

CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Wednesday, March 12, 2013

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 12, 2013 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. Steve Green, Commissioner
Hon. Jeff Richter, Commissioner

Also present:

Juan Fuentes, City Manager
Judy Harris, Deputy City Clerk

Absent:

Jay Rubin, City Attorney

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 Pro-tem Whitehead led the Pledge of Allegiance.

Mayor Mulcahy and City Manager Fuentes each gave a short presentation of the new website "torcnm.suiteonemedia.com", explaining meetings were now available for viewing on-line by the public.

Mayor Mulcahy explained that the bathroom facilities at the Civic Center were closed and under repair.

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

"Commissioner Green moved to approve the Agenda as presented."

Seconded by Commissioner Whitehead
Motion carried unanimously.

COMMENTS
FROM THE
PUBLIC:

January Roberts approached the podium and spoke of the minutes from Planning and Zoning, she also spoke about the Business License Registrations. Fees, meetings and information for Records. (Information provided for the Record)

Cary “Jagger” Gustin approached the podium and made comments about the free events held by the Sierra County Arts Council, and that two of our own citizens, James Durham and Sid Bryan have been selected to the Spaceport Art and Public Places design team, whose team will look at commissioning art work for the Spaceport America Terminal Building.

Pat Freemyer approached the podium and spoke about the public comment portion of the meetings, Budget Changes and the Slide show shown the last meeting by a local resident.

Marylyn Szigeti approached the podium and spoke of living in TorC and public comments made in meetings.

Andrea Wolfe with MainStreet made comments about the Healing Waters Trail Benches, Cleanup on March 24th, and the Hot Springs Festival date changed to June.

Audon Trujillo approached the podium and made comments about the Annual review for the City Manager and an annual procurement plan. (Information provided for the Records)

Ron Fenn approached the podium and made comments about the Ordinance for Business License Registration Fees and a proposed meeting with Commissioner Richter.

George Szigeti comments on trash collection, recycling, and illegal trash dumping.

CONSENT
CALENDAR:

Mayor Mulcahy called for approval of the Consent Calendar, noting that after public comment made regarding a request from January Roberts to remove the minutes for the Planning and Zoning, as they had not been approved and had changes.”

“Commissioner Green moved to remove D2; the Planning and Zoning Minutes from the Consent Calendar, and to approve items D1., D3., D4., and D5 on the Consent Calendar.”

Commissioners Whitehead stated that before she made a second, she wished to note a couple of corrections; on page 2, the wording Truth or Consequences, Consequences needs to be capitalized. On page 5 it should be

amount, instead of about.”

Motion Carried unanimously.

PUBLIC HEARING: None.

OLD BUSINESS: **(For publication) Ordinance #635 – (Second Reading) – Amending Section 7-35 – Pertaining to default penalties for Business Registration Fees, by Amending the Due Date for Business Registration Fees.**

City Manager Fuentes noted that the Commission had paperwork regarding two options; Mr. Fuentes showed a short PowerPoint presentation showing both options. In the Presentation, Mr. Fuentes noted several other Communities and how they handled the Business License Registration; he noted numerous other Communities that used the filing date as prior to March 16th as the renewal date. City Manager Fuentes noted that there was confusion about the January 1st deadline verses the March 16th deadline.

Mr. Fuentes explained that under Option 1; our date would be March 16th, and the late fee by State Statue for the penalty fee we can only charge \$10.00 fee. Under Option 2, it would be 30 days prior to the expiration date, and we would leave the date as January 1st. Mr. Fuentes noted that we now have a third Option, in listening to Ms. Roberts. He noted that either proposal will work for us, however, in speaking with staff, we do like the March 16th Option; Option #1, and the reason for that is that it would then give staff and the business two months to renew their license, and since we are proposing to require them to display them, it would require staff to print all of the business registrations every year, and issue them to the business so they can in turn display the current license in their business.

Board Members discussed Business License Registration information.

“Commissioner Green moved to adopt Option #1 for the Default Penalties for Business Registration Fees.”

Seconded by Commissioner Richter.
Motion carried unanimously.

Mayor Mulcahy recognized various City Employees in the audience and thanked them for their service.

NEW BUSINESS: **Review/Acceptance – Of the 2011-2012 FY Audit Report prepared by Accounting & Consulting Group, LLP – Mr. Ray Roberts, Managing Partner.**

Mr. Roberts noted what a pleasure it has been to work with the City of TorC and thanked Linda Lanham for her work. Mr. Roberts noted five (5) findings on the report, noting to back in start July with an entrance conference, and then went over findings and what we found back in November and submitted to the Office of the State Auditor; it was approved and released on January 9th, 2013. We got the release letter and sent you the reports and with scheduling conflicts and such, and now it’s in front of the Commissioners. He noted there are 117 pages in the audit; we are responsible for four (4) pages of it. The first page is the opinion, there are two (2) pages of that, and what it does is tell you that you have an unqualified opinion; and there’s no

ifs, ands, but about it, you're following all the rules; and that's the best report you can get as a City and a Government Institute.

Mr. Roberts noted that next is a report on internal controls; we don't give an opinion on that, cause all we do is gain a basic understanding of internal controls, to allow us to do the audit, there is no way we can look at every transaction, and every dollar amount we look on a risk based model to perform our audit. During that process we have to rely on the controls of the City, we identify them and test them to see if they are implemented; if we see any issues we will tell you about it. Mr. Roberts stated they had five (5) new findings this year, that's not unusual, there are (3) three levels of findings for a Government Agency here in New Mexico; 1) Controlled efficiency, or as the State Auditor here in New Mexico calls them "Other Matter", and those are just really small items; for instance, one of the findings this year was there's a State Regulation from the State Auditor, that says you can't release any information about the Audit before it's released and approved by the State Auditor, you guys released stuff to the Newspaper, last year before it was released, so that's technically a finding, it's an "Other Matter", it's not life threatening in any way, shape or form, or it doesn't cost anybody any money, but it's a violation of Regulations, so we had to write it up, so that's a "Other Matter" a smaller item. We have an significant deficiently, and in layman's terms that's something that's something that's more than remote and if something happens it's more than inconsequential, so pretty low bar, but in essence, something that the Auditor thinks the Commission needs to know about. And we did have a couple of those. And of course there's a material weakness, which a design issue or an actual issue, where if something does happen or it did happen it would have a material effect on the financial statements, we do have 5 new finding, and I'll go over the categories. We do have a Material weakness this year, just because of the size of the adjustments; and it is related to the Utility billings, over the years (20 to 30 years) we've had people to bankrupt, move out of the area, or they die - whatever it might be, they left without paying their Utility bills. Until there's a formal process to write that off through the Commission you can't write those off. So we are recommending, it's a large number, and we're recommending to the City and Staff to take care of that and get that all cleaned up this year, before next audit. Nothing in our test work led us to believe that people were writing them off unfairly, they just - people move and they don't pay their bills, or they go bankrupt, or they die and after so many years, it just accumulates to a pretty large number. The next thing is Budget Adjustments, this is "Other Matter", on the internal bookkeeping, when there's an adjustment to the budget, the staff goes ahead and makes adjustments to the books, so they can keep track on if they're going to go over the budget or not; we found that sometimes that was made to the books, we found a couple of cases that were made to the books before the Commissioners approved it. And in one case, before the DFA approved it. A small little thing; in **no** case during that process did the increase or decrease in budget cause any problems with going over or under the budget, it's more of the mechanics of the timing of making the changes in the budget. The next thing would be "Capital Assets". In the Government when you buy this desk you expense it a little different than "for profit accounting", and then you have to add it as an addition to your fixed assets, so there's a reconciliation process between the expense and the addition to the fixed assets. We had some issues in that area, and Linda showed all kinds of tenacity, she really worked hard at it and finally got it straight, but we had to write a finding on it because it wasn't there when we got here, but Linda did great working through that. The next item was the a new gross receipts tax as it relates to the Police Department during the year and setting up the infrastructure on how to deal with that internally that and how to account for that. And it was set up and ultimately everybody got their money, and was allowed, we do not believe the Police Department lost any of that money, it just took a while to

set that up. And the last one if the release of information to the Newspaper before you had permission from the State Auditor. We had some repeat stuff, but overall we think you are doing a great job. We couldn't be happier. Anything over 180 days were going to write off, but it has to come through the Commission. The legalities of that have to be run through.

Mayor Mulcahy noted that with 50 Municipalities, you must know what you're doing. He then asked on the Budget Adjustment "Other Matter" where we posted before DFA written approval, it's my understanding we had verbal approval, but that doesn't really count.

Mr. Roberts said it doesn't count for audits, if you had a written memo of the discussion that I talked with such and such at DFA and this from DFA, with dates and names, times.

Mayor Mulcahy stated that under FS2201204 the improper gross receipts tax distribution, did your auditors consider that a misappropriation at any time?

Mr. Roberts answered No Way.

"Commissioner Green made the motion to approve and accept the 2011/2012 Audit Report prepared by Accounting & Consulting Group, LLP."

Seconded by Commissioner Whitehead.
Motion carried unanimously.

(Note: A Roll Call Vote was taken later in the meeting, see page 6.)

Discussion/Action – Solar Generation Facility RFP: 12-13-4603-0628-4840 Rejection of all proposals – Juan Fuentes, City Manager

City Manager Fuentes explained to the Commission that several months ago the Commission directed the Staff to do additional research and a recommendation for a Solar Generation Facility RFP. Noting that in the Commission packet is a memo from our Procurement Officer, making a recommendation. During our original RFP, part of the process was to find a mechanism to finance this project. Unfortunately with the contract obligations we have and the discussions we had with the people who came in at the top, we are unable to reach an agreement or find funding for this project. Mr. Fuentes stated that at this time we are recommending all the Bids be rejected; however there is potentially is a possibility to explore this further thru other means, other avenues or other mechanisms, that would be up to the Commission, as far as this particular project the recommendation from Staff is to reject all proposals.

Mayor Mulcahy noted he wished to introduce an idea that some Municipalities have gone to the Solar Companies and said if you build it we will buy the electricity. That may be an option for us, knowing that we don't have the funding to do it, and we may be able to be on the receiving end; probably a smaller type plant. It's my understanding at looking at this, after reading this, from reading this, we probably would have some agreement from Sierra Electric to do that, which might be a viable option down the road, but I personally concur, if we can't find the funding.

Commissioner Green agreed with the Mayor, requested that not too much time to expire until we bring this back, Silver City is building a one megawatt power installation, it was announced on public radio, a company Affordable Solar, out of Albuquerque, is doing a PPA (Purchase Power

Agreement) I'd like it to have the opportunity since it's not on the Agenda, brought together on the Agenda, so we can explore different options, If it can work, I think it's a value to the City if we own a percentage of the electricity. Commissioner Green moved to place this on the Agenda for discussion again.

“Commissioner Green moved to reject all proposals.”

- Seconded by Commissioner Richter
Motion carried unanimously.

Discussion/Approval – 2013 Fuel Farm Upgrade Project IFB# 12-13-8403-0110-840 Reject all bids – Pat A. Wood, Procurement Officer.

Procurement Officer Pat Wood stated that they opened bids for the Fuel Farm Upgrade Project IFB# 12-13-8403-0110-840 on Feb 26, 2013 at 2:00 P.M.; we received one bid for this project from D & H Pump Services of Albuquerque. The Bid came in a lot higher than the Engineers estimate, so WH Pacific is requesting that we reject all bids at this time, due to funding and make some modifications to the scope of work so that we can rebid it.

Mayor Mulcahy noted that we allocated a quarter of a million dollars to this deal counting Federal Funding and it was a significant investment, and he was frankly disappointed that we were not able to complete the task; however he does understand from the procurement process that sometime you can want to pay something and then it comes in at twice that much, or something of that factor. I don't think we have the ability to raise that kind of money, I hope we can come back to this project very quickly with another proposal, Mr. City Manager that will allow us to get this Fuel Farm upgraded. He asked if there was any reason to concern ourselves with the ability of the Fuel Farm to deliver fuel at this time.

City Manager Fuentes stated that we are currently providing that service at the Airport. We are looking at other avenues to be able to seek some addition funding through the State Aviation Division that would give us some more Grant money. And to be able to close that gap for a project that may come about how it was originally estimated, but at this time we do have a new lease truck that we are leasing, so everything is running normal at the Airport. We will definitely be moving forward, Bill Slettom, Community Development Director is working closely with WH Pacific; so hopefully they can work it out., we are looking at all the options and hopefully we'll get more than one bid, and a lower cost bid.

Commissioner Green asked if there was a time limit on the \$50,000 monies.

Community Development Director Bill Slettom stated No. He noted they would start over again, with a new grant application; the initial budget was based on a preliminary analysis for that scope of work. At that time the State Aviation was doing a 50/50 match.

“Commissioner Green moved to reject all bids for Fuel Farm Upgrade Project.”

Seconded by Commissioner Sandra Whitehead.
Motion carried unanimously.

Discussion/Action-Awarding of Contract to PDCO Inc., for the Armijo Family Park Restroom Project bid. Juan Fuentes, City Manager

City Manager Fuentes noted that the Commission had previously approved and awarded the Armijo Family Park Restroom Project bid to PDCO, Inc. For the amount of \$87,401.24, and in the packet is the standard agreement from WH Pacific. The Project is ready to move forward.

“Commissioner Jeff Richter moved to award the Contract to PDCO Inc., for the Armijo Family Park Restroom Project.”

Seconded by Commissioner Green.
Motion carried unanimously.

Mayor Mulcahy stated he noted an issue on the Agenda, he requested to go back to Old Business, Item 1. On the Ordinance for Publication. We did a verbal vote, and it was a unanimous vote, I’m afraid under Ordinance we have to do a Roll call Vote.

Hon. John Mulcahy responded Aye to a Roll Call Vote
Hon. Sandra Whitehead responded Aye to a Roll Call Vote
Hon. Steve Green responded Aye to a Roll Call Vote
Hon. Jeff Richter responded Aye to a Roll Call Vote

Motion carried unanimously.

DISCUSSION/Action – MOU between the State of NM 7th Judicial DA’s Office and the City of T or C Police Dept. for Participation in the T or C Immediate Response Team, Priscilla Mullins, Chief of Police.

Chief Mullins stated that this MOU is to approve the State of New Mexico and the State of New Mexico 7th Judicial DA’s Office working in conjunction with the TorC Police Department for participation in the TorC Immediate Response Team (IRT), for one member. The inclusion of the DA’s Office will increase interagency relations and cooperation, provide legal liability/protection for Officer and the City of TorC. The Agreement term is open ended; either party can withdraw, from this agreement with 30 days written notice. Each individual agency will be responsible for their overtime, for their Officers/Investigators.

Commissioner Richter asked about providing for legal liability protection.

Chief Mullins stated each Agency will cover their Officer/Agency, that’s why we need the MOU. We didn’t have a MOU in place for the Judicial DA’s Office.

“Commissioner Whitehead moved to approve the MOU between the State of NM 7th Judicial DA’s Office and the TorC Police Department.”

Seconded by Commissioner Green.
Motion carried unanimously.

Discussion/Action – Resolution #27 12/13 – Authorizing and Approving Submission of a completed Application for Financial Assistance and Project Approval to the NMFA for the Colonia’s Infrastructure Fund. Bill Slettom, Community Development Director.

Community Development Director Slettom explained that this Resolution #27 12/13 is approving the application that we are going to submit to NMFA to the Colonia’s Infrastructure Project Fund, this is the application requesting

about eight million dollars of Colonia's funding for the Waste Water Treatment Plant Improvements. He stated it requires at least a 10% match from the City, noting the application was due Friday. .”

“Commissioner Steve Green moved to approve Resolution 27 12/13 the submission of the completed Application for Financial Assistance and Project Approval to NMFA for Colonia's Infrastructure Fund;

Seconded by Commissioner Whitehead.

Hon. John Mulcahy responded Aye to a Roll Call Vote
Hon. Sandra Whitehead responded Aye to a Roll Call Vote
Hon. Steve Green responded Aye to a Roll Call Vote
Hon. Jeff Richter responded Aye to a Roll Call Vote

Motion carried unanimously.

REPORTS:

City Manager Report, City Manager Fuentes gave a quick update on three items that are of interest to us. 1) Related to the New Mexico Legislature, the session ends this Saturday, March 16th; and in regards to the Space Flight Informed Consent Act, it has pass both House and Senate it was headed to the Governor's Office for signature, that was one of our priorities this year so I'm pleased to report that is moving forward. Also we had Senate Bill # 228- regarding the New Mexico Finance Authority Water Fund Project; we also have submitted an application for a water preliminary report as well as well as a an acid management plan, that bill has passed both House and Senate and is also headed to the Governor's Office for a signature, if signed we will be headed to Santa Fe for a presentation to the Board for funding for our application. And finally we do have as well Senate Bill 60 that is related to the Capital Outlay request that we have submitted. Sierra County has a number of projects listed under that Senate Bill and we are eligible for one hundred thousand dollars for the animal shelter, I believe that was our priority number 2, also Sierra County has some funding also, Elephant Butte and our Senior Program as well, has passed the Senate so it's going forward to the House, hopefully they can get it passed in the next few days.

Commissioner Green noted that Mr. Cary “Jagger” Gustin was in the audience and noted stated that it is a big deal that two of our Citizens were appointed to a state wide board, Art and Public Places, it's the first time it's ever happened in the history of the State, Commissioner Green stated that it was all thanks to Jagger's pushing it, and making it happen. He also suggested that he contact Mr. Zimmer, who is the program manager and let him know that our Veteran's Home will be building a Alzheimer's wing here, and that is going thru State dollars and it's going to be a lot of public art it's 1% after a hundred thousand dollars up to twenty million, we're talking about bringing the opportunity for our artist or town to be players in this field. So I'd like to see our that Mr. Durham and Mr. Bryan are rolled over, not only for the Spaceport Public Art, but for Art in general, anything that's built in Sierra County with State money. Noting that it was after 7 PM, and the polls have now closed, he had not wanted to speak about this until the Polls closed; he wished to thank the City Manager and Leonard for their hard work. He spoke of receiving a phone call from a resident who had 12 tires dumped in their front yard, on Veater and Cole, with a phone call to the City Manager it was cleaned up within 20 minutes, they did a great job.

Mayor Mulcahy stated he went to one event last week; it was the Albuquerque Chamber annual luncheon, he noted going with a bunch of business people. There were two presentations, one by the Governor and one by George Whiteside's, the CEO of Virgin Galactic, both of them were very interested in getting the Informed Consent, it not only passes it was one of the only unanimous bills 62 to nothing, in Congress. It is on its way to the Governors' desk. She pushed a couple of points, that I had heard in Arizona, one of them she wants to lower the corporate income tax rate, something comparable to Arizona 4.9% we're at 7.6; that was very good to hear. The second was what's called a single way to tax, where in New Mexico we export goods, we charge the inputs and then we charge sales tax on the other side, Arizona does not do that. Those were two points that she made during that Luncheon, I was glad to hear. I also spoke to the Albuquerque Chamber to make sure we are invited to that event every year.

RESPONSE TO
PUBLIC
COMMENT:

None.

EXECUTIVE
SESSION

“Commissioner Green made a motion for the Commission to go into Executive Session, regarding Potential or Threatened Litigation 10-15-1H (7)-related to HSLD, LLC. , and 2.)Potential or Threatened Litigation 10-15-1H (7) related to Solid Waste Collection Center. And Personnel 10-15-1H (2)-related to Annual review of the City Manager.”

Seconded by Commissioner Whitehead.

Hon. John Mulcahy responded Aye to a Roll Call Vote
Hon. Sandra Whitehead responded Aye to a Roll Call Vote
Hon. Steve Green responded Aye to a Roll Call Vote
Hon. Jeff Richter responded Aye to a Roll Call Vote

Motion carried unanimously.

OPEN MEETING

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

“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; Commissioner Green stated that the Commission did discuss, no vote taken, no decision was made.

“Commissioner Green certified regarding Potential or threatened Litigation 10-15-1H (7)-related to Solid Waste Collection Center, was not discussed.”

“Commissioner Green certified regarding the Annual review of the City Manager; discussion incurred, no vote was taken.” “Commissioner Green motioned to tabulate scores, finding and suggestions and discuss next meeting in Executive Session.”

ADJOURNMENT:

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

Passed and Approved this _____ day of _____, 2013 on a motion duly made by Commissioner _____, seconded by Commissioner _____, and carried.

APPROVAL:

ATTEST:

John A. Mulcahy, Mayor

Judy M. Harris,
Deputy City Clerk