

CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, May 28th, 2013

WORK SHOP

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 meeting, in full conformity with the law and ordinances of said Commission in the Commission Chambers of said City, on Tuesday, May 28, 2013 at 4:00 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
Hon. Mike Kertesz, Commissioner

Also present:

Scott Griffith, Rory (last name inaudible) and Neil Skiver of Johnson Control, Inc.
Juan Fuentes, 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.

PRESENTATION: Mayor Mulcahy opened the meeting and introduced Johnson Controls.

Scott K. Griffith, Account Executive, Energy Solutions Johnson Control, Inc. made a presentation regarding:

1. Water Conservation – Utility Metering Infrastructure Modernization through Energy Performance Contracting.

(Information provided for the Record)

CITY COMMISSION
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Tuesday, May 28th, 2013

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 Work Shop Session in full conformity with the law and ordinances of said Commission in the Commission Chambers of said City, on Tuesday, May 28, 2013 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
Hon. Mike Kertesz, Commissioner
- Also present:
Juan Fuentes, City Manager
Jay Rubin, City Attorney
Mary B. Penner, City Clerk
- QUORUM:** There being a quorum present the Board proceeded with the business at hand.
- CEREMONY:** Mayor Mulcahy called for fifteen seconds of Silent Meditation.
- Mayor John Mulcahy called for the Pledge of Allegiance with Commissioner Steve Green leading the Pledge of Allegiance.
- APPROVAL OF AGENDA:** Mayor John Mulcahy called for approval of the Agenda.
- “Commissioner Steve Green moved approval of the Agenda as submitted.”
- Seconded by Commissioner Sandra Whitehead.
Motion carried unanimously.
- COMMENTS FROM THE PUBLIC:** Prior to Comments from the public, Mayor John Mulcahy read a statement in regards to the Pool, noting possibly needing to call a special meeting for expenses incurred.
- The Mayor stated that people could sign in as a proponent or opponent for the Public Hearing to be held later in the meeting.

Sarah Frothingham came before the Commission in regards to the pool.

Mike (last name inaudible) came before the Commission in regards to the pool.

Mayor Mulcahy noted; there is a piece of statement he wished to clarify, with this finance, we are bound to spend this money, as quickly as possible, so the option of putting the pool off or to another time – is not an issue.

Carole Wheeler came before the Commission in regards to the pool.

Cary “Jagger” Gustin came before the Commission giving a film report, provided a hand-out. (Information provided for the record.)

Andrew and Mary (last name inaudible) came before the Commission in regards to the Pool.

Ron Fenn came before the Commission in regards to the crowd in the Chambers, Workshop with Johnson Controls, Utilities and audit of electric transformers.

Randal Lawson came before the Commission in regards to the pool.

Ivan Padilla came before the Commission in regards to a name change for the town.

Audon Trujillo came before the Commission in regards to the Golf Service Contract and the City Manager’s Contract.

Mayor Pro-tem Whitehead noted point of order regarding the audience clapping.

Eve Elting came before the Commission in regards to thank Ivan Padilla for his statements, and specking for Wendy Sager-Everson about the health benefits for the Pool.

Hans Townsend came before the Commission in regards to his disappointment regarding the Pool and the Tennis Courts.

Mayor Mulcahy read the Rules of Procedure regarding meetings, asking the public to refrain from clapping.

Wendy Nine came before the Commission in regards to exemption to opening parts of the Pool during construction.

Attorney Rubin spoke to the Commission regarding enforcing the “point of order”.

Commissioner Green spoke regarding the point of order.

Candace Brown came before the Commission in regards to the speakers in the Chambers noting she could not hear what was being said, she also spoke of the transformers and the swimming pool,.

Howie Tucker came before the Commission in regards to leasing pools from Hotels/Motels during the construction.

Diana Mathews came before the Commission in regards to the pool, the need of a handicap lifts; and use of pools at Elephant Butte Inn and Hot Springs Inn.

CONSENT CALENDAR: Mayor Mulcahy asked for approval of the Consent Calendar.

“Commissioner Green moved to approve the Consent Calendar.”

Seconded by Mayor Pro-tem Whitehead.
Motion carried unanimously.

PUBLIC HEARING: Mayor Mulcahy noted the Public Hearing regarding Final Adoption of Ordinance #637 – Amending Article IV, Division 10 ‘Sierra County Higher Education Council’; inviting the audience to sign up to be a proponent or opponent.

City Manager Fuentes stated this was presented in the last meeting, seeking deletion of the Sierra County Higher Education Council, and the lease agreement with the lease property being used by Western New Mexico University and the Gardner Learning Center, noting working with the lease agreement would address any issues the City had.

Commissioner Green asked how long the lease is, suggested working with the Schools.

City Manager Fuentes did not have the length of lease information at this time.

Mayor Mulcahy closed the Public Hearing.

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OLD BUSINESS: Discussion/Action - Mayor Mulcahy noted next was Resolution #31 12/13 to approve the Preliminary Budget.

Finance Director Linda Lanham stated that they made decreases in each item for the General Fund, which did show a 6% cut in the General Fund. Noting all the budgets in the General Fund went back and cut back funds from each item in the General Funds. Asking for approval of the Preliminary Budget. She explained the Police Department cuts. Noting a decrease of \$106,868, and adding two positions Lifeguards.

Commissioner Kertesz asked is the electric bills, if that was part of the Budget.

City Manager Fuentes explained customers paying past due billings, noting it did not have a specific line in the budget, explaining the accounting system and how it would show at the end of the year.

Commissioner Green noted cuts in sub-recipient allocations, and if that was included in the budget. Noting he was disappointed in the cuts to vital services.

Ms. Lanham explained it was part of the Governing Body Budget.

“Mayor Mulcahy moved to approve the Preliminary Budget.”

Seconded by Commissioner Richter.

Mayor Mulcahy responded Aye to a Roll Call Vote.
Mayor Pro-tem Whitehead responded Aye to a Roll Call Vote.
Commissioner Green responded Nay to a Roll Call Vote.
Commissioner Kertesz responded Aye to a Roll Call Vote.
Commissioner Richter responded Nay to a Roll Call Vote.

Motion Carried 3/2.

Discussion/Action – Final Adoption Ordinance #637 – Amending Article IV, Division 10 ‘Sierra county Higher Education Council.’ Noting the Public Hearing earlier in the meeting.

City Manager Fuentes explained the request to Amend the Code, explained matters which cover in the WNMU lease agreement.

“Mayor Mulcahy moved to accept the Amendment to the Code.”

Seconded by Commissioner Richter.

Mayor Mulcahy responded Aye to a Roll Call Vote.
Mayor Pro-tem Whitehead responded Aye to a Roll Call Vote.
Commissioner Green responded Aye to a Roll Call Vote.
Commissioner Kertesz responded Aye to a Roll Call Vote.
Commissioner Richter responded Aye to a Roll Call Vote.

Motion Carried Unanimously.

Discussion/Action regarding the Golf Course Contract. City Attorney Rubin made an observation regarding the Contract; he spoke of comments made in open session being appropriate. Attorney Rubin reviewed the changes made to the Proposed Contract.

Commissioner Green addressed the need to improve the look of the City owned Buildings at the Golf Course.

“Mayor Mulcahy moved to approve the Golf Course Contract”.

Seconded by Commissioner Mike Kertesz.
Motion carried unanimously.

Mayor Mulcahy thanked the City Employees for the attendance and their hard work.

NEW BUSINESS:

Presentation – Healing Water Trail Dedication – Merry Jo Fahl

Sherry Fletcher and Don Armijo approached the podium. Ms. Fletcher noted that Merry Jo Fahl who was unable to attend as she was not feeling well. Ms. Fletcher gave a presentation on the Healing Water Trail and noted the Dedication was to be held the June 8th at the Geronimo Springs Museum; invitations were given to the Commission. Ms. Fletcher noted invitations were sent out with Utility Bills to invite the Public to attend.

City Manager Fuentes noted meeting Merry Jo Fahl and her work to get the Healing Water Trail project and moving it forward, and commended and thanked them for their hard work.

Discussion/Action – Swim Team requesting assistance for the city of T or C.

Ms. Dana Berkstresser spoke as Co-President of the Swim Team, apologizing that Destiny Mitchell was ill and not able to be there. Ms. Berkstresser requesting funding for the Swim Team, noting the Summer Swim Team had been working now for 25 years. She noted with the work being done at the Pool, they had to find a new place to swim, speaking of different State meets. Explaining they had several kids place in the State competition. Noting arrangements made with several pools within 30 to 45 miles in order to compete in the summer swim season. Noting they organized projects to raise funding for the Swim Team. Noting they were doing fund raising and hoped the City had excess funds available from the budget to help financial

support given to the Team. Noting the Team has 30 to 50 members, which needed to swim daily, stating that Hatch would be charging the Team \$25.00 per day, asking for monies for the teams for gas to attend.

Commissioner Green noted there was an organization names Rufus, asking if they could help defrayed the cost of attending the meets.

Commissioner Richter asked how much was raised so far.

Ms. Berkstresser answered they had a 50/50 raffle at the Art Hop and raised about \$270.00.

Mayor Mulcahy asked if they were nonprofit.

Ms. Berkstresser answered no, previously under the City.

Mayor Mulcahy noted that may be a problem, because of the anti-donation clause.

City Attorney Rubin noted it stands to issue, and the City cannot contribute money to an Organization and could think of no way to get around the anti-donation clause.

City Manager Fuentes noted issues with the anti-donation and that the program would have to be given to all persons in the entire City.

Mayor Mulcahy asked if the City could provide transportation.

City Manager Fuentes noted there were about 60 kids, and we don't have the capacity for that.

Ms. Berkstresser stated they had transportation; they only needed assistance for gas.

Discussion/Action – Appointment to City Art board – Cary “Jagger” Gustin.

Mr. Gustin, representing Sierra County Arts Council requested appoint James Durham to the Board to replace Steve Rice.

“Commissioner Green moved to approve the appointment of James Durham as a member of the Sierra County Arts Council.”

Seconded by Commissioner Whitehead.
Motion carried unanimously.

Discussion/Action Resolution #37 12/13 approving participation in the SCCOG, Inc. for FY 12/14 and appointment of designated representative and Alternate –

Mr. Jay Armijo, Executive Director, SCCOG; explained it was that time of the year again, requesting the City participate in the Sierra County Council of Government and appoint a designated representative and Alternate for SCCOG. Mr. Armijo explained they help with planning grants, transportation options, cancer assistance transportation, Senior Citizens programs, and many other organizations in the community. Noting they asked yearly to adopt a resolution in the matter.

Commissioner Green volunteered to the City's representative.

Commissioner Kertesz volunteered to the City's alternate.

Mayor Mulcahy noted Commissioner Green was throwing his hat in the ring, and

stated Commissioner Green moved as such.

“Commissioner Green moved to approve Resolution #37 12/13, with Commissioner Green as the Representative and Commissioner Kertesz as the alternate.”

Seconded by Mayor Mulcahy.

Mayor Mulcahy responded Aye to a Roll Call Vote.
Mayor Pro-tem Whitehead responded Aye to a Roll Call Vote.
Commissioner Green responded Aye to a Roll Call Vote.
Commissioner Kertesz responded Aye to a Roll Call Vote.
Commissioner Richter responded Aye to a Roll Call Vote.

Motion carried unanimously.

Mr. Armijo thanked the Commission for the attendance and hard work Commissioner Green has put into the Council.

Discussion/Action – Appointment/Re-Appointment Sierra Vista Hospital Governing Board (SVHGB).

City Clerk Mary Penner noted a letter received from SVHGB asking that Mr. James Hunt be re-appointed to the Board.

Commissioner Green noted how impressed with Mr. Hunts qualifications, commitment and work on the SVHGB.

“Commissioner Green moved to appoint Mr. Hunt to the SVHGB.”

Seconded by Mayor Pro-tem.
Motion carried unanimously.

Discussion/Action – Appointment of Alternates – JPC Board, RPO and SCRTD Boards.

Commissioner Green stated the need for a voice at the table for the above noted Boards, asking the Commission to have an alternate for each Board.

Mayor Mulcahy asked Commissioner Kertesz if he would be willing to be the alternate in the JPC Board.

Mayor Mulcahy asked who would be interested in an alternate position with the RPO Board.

Commissioner Whitehead volunteered to the Alternate on the SCRTD Board.

“Mayor Mulcahy moved to approve as alternates: Commissioner Kertesz to the JPC Board and the RPO Board, Commissioner Whitehead to the SCRTD Board.”

Seconded by Commissioner Green.
Motion carried unanimously.

Discussion/Action – Change Order #1 – Collection Center Construction.

Sanitation Director Leonard Carrillo noted he brought the last and final Change Order for the Collection Center Construction; consists of the finishing the gutter, to include the Geo Testing for the Ground, and surveying for the roads and the Scale house would be.

Commissioner Kertesz noted he had various questions regarding the Change order and unit rates, he had spoken to Manager Fuentes; they called and determined the information, and he was convinced everything was being done as to protocols.

Commissioner Richter noted charges which should have been added to the original RFP for the construction and if this was a design flaw?

City Manager Fuentes noted when the testing was done with a natural trailer it was too close to the berm, we did not feel comfortable leaving it as it is, it was too tight of a turn; we requested additional room, which required additional dirt. The design was not to our comfort level, and the reason for the change order. Mr. Fuentes noted it was staff recommendation to approve the funding.

“Commissioner Green moved for approval of Change Order #1, for Solid Waste Collection Center Construction.”

Seconded by Commissioner Whitehead.
Motion carried unanimously.

Discussion/Action Recommendations – Recommendation Planning & Zoning Commission –

a. Special Use Permit 400 N. Broadway – Yarrow Dankert

City Manager Fuentes noting the Special use Permit, stating that Planning & Zoning had met and did recommend the Special use Permit.

Commissioner Kertesz questioned how the Commission handled the use of Business and Special Use.

Commissioner Green noted what they had decided in the past.

Commissioner Kertesz requested that be included in the Resolution for this.

Ms. Dankert spoke to the Commission, noted she had two different parties interested in the Business, and both had noted they wished to live in the back or have living quarters in the Business, she noted she wished to sell or rent the building.

Commissioner Richter noted he thought it was a good recommendation.

City Building Inspector Robby Travis stated Ms. Dankert was following procedure and codes with the renovations.

“Commissioner Green moved to approve the recommendation of the Planning and Zoning Commission for the Special Use Permit for 400 N. Broadway”.

Seconded by Commissioner Richter.
Motion carried unanimously.

b. Variance Application – 1.3 miles from I-25, exit 75 off ramp – Los Arcos Arcos Steak House.

City Manager Fuentes noted that Mr. Middleton was requesting variance approval from the Commission, due to the previous Bill Board damaged and torn down by winds.

Commissioner Kertesz noted another sign in the area, not the same property, stating he wished the Commission take a look at the sign codes.

Planning and Zoning Commissioner John Sheridan noted sections of the sign code. Noting the P & Z had not had all the information when the Variance was brought to them. Noting the Planning and Zoning did approve the Variance Application.

Sign owner Bobby Middleton noted he had the sign was a legal conforming sign, noting he has had a legal permit for 40 years or so and had the required State Highway permit. Noting he was going to have a sign company put it up in the same position on his own personal property, and the sign came back and told him he needed to go through the Planning and Zoning Board.

Mr. Sheridan approached and read further codes in the article.

“Commissioner Green moved for the variance for replacement of the Los Arcos Steakhouse sign.”

Seconded by Mayor Pro-tem Whitehead.
Motion carried unanimously.

REPORTS:

City Manager reported on a course he attended the New Mexico Economic Development Course in Silver City.

Mayor Mulcahy asked the City Manager about the Solid Waste Scales.

City Manager Fuentes stated one of the items we are missing at the Collection Center is the actual Scales, we did go out to bid, and unfortunately we received only one bid – stating we will re-advertise and re-bid.

Commissioner Green asked if there was a possibility of renting, noting there are portable scales. Stating he wished for the city to look into renting a scale.

City Manager Fuentes answered that they had looked into the scale; also actual weights being hauled verses the amount we are being charged. Manager Fuentes explained the bid process, and what it involved.

City Attorney Rubin – No Report.

Commissioner Kertesz stated he personally went out to the building next to Casa Taco, in Elephant Butte, and he witnessed the fact that Fun in the Sun Tours is in fact picking up out there. He reported that he and Sid Bryan got their heads together and he decided to call Christine Anderson; Ms. Anderson was very surprised that nobody has spoken out from our City, complaining about the fact that Follow The Sun Tours is not coming through our City. Commissioner Kertesz urged the Commission to give that some thought and see what they could do to put their heads together.

Commissioner Richter stated he wished to offer an antidote about the identity of our

City and branding it. He noted in light of earlier comments made by Mr. Padilla, explaining that historically this has been Hot Springs, before any town sites were formed, this was known as Palomas Hot Springs; around 1928 or 29 - the area from North or Broadway to about 9th Street was removed from the Public Domain and it was a Government Town Site called Town site of Hot Springs New Mexico, South of Broadway there was a private town site, a subdivision, almost to the river and it was called Palomas Hot Springs Town Site. And then later on the name was changed, Commissioner Richter wished everyone to know a little of the history.

Commissioner Green stated he had served 5 years on the Commission, but this was toughest Commission meeting he has sat through in those 5 years. He wants to challenge the rest of the Commission to roll up their sleeves, find the money and go away on a retreat that will give them direction and allow them to make accomplishments and achievements that can be measured by the citizens, for level of their performance; noting he was not a happy camper with himself.

Mayor Pro-tem Whitehead reported that on Saturday, May 25th at 10 o'clock A.M. in the morning, she participated in the Fly Freedom's Flag at Dam Site Marina in honor of our Military, I was also honored with a Boat Parade, one the windy Elephant Butte Lake, she thanked the Commission for that opportunity.

Mayor Mulcahy noted this past week we had a fun event, opening up the Lee Belle Johnson Senior Center, to license dogs and vaccinate dogs and show stuff about dogs; noting he had pictures he would send out, it was a fun event from 10 to 2. Mayor Mulcahy thanked City Employees, noting 100 dogs were licensed. The Vet, Dr. Dawkins, saw a number of Dogs, and there were vendors there. It was a lot of fun, Police and Animal Control were there, Kuma was there and made a fabulous presentation, the kids had fun. He thanked all for making it possible.

Mayor Mulcahy stated he met with State Engineers Office in Las Cruces last week, we went over a pretty extensive inventory of all of the domestic wells and toured within the City, and there's a lot that's going to come out of that, we have a good list now of all the wells, who the owners are, how deep they are,

**RESPONSE TO
PUBLIC COMMENT:**

City Manager Fuentes noted in response to what needs to be done next, speaking of the town name. Explaining the two options available, 1.) Commission votes to put in in the Election Resolution, 2.) Citizens form petition to get it in the March 2014 Election.

Commissioner Green stated Commissioner Kertesz had a valid point, noting it was the City of TorC with its population that carried the vote, 2/3rds to 1/3rd vote for the self-imposed GRT. Recommending that Mr. Kertesz reach out to Mr. Bryan to file a IPRA request for the RFP and the Contract signed with SpacePort and Follow the Sun, to see if there's TorC mentioned there, until we know what that contract reads, we're kinda in the dark a little bit.

Commissioner Kertesz noted Mr. Bryan had already done that.

EXECUTIVE SESSION:

"Commissioner Green moved that the Commission to go into Executive Session to discuss 1.) Pending or Threatened Litigation 10-15-1H(7) related to the Buckhorn Property."

Seconded by Mayor Pro-tem Sandra Whitehead.
Mayor Mulcahy responded Aye to a Roll Call Vote.

Mayor Pro-tem Whitehead responded Aye to a Roll Call Vote.
Commissioner Green responded Aye to a Roll Call Vote.
Commissioner Kertesz responded Aye to a Roll Call Vote.
Commissioner Richter responded Aye to a Roll Call Vote.

Motion carried unanimously.

OPEN MEETING: Mayor Mulcahy stated we are now in open session.

“Commissioner Green certified that only matters pertaining to:
1.) Pending or threatened Litigation 10-15-1H(7), A.) Related to Buckhorn Property;
stating that discussion incurred no decision was made.”

“Commissioner Green made a motion that stipulate that we authorize the City Manager and Attorney, to move forward with the agreement for conveyance of real property and the documents to be signed by the Brannon’s and authorize Manager Fuentes to sign for the City as it pertains to real property located in Truth or Consequences – Lots 19 & 20, Block 91 in the Hot Springs Town site of Hot Springs now Truth or Consequences, as shown by the Plat on file in the Office of the County Clerk of Sierra County, otherwise known as 307 Main Street, Truth or consequences.”

Seconded by Mayor Pro-tem Whitehead.
Motion carried unanimously.

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

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

APPROVAL:

John A. Mulcahy, Mayor

Mary B. Penner, City Clerk

