/28/12, City Commission Minutes-Special 9/4/2012, Accounts Payable September 2012.”

Seconded by Commissioner Whitehead.
Motion Carried Unanimously.

Mayor Mulcahy opened for discussion on item D-3 of the Consent Calendar, City Commission Minutes. Regular 9/11/2012.

“Commissioner Richter restated his previous statement, “In the City Commission Meeting Minutes of 9/11/2012; this is in regard to Executive Session, I recuse and I wasn’t present for that portion of the Closed Session, and I’d like the Minutes to reflect that.”

Mayor Mulcahy asked “Mr. Secretary”, (meaning the City Attorney); “in this situation can we amend the minutes at this point?”

City Attorney Rubin answered “yes, I think it’s appropriate”.

“Mayor Mulcahy moved to approve the City Commission Minutes for 9/11/2012, reflecting that Commissioner Richter did recuse himself from the discussion about the NMSA Welcome Center.”

Seconded by Commissioner Green.
Motion Carried Unanimously.

UNFINISHED
BUSINESS:

Mayor Mulcahy stated the next item on the Agenda is Unfinished Business; Discussion and Action related to the appointment of the Planning and Zoning Commission, noting one opening at this point, we interviewed two tonight he opened for discussion on how the Commission felt that would be best accomplished tonight, and we have two candidates and one opening.

Commissioner Green started to make a motion, paused and noted his wish would be to have 6 people on the Planning and Zoning Commission, because he thought both were outstanding candidates, and handled themselves with professionalism. Noting the Board

Mayor Mulcahy noted he had looked in to the possibility of an alternate; as some boards have them; noting that ours does not have that in the bylaws currently.

“Commissioner Green moved to appoint Michael Sparks”

No Second was made.

“Commissioner Richter moved to nominate Jimmy Butler”.

Seconded by Commissioner Whitehead.
Motion Carried Unanimously.
Mayor Mulcahy thanked Mr. Sparks.

Mayor Mulcahy noted the next item; Discussion/Action regarding appointment for a City Commissioner to replace the vacancy of Commissioner Torres.

“Commissioner Green noted he had requested this be back on the Agenda; one more time. Noting he was going to go a different route, but since Mr. Buhler posed a legal question, he thought they should postpone the vote until the time the City Attorney can research the question, issue a legal opinion on whether this is a conflict of interest real or perceived. And return it to the docket for the next City Commission Meeting.”

Seconded by Commissioner Whitehead.
Motion Carried Unanimously.

NEW BUSINESS: Mayor Mulcahy noted several in the audience; Park Superintendent Kay Dunlap, Linda Sparks, Captain Morgan, special thanks for being here to Mary Penner (noting her service award anniversary), Bill Slettom, Jan Carrejo, and Sandy Jones.

Mayor Mulcahy noted with the next item of Business, hand the gavel to Mayor Pro-tem Whitehead.

Mayor Pro-tem Whitehead noted next item on the Agenda is F-1. Discussion/Action – Resolution #15-12/13 Election Resolution in both English & Spanish; she then turned to City Clerk Mary Penner to explain

City Clerk Penner noted that this is just part of the Election Process; the Election Resolution is in English and Spanish, it tells you what the reason is for the Election is going to be and gives you the information on where you can vote, when the registration books close, and when absentee and early voting will start, in English and in Spanish, asking for your approval, please

“Commissioner Green moved to accept Resolution #15-12/13 Election Resolution, in English and Spanish.”

Seconded by Commissioner Richter.

Mayor Pro-Tem Whitehead asked for a Roll Call Vote.

Mayor Mulcahy – did Abstain.
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.

Mayor Pro-tem Whitehead turned the Meeting back over to Mayor Mulcahy.

Mayor Mulcahy noted F-3. Discussion/Action – related to the Purchase Agreement and quick claim deed between the City and DNS Properties, LLC.

City Manager Fuentes noted the Board Packet a proposal for the sale of an easement that was granted back in 1997 to Marshall and Barbara Neel, property at 439 McAdoo. Mr. Fuentes turned to City Attorney Rubin for further.]

City Attorney Rubin noted he prepared a purchase agreement, a quick claim deed, for your consideration/review; he apologized for a typo/misspelling on the name of the Mayor, explaining he would take care of it. He noted the purchase agreement calls for sales price of \$1,000.00, which was based upon that the Market Analysis Broker evaluation who indicated that was a good price for the parcel, its .043 acres, and it is something that really wouldn't be fair to have this third determination clause still in existence. This is something that would be fair to both sides; we're getting full consideration for the value of the property. Noting the purchase agreement, set forth the fact that we are selling the property as is, we're not making any warranties; and a provision the purchaser acknowledges or is accepting a deed based upon a 1997 survey and hereby waives the right to obtain an updated survey.

"Mayor Mulcahy moved to approve the purchase/agreement and quick claim deed between the City and DNS Properties, LLC."

Seconded by Commissioner Whitehead.
Motion Carried Unanimously.

City Attorney Rubin requested a 1 to 3 minute recess.

REPORTS:

City Manager Fuentes gave an update on the Municipal Pool Cover, noting bids were due 10/30. Stated the City need to identify the funding so we can start issuing work orders.

City Manager Fuentes noted the CDBG Electrical Project is up for bid, due 11/5, with the Pre-Bid 10/22. Manager Fuentes noted the Billboard approval.

City Manager Fuentes gave an update on the Solid Waste, noting all was moving according to schedule.

Commissioner Green noted the costs, he would like for staff to investigate the possibility of what it would cost to make that sign on date and 4th an electronic Trinitron sign so we could put different images up there on certain events, and change it from staff's office. He noted Ruidoso had 17 of these in Texas and Southern New Mexico.

City Manager Fuentes noted the City was looking at that and had spoken with Mr. Gustin to get names of those whom have worked here locally, so they will be looking at costs.

Mayor Mulcahy thanked the City Manager for his leadership in moving forward on the Pool Project, getting the CDBG on the Electrical Project, the Billboards and the Solid Waste.

City Attorney Rubin: no report,

Commissioner Richter commented that in the accounts payable, which was on the Consent Calendar this meeting, that we have spent \$145,000.000 on street renovations in September, and there's a lot of streets that intersect Veater that have been chip sealed, and he wished to thank City Manager and Staff for moving forward on these paving projects, as he thinks it's vital to our infrastructure.

Commissioner Green noted the County Representation in the Chambers, as he noted the Sierra County Tourism Board had its first fund raiser and he was

pleased to announce that at the end of the day and we netted \$2,351.00, we will now be deciding how to use that money to entice destination writers and travel writers to come in to our communities, spend a couple of days and see what our assets are County Wide.

Commissioner Green noted he would be putting on some items on Tourism, but he understands that City Manager Fuentes may not be here, so he will on that. He noted the mornings Tourism Board Meeting, the consensus is that we're back sliding, we don't have the people in place to do the job that needs done; whether it be a County wide or a City position, brochures were discussed. He requested workshops or meetings with the Community to save ourselves. He spoke of GRTs, and Lodger's Tax being low. He requested these items be covered in the upcoming November meeting.

Mayor Pro-tem Whitehead noted she had a visit from Ron Fenn, and was also contacted by Deb Toomey requesting that the petition for the Citizens Initiative be placed on this Agenda, it was not. She turned to the City Manager for an explanation and clarification as to why and what the process is that we are going through.

City Manager Fuentes noted a flow chart; he also showed this same chart on the screen. He noted several State Statues sections which cover this petition. As we have just approved the Election Resolution for one of the petitions, and there are two different calendars we will have to be dealing with; we are dealing with apples and oranges, and this is just one of those petitions that has several calendars that we have to be aware of. Manager Fuentes noted several items on the flow chart with the following:

The Citizen Initiative Ordinance, the petition was approved by the City Clerk on August 16th, the petition was first signed on August 17th – that date is important because under section 315 the petitioners have under October 16th to collect signatures, however they have up until October 21st to file the petition. The State Statue allows does allow the petitioners to obtain the signatures within the time frame, they can also submit the signatures at different times, during that time period. When the petition is filed after the October 21st, per State Statue the City Clerk's Office has 10 days to certify it, which would move them to by October 31st; these are just deadlines that are governed by State Statue, so we have to follow statutory deadlines. After it's been certified, then under Section 3-14-18A, by November the 30th, within 30 days of the date of verification of the petition, the measure will have to go before the Commission. This is where it is different, because this is a unique Initiative, the City has never had this type of Initiative before – it's always been just a recall type of petitions. Because this is a Citizen's Initiative it also requires us to follow the Ordinance requirements for Publication, it does require us to publish 15 days (two weeks) prior to consideration, so we have to keep that timeframe in mind. If the measure is approved the Ordinance (Citizens Petition) ends the process ends and we move forward to comply with the provisions. If the petition is denied by the City Commission, then under Section 3-14-19A3 the Commission shall within ten days of the expiration of the 30 day period, adopt an Election Resolution, calling for holding a Special Election within 90 days of the expiration of the 30 day period. Once we adopt the Election Resolution we have to mindful of another Election that is happening in February, the School Board District – February 5th; under Section 3-8-9A the City cannot hold a Special Election or a Regular Election if there is a State wide Election or School Board Election, which will put us in March. Mr. Fuentes went through several options and explained the process, noting the City Clerk has to follow each of these steps by State Statue, and in additional to this, within that same general timeframe – have to comply with

the process and deadlines for the Election, as per the Election Resolution. Mr. Fuentes noted that this was just a general overview of the process, if the petitioners do have enough signatures, then these are the statutory sections we must be compliant with.

Commissioner Green noted it did not have to go in front of the Public Utility Board, or any other Board, if they have enough signatures. He also asked if there was an official person or someone leading the Initiative to be here to answer questions from the Commission.

Attorney Rubin answered was yes that was correct it would go directly to the Commission. Mr. Rubin noted it was not required for anyone to be present.

Commissioner Green questioned that they are basically petitioning the City to go out of the garbage business and they have not come up with plan B? They just don't want us to be in the refuse business anymore and that's what this is about, is that correct?

City Manager Fuentes noted he was not sure what exactly what the issue is, whether it be specifically about the Collection Center, or the general including the operation that we currently have for collecting refuse, residential and commercial and so forth; which is something that within this time frame we definitely have to clarify.

Mayor Mulcahy agreed we need everything in front of us, when we have the Ordinance before us at that point in time, we will definitely have to have a discussion and presentation from the Public.

Mayor Mulcahy noted he walked around down town and he is going to email out and put in the paper a public notice related to a presentation by a New Mexico Tech Team who are doing a water study, that will be this Thursday at 4:00 PM in the Civic Center. He noted it was a Public Meeting and invited all to attend.

Mayor Mulcahy stated he had spent a day and a half in Silver City, noting he felt it was very important to figure out some way strategically to deal with our storm water runoff downtown. He stated that the business people, who have to get up, pull up sand bags and put them out in front every time there is a sprinkle out there, that really an untenable situation for any City. As Commissioners he encouraged the Commission to look in to a remedy for the problem.

Mayor Mulcahy stated that particularly for Commissioner Whitehead and Commissioner Green, that he had finally gathered four people to join as a subcommittee looking at the Advisory Boards in general, and is happy to announce that Donna Monroe wished to join, Millie McLeod, Audon Trujillo and Lisa Burris all did respond and we have scheduled our first meeting for the 22nd of October at 1:00 PM, just to start the ball rolling.

Mayor Mulcahy stated he wished to recognize our School Superintendent, noting that 29 major people coming down from Albuquerque all part of an Organization called NAILPS, for a little presentation at the Civic Center and then go for a tour of the SpacePort. He received a call that they had broken down 20 miles north, the Mayor called our Superintendent (Dr. Cummings), can you help us out. He not only help us out, he got a bus and a driver, and he

went out himself and brought them back to the Civic Center and they went on a tour of the SpacePort using one of the TorC Municipal buses. Hats off to Dr. Cummings for supporting our City and we thank him for his service and support of us.

RESPONSE TO
PUBLIC
COMMENT:

Mayor Mulcahy wished to speak for himself, noting that no fewer than half a dozen times he has had people come to him both in these Chambers and outside of the Chambers, to comment on how they know what Commissioner Torres wanted and what he would of said if he was here. He asked, to borrowing the word of a late Commissioner, is really not something that is the right thing to do, he thinks there is history, there is evidence, he asked that people respect the fact, to honor Commissioner Torres with his history and his legacy, and all things he's done, and not give him a voice that may or may not be his; but he can't speak for himself now.

Commissioner Green wished to thank everyone for Hot Springs Festival, on Sunday afternoon, he wished to thank MainStreet and all the volunteers that put that together. Folks from out of town came in, they love the Community, they love the spas, the kick back feeling of TorC, but they did comment on the building we took down, and it looks raggedy, a coat of paint – let's get the metal that's hanging off the top, we can to better than that, we took a building down and it's an eyesore right now, he doesn't think it would cost that much money in material and time to slap a fresh coat of paint on the west side of the building, and get rid of the trim that's falling off the top.

EXECUTIVE
SESSION:

"Mayor Mulcahy moved that the meeting be closed for Executive Session pertaining to A. Purchase, Acquisition or Disposal of Real Property 10-15-1H (8), 1. Related to – HSLD, LLC."

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.

Commissioner Whitehead recused herself from Executive Session.

OPEN MEETING:

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

CERTIFICATION

"Commissioner Green certified that only matters pertaining to A. Purchase, Acquisition or Disposal of Real Property 10-15-1H (8), 1. Related to HSLD, LLC; discussion incurred and no vote was taken."

"Commissioner Green moved that the Commission authorize City Manager and the City Attorney to proceed with the long term ground lease between the City of Truth or Consequences, and HSLD, LLC; with the proposed changes."

Seconded by Commissioner Richter.

Motion carried.

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

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

JOHN A. MULCAHY, MAYOR

ATTEST:

MARY PENNER
CITY CLERK